

AN ACT relating to reorganization and making an appropriation therefor.

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

➔Section 1. KRS 15.010 is amended to read as follows:

- (1) The Attorney General is the head of the Department of Law.
- (2) The Department of Law shall include the following major organizational units:
 - (a) ***Department of Criminal Investigations***~~[Criminal Appellate Division];~~
 - (b) ***Office of*** Consumer Protection~~[Division];~~
 - (c) ***Office of Criminal Appeals***~~[Special Investigations Division];~~
 - (d) ***Office of*** Special Prosecutions~~[Division];~~
 - (e) ***Office of*** Prosecutors Advisory Council~~[Services Division];~~
 - (f) ***Office of*** Medicaid Fraud and Abuse Control~~[Division];~~
 - (g) ***Office of*** Civil and Environmental Law~~[Division];~~
 - (h) ***Office of*** Victims Advocacy~~[Division];~~
 - (i) ~~[Child Support Enforcement Commission;~~
 - (j) ~~—Administrative Hearings Division;~~
 - (k) ~~—]Office of Rate Intervention; ***and***~~
 - (l) ~~[+] ***Office of*** Administrative Services ~~[Division; and~~~~
 - (m) ~~—Financial Integrity Enforcement Division].~~

(3) The Department of Criminal Investigations shall be headed by a commissioner, who shall be appointed by and serve at the pleasure of the Attorney General. The offices outlined in subsection (2) of this section shall be headed by executive directors, who shall be appointed by and serve at the pleasure of the Attorney General.

➔Section 2. KRS 13B.010 is amended to read as follows:

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

- (1) "Administrative agency" or "agency" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity in the executive branch

of state government authorized by law to conduct administrative hearings.

- (2) "Administrative hearing" or "hearing" means any type of formal adjudicatory proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges, or immunities of a named person.
- (3) "Party" means:
 - (a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;
 - (b) Any other person who is duly granted intervention in an administrative hearing; and
 - (c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing.
- (4) "Agency head" means the individual or collegial body in an agency that is responsible for entry of a final order.
- (5) "Recommended order" means the whole or part of a preliminary hearing report to an agency head for the disposition of an administrative hearing.
- (6) "Final order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by an agency head, whether affirmative, negative, injunctive, declaratory, agreed, or imperative in form.
- (7) "Hearing officer" means the individual, duly qualified and employed pursuant to this chapter, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.
- (8) "~~Office~~~~[Division]~~" means the *Office of Civil and Environmental Law*~~[Division of Administrative Hearings]~~ in the Office of the Attorney General~~[created pursuant to KRS 15.111]~~.

➔Section 3. KRS 13B.030 is amended to read as follows:

- (1) An agency head may exercise all powers conferred on an agency relating to the

conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).

- (2) (a) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:
1. Employ hearing officers;
 2. Contract with another agency for hearing officers; or
 3. Contract with private attorneys through personal service contract.
- (b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this section only if the Attorney General has first determined that the Attorney General's Office cannot provide the needed hearing officers to the agency. If the Attorney General determines that the Attorney General's Office can provide the needed hearing officers to the agency, the agency shall use the hearing officers provided by the Attorney General's Office. The expenses incurred by the Attorney General's Office in providing the hearing officers to the agency shall be paid to the Attorney General's Office by the agency in the following manner:
1. The amount to be paid by the agency to the Attorney General's Office shall be established by vouchers submitted by the Attorney General's Office to the agency which shall be promptly paid by the agency, at the beginning of, at the end of, or at any time during the provision of the hearing officers by the Attorney General's Office.
 2. The expenses to be paid to the Attorney General's Office shall be

calculated according to the amount of time spent by the salaried hearing officers of the Attorney General's Office in providing the services. The charge for time spent shall not exceed twenty-five percent (25%) more than the amount allowed for a sole practitioner under personal service contract. The Attorney General may require payment in advance of the provision of the requested services based on his calculation of the amount of time that will be spent by the salaried hearing officers of the Attorney General's Office in providing the services. The agency shall be reimbursed for any overpayment at the conclusion of the provision of services by the Attorney General's Office.

- (3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and the employing agency, with the advice of the office~~[division]~~, may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.
- (4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter, specifically. The office~~[division]~~ shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Required training shall not exceed eighteen (18) classroom hours for initial training and six (6) classroom hours per year for continuing training. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the office~~[division]~~ as meeting minimum standards.

→ Section 4. KRS 15.111 is amended to read as follows:

~~[(1)]~~ The **Office of Civil and Environmental Law of the Office of the Attorney General** ~~Division of Administrative Hearings is created in the Office of Attorney General.~~

~~(2)~~ ~~This division~~ shall have the following responsibilities:

~~(1)~~~~(a)~~ Employing and maintaining a pool of hearing officers for assignment to the individual agencies at their request, for the conduct of administrative hearings. The Attorney General's office may also employ other staff as necessary to carry out functions and responsibilities assigned by KRS Chapter 13B;

~~(2)~~~~(b)~~ Reviewing and approving or disapproving requests from agencies for waivers from provisions of KRS Chapter 13B;

~~(3)~~~~(c)~~ Providing training in administrative hearing procedures for hearing officers as required in KRS 13B.030, either by developing and offering the training, or by contracting with appropriate organizations for the provision of training, or by approving training developed and submitted by the agencies;

~~(4)~~~~(d)~~ Consulting with the Personnel Cabinet and employing agencies in the establishment of relevant and appropriate qualifications for classes of hearing officers;

~~(5)~~~~(e)~~ Establishing, in cooperation with the **Office** ~~Division~~ of Consumer Protection, a clearinghouse for complaints concerning the administrative hearing process in Kentucky. Each complaint received shall be referred to the agency that is the subject of the complaint, and the action of the agency to resolve the complaint shall be noted and reported to the **Office of Consumer Protection** ~~division~~;

~~(6)~~~~(f)~~ Reporting to the Legislative Research Commission by July 1 of each odd-numbered year, the status of the administrative hearing process in Kentucky. The report shall include a compilation of statistical data and other information necessary to assess the effectiveness and efficiency of hearing procedures and

recommendations for making improvements to the system. Agencies shall provide the information requested by the *Office of Civil and Environmental Law*~~[Division of Administrative Hearings]~~ necessary to complete the report.

➔Section 5. KRS 15.113 is amended to read as follows:

- (1) The *Office of the Attorney General*~~[Financial Integrity Enforcement Division is created in the Department of Law. The division]~~ shall:
 - (a) Investigate illegal redemption of food stamp benefits in cooperation with the United States Department of Agriculture and the Cabinet for Health and Family Services;
 - (b) Verify eligibility of food stamp program applicants as to past criminal history;
 - (c) Investigate the illegal distribution of counterfeit merchandise; and
 - (d) Investigate the use of personal identification and financial information by persons for the purpose of theft, or fraud, or both theft and fraud, and other illegal or fraudulent activity which may involve electronic commerce.
- (2) The Office of the Attorney General shall coordinate with the Department of Financial Institutions, the United States Secret Service, the Federal Trade Commission, the Kentucky Bankers' Association, and any other agency or organization to prepare and disseminate information to prevent identity theft.

➔Section 6. KRS 15.753 is amended to read as follows:

- (1) This section shall apply to:
 - (a) The Attorney General and his staff;
 - (b) A county attorney and his staff; and
 - (c) A Commonwealth's attorney and his staff.
- (2) A person named in subsection (1) of this section who is sued for any act or omission in the course of his duties and who has a judgment for monetary damages rendered against him and who personally suffers actual financial loss, unreimbursed from any source, by the enforcement and satisfaction of the judgment, including any costs or

attorney's fees awarded pursuant thereto, shall be indemnified by the Commonwealth from funds appropriated to the Finance and Administration Cabinet for the payment of judgments, to the extent of his actual financial loss.

- (3) The indemnification shall be contingent upon an express determination by the **Prosecutors**~~[Prosecutor's]~~ Advisory Council that the act or omission which resulted in liability was within the scope and course of the officer's employment and occurred during the performance of duty and was committed or omitted in the good faith belief that the act or omission was lawful and proper.
- (4) If the officer seeking indemnification is the Attorney General, the determination referred to in subsection (3) of this section shall be made by the Governor.
- (5) The indemnification shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available to the person claiming indemnification and shall not constitute a waiver of any privilege, immunity, or matter of defense including the sovereign immunity of the Commonwealth.
- (6) The indemnification shall not be the subject of comment, directly or indirectly, before any jury hearing any cause of action in which the Attorney General, a county or Commonwealth's attorney, or a member of their staff is a party, and any comment before the jury shall result in an immediate mistrial.

➔Section 7. KRS 189A.050 is amended to read as follows:

- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall be sentenced to pay a service fee of three hundred seventy-five dollars (\$375), which shall be in addition to all other penalties authorized by law.
- (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
- (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid into the general fund, and the remainder of the revenue collected from the service

fee imposed by this section shall be utilized as follows:

- (a) Twelve percent (12%) of the amount collected shall be transferred to the Department of Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;
- (b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department for Public Advocacy;
- (c) One percent (1%) shall be transferred to the Prosecutors~~Prosecutor's~~ Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;
- (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and
 2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph;
- (e) Any amount specified by a specific statute shall be transferred as provided in that statute;

- (f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department for Public Advocacy; and
 - (g) The remainder of the amount collected shall be transferred to the general fund.
- (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

➔Section 8. KRS 205.712 is amended to read as follows:

- (1) The Department for Income Support, Child Support Enforcement, is established in the Cabinet for Health and Family Services.
- (2) The duties of the Department for Income Support, Child Support Enforcement, or its designee, shall include:
 - (a) Serve as state agency authorized to administer Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 to 669;
 - (b) Serve as the information agency as provided in the Uniform Interstate Family Support Act, KRS Chapter 407;
 - (c) Serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act;
 - (d) Serve as the agent for enforcement of international child support obligations, and respond to requests from foreign reciprocating countries;
 - (e) Establish and enforce an obligation upon receipt of a completed, notarized voluntary acknowledgment-of-paternity form;
 - (f) Enforce Kentucky child support laws, including collection of court-ordered or administratively ordered child support arrearages and prosecution of persons who fail to pay child support;
 - (g) Publicize the availability of services and encourage the use of these services for establishing paternity and child support;

- (h) Pay the cost of genetic testing to establish paternity, subject to recoupment from the alleged father, when paternity is administratively or judicially determined; and obtain additional testing when an original test is contested, upon request and advance payment by the contestant;
- (i) Establish child support obligations and seek modification of judicially or administratively established child support obligations in accordance with the child support guidelines of the Commonwealth of Kentucky as provided under KRS 403.212;
- (j) Administratively establish child support orders which shall have the same force and effect of law;
- (k) Issue an administrative subpoena to secure public and private records of utility and cable companies and asset and liability information from financial institutions for the establishment, modification, or enforcement of a child support obligation;
- (l) Impose a penalty for failure to comply with an administrative subpoena;
- (m) Provide notices, copies of proceedings, and determinations of support amounts to any parties or individuals who are applying for or receiving Title IV-D services, or who are parties to cases in which Title IV-D services are being provided;
- (n) Issue interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court where the individual or entity resides; and
- (o) May promulgate administrative regulations to implement this section and

adopt forms or implement other requirements of federal law relating to interstate administrative subpoenas.

- (3) Effective September 30, 1999, the cabinet shall establish a system to receive and process all child support payments. The system shall include existing computer systems to record the payments. The automated system shall include a state case registry that contains records with respect to each case in which services are being provided by the cabinet and each child support order established or modified in the state on or after October 1, 1998.
- (4) The cabinet shall establish and operate a state disbursement unit for the collection, disbursement, and recording of payments under support orders for all Title IV-D cases and for all cases initially issued in the state on or after January 1, 1994, in which a wage withholding has been court-ordered or administratively ordered, pursuant to Part D of Title IV of the Social Security Act. Establishment of the state unit may include the designation and continuation of existing local collection units to aid efficient and effective collection, disbursement, and recording of child support payments.
- (5) After the establishment of the disbursement unit child support collection system, the cabinet or its designee shall serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act.
- (6) Where establishment of paternity and enforcement and collection of child support is by law the responsibility of local officials, the cabinet shall refer cases to the appropriate official for such action. The cabinet may enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the cabinet in administering the program of child support recovery, including the entering into of financial arrangements with such courts and officials as provided for under the provisions of federal law and regulations. The local county attorney

shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county, subject to the option of the county attorney to decline such designation. Nothing in this section shall prevent the secretary from taking such action, with prior written notice, as appropriate if the terms and conditions of the cooperative agreement are not met. When a cooperative agreement with a contracting official is canceled for good cause, the cabinet may not offer that cooperative agreement to that official during the official's tenure.

- (7) Where the local county attorney, friend of the court, domestic relations agent, or other designee of the cabinet has been contracted for the purpose of administering child support enforcement pursuant to Title IV-D of the Social Security Act, the contracting official shall be deemed to be representing the cabinet and as such does not have an attorney-client relationship with the applicant who has requested services pursuant to Title IV-D of the Social Security Act nor with any dependent on behalf of the individuals for whom services are sought.
- (8) The cabinet shall determine the name of each obligor who owes an arrearage of at least two thousand five hundred dollars (\$2,500). After notification to the obligor owing an arrearage amount of two thousand five hundred dollars (\$2,500), the cabinet shall transmit to the United States secretary of health and human services the certified names of the individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport. The cabinet shall notify the identified obligor of the determination and the consequences and provide an opportunity to contest the determination.
- (9) The cabinet shall determine the name of an obligor owing an arrearage and shall indefinitely deny, suspend, or revoke a license or certification that has been issued if the person has a child support arrearage that equals or exceeds the amount that would be owed after six (6) months of nonpayment or fails, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or

- child support proceedings as provided by 42 U.S.C. sec. 666(a)(16).
- (10) The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.
 - (11) The denial or suspension shall remain in effect until the child support arrearage has been eliminated or payments on the child support arrearage are being made in accordance with a court or administrative order, the person complies with the subpoena or warrant relating to paternity or child support proceedings, or the appeal of the denial or suspension is upheld and the license is reinstated.
 - (12) Except for cases administered by the cabinet under 42 U.S.C. secs. 651 et seq. which shall be afforded the appeal process set forth by KRS 405.450(3), an individual who has a license or certification denied, revoked, or suspended shall have the right to appeal to the licensing or certifying board.
 - (13) A dispute hearing shall be conducted by the cabinet in accordance with KRS 405.450. The only basis for a dispute hearing shall be a mistake in fact.
 - (14) The cabinet shall in its discretion enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in coordination with the financial institutions, a data match system as required by KRS 205.772 to 205.778.
 - (15) The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents that are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.

(16) ~~The Cabinet for Health and Family Services shall forward to the Office of the Attorney General a list of names of delinquent obligors and, in cooperation with the Office of the Attorney General, shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 15.055.~~

~~(17)~~ The cabinet shall compare a quarterly report provided by the Finance and Administration Cabinet of all tort claims made against the state by individuals with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.

(17)~~(18)~~ The cabinet shall prepare and distribute to the cabinet's designee for the administration of the child support program information on child support collections and enforcement. The information shall include a description of how child support obligations are:

- (a) Established;
- (b) Modified;
- (c) Enforced;
- (d) Collected; and
- (e) Distributed.

(18)~~(19)~~ The cabinet's designee for the administration of the child support program shall distribute, when appropriate, the following:

- (a) Information on child support collections and enforcement; and
- (b) Job listings posted by employment services.

➔Section 9. KRS 205.8465 is amended to read as follows:

- (1) Any person who knows or has reasonable cause to believe that a violation of this chapter has been or is being committed by any person, corporation, or entity, shall report or cause to be reported to the Office of Medicaid Fraud and Abuse Control of the Office of the Attorney General~~[state Medicaid Fraud Control Unit]~~, or the Medicaid fraud and abuse hotline, the following information, if known:

- (a) The name and address of the offender;
- (b) The offender's place of employment;
- (c) The nature and extent of the violation;
- (d) The identity of the complainant; and
- (e) Any other information that the receiving person reasonably believes might be helpful in investigation of the alleged fraud, abuse, or misappropriation.

The **Office of Medicaid Fraud and Abuse Control**~~[state Medicaid Fraud Control Unit]~~ shall periodically publicize the provisions of this subsection.

- (2) The identity of any person making a report under this section shall be considered confidential by the receiving party. Any person making a report under this section regarding the offenses of another shall not be liable in any civil or criminal action based on the report if it was made in good faith.
- (3) No employer shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by KRS 205.8451 to 205.8483, testifies, or is about to testify, in any proceeding with regard to any report or investigation. Any individual injured by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained, together with the costs of the lawsuit, including a reasonable fee for the individual's attorney of record.
- (4) No employee of the **Office of Medicaid Fraud and Abuse Control**~~[state Medicaid Fraud Control Unit]~~, the Office of the Attorney General, the Office of the Inspector General, or the Cabinet for Health and Family Services shall notify the alleged offender of the identity of the person who in good faith makes a report required or permitted by KRS 205.8451 to 205.8483 nor shall the employee notify the alleged offender that a report has been made alleging a violation of KRS 205.8451 to 205.8483 until such time as civil or criminal proceedings have been initiated or a

formal investigation has been initiated. Any information or report concerning an alleged offender shall be considered confidential in accordance with the Kentucky Open Records Law, KRS 61.870 to 61.884.

➔Section 10. KRS 205.8483 is amended to read as follows:

- (1) The Office of the Inspector General in the Cabinet for Health and Family Services shall establish, maintain, and publicize a twenty-four (24) hour toll-free hotline for the purpose of receiving reports of alleged fraud and abuse by Medical Assistance Program recipients and participating providers.
- (2) The Office of the Inspector General in the Cabinet for Health and Family Services shall prepare a written description of the reported information and immediately make a written referral to:
 - (a) The **Office of Medicaid Fraud and Abuse Control of**~~state Medicaid Fraud Control Unit and to~~ the Office of the Attorney General of all reports of alleged fraud and abuse by providers or recipients participating in the Medical Assistance Program; and
 - (b) Other agencies and licensure boards of all reports relevant to their jurisdiction.
- (3) The Office of the Inspector General in the Cabinet for Health and Family Services, jointly with the **Office of Medicaid Fraud and Abuse Control of**~~state Medicaid Fraud Control Unit and~~ the Office of the Attorney General, shall prepare a Medicaid fraud and abuse report, for the prior fiscal year, categorized by types of fraud and abuse and by recipient and provider group. This report shall be submitted no later than July 1 of each year to the Legislative Research Commission, the Interim Joint Committee on Appropriations and Revenue, and the Interim Joint Committee on Health and Welfare and shall identify:
 - (a) The number and type of reports received in the Office of the Inspector General in the Cabinet for Health and Family Services, from the Medicaid fraud and abuse hotline categorized by recipient and provider groups;

- (b) The number and type of alleged Medicaid fraud and abuse reports which were discovered by, received by, or referred to the Office of Medicaid Fraud and Abuse Control of the Office of the Attorney General, ~~the state Medicaid Fraud Control Unit,~~ the Office of the Inspector General, and the Department for Medicaid Services; the number and type of reports which were opened for investigation by the Office of Medicaid Fraud and Abuse Control of the Office of the Attorney General, ~~the state Medicaid Fraud Control Unit,~~ the Department for Medicaid Services, or the Office of the Inspector General and their disposition including:
1. Administrative actions taken;
 2. Criminal penalties and civil payments received;
 3. The amount of state and federal funds involved in the alleged fraud and abuse;
 4. The cost of administering the hotline; and
 5. Recommendations for legislative action to prevent, detect, and prosecute medical assistance abuse and fraud in the Commonwealth.

➔Section 11. KRS 217.896 is amended to read as follows:

The Office~~Division~~ of Consumer Protection of the Office of the Attorney General shall develop and distribute to licensed pharmacies without charge a pamphlet for citizens of the Commonwealth which explains the provisions of KRS 217.815 to 217.826 and 217.895. Pharmacists shall display such distributed pamphlets in a prominent place and make them available without charge. Pharmacies shall maintain a sufficient stock of the distributed pamphlets to assure that the supply will not become exhausted for any lengthy time.

➔Section 12. KRS 248.353 is amended to read as follows:

- (1) Compliance with the provisions of KRS 248.350 shall be monitored by the department with enforcement assistance provided by the Office of Special

Prosecutions ~~Unit~~ of the Office of the Attorney General.

- (2) The Attorney General at the request of the commissioner:
 - (a) May make such public or private investigations within or outside of this state as he deems necessary to determine if any person has violated or is about to violate KRS 248.350 or any administrative regulation or order thereunder, or to aid in the enforcement of KRS 248.350 or in the prescribing of administrative regulations and forms thereunder;
 - (b) May require or permit any person to file a statement in writing, under oath or otherwise as the Attorney General may determine, as to all the facts and circumstances concerning the matter to be investigated; and
 - (c) May publish information concerning any violation of KRS 248.350 or any administrative regulation or order thereunder.
- (3) For the purpose of any investigation or proceeding under KRS 248.350, the Attorney General or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Attorney General deems relevant or material to the inquiry.
- (4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the Attorney General, may issue to that person an order requiring him to appear before the Attorney General, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.
- (5) No person is excused from attending and testifying or from producing any document or record before the Attorney General, or in obedience to the subpoena of

the Attorney General or any officer designated by him, or in any proceeding instituted by the Attorney General, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

➔Section 13. KRS 304.1-120 is amended to read as follows:

No provision of this code shall apply to:

- (1) Fraternal benefit societies (as identified in Subtitle 29), except as stated in Subtitle 29.
- (2) Nonprofit hospital, medical-surgical, dental, and health service corporations (as identified in Subtitle 32) except as stated in Subtitle 32.
- (3) Burial associations (as identified in KRS Chapter 303), except as stated in Subtitle 31.
- (4) Assessment or cooperative insurers (as identified in KRS Chapter 299), except as stated in KRS Chapter 299.
- (5) Insurance premium finance companies (as identified in Subtitle 30), except as stated in Subtitle 30.
- (6) Qualified organizations which issue charitable gift annuities within the Commonwealth of Kentucky. For the purposes of this subsection:
 - (a) A "qualified organization" means one which is:
 1. Exempt from taxation under Section 501(c)(3) of the Internal Revenue Code as a charitable organization, if it files a copy of federal form 990 with the Office~~[Division]~~ of Consumer Protection in the Office of the

- Attorney General; or
2. Exempt from taxation under Section 501(c)(3) of the Internal Revenue Code as a religious organization; or
 3. Exempt as a publicly owned or nonprofit, privately endowed educational institution approved or licensed by the State Board of Education, the Southern Association of Colleges and Schools, or an equivalent public authority of the jurisdiction where the institution is located; and
- (b) A "charitable gift annuity" means a giving plan or method by which a gift of cash or other property is made to a qualified organization in exchange for its agreement to pay an annuity.
- (7) A religious organization, as identified in this subsection, or its participants, that:
- (a) Is a nonprofit religious organization;
 - (b) Is limited to participants who are members of the same denomination or religion;
 - (c) Matches its participants who have financial, physical, or medical needs with participants who choose to assist with those needs;
 - (d) 1. Includes the following notice for delivery to all participants, printed in not less than ten (10) point, bold-faced type on or accompanying all applications, guideline materials, or any similar documents:

"NOTICE: UNDER KENTUCKY LAW, THE RELIGIOUS ORGANIZATION FACILITATING THE SHARING OF MEDICAL EXPENSES IS NOT AN INSURANCE COMPANY, AND ITS GUIDELINES, PLAN OF OPERATION, OR ANY OTHER DOCUMENT OF THE RELIGIOUS ORGANIZATION DO NOT CONSTITUTE OR CREATE AN INSURANCE POLICY. PARTICIPATION IN THE RELIGIOUS ORGANIZATION OR A SUBSCRIPTION TO ANY OF ITS DOCUMENTS SHALL NOT BE

CONSIDERED INSURANCE. ANY ASSISTANCE YOU RECEIVE WITH YOUR MEDICAL BILLS WILL BE TOTALLY VOLUNTARY. NEITHER THE ORGANIZATION OR ANY PARTICIPANT SHALL BE COMPELLED BY LAW TO CONTRIBUTE TOWARD YOUR MEDICAL BILLS. WHETHER OR NOT YOU RECEIVE ANY PAYMENTS FOR MEDICAL EXPENSES, AND WHETHER OR NOT THIS ORGANIZATION CONTINUES TO OPERATE, YOU SHALL BE PERSONALLY RESPONSIBLE FOR THE PAYMENT OF YOUR MEDICAL BILLS."

2. A participant shall acknowledge receipt of the "Notice" by signing below the "Notice" on the application;
 - (e) Suggests amounts to give that are voluntary among the participants, with no assumption of risk or promise to pay either among the participants or between the participants and the organization.
- (8) A public or private ambulance service licensed and regulated by the Cabinet for Health and Family Services to the extent that it solicits membership subscriptions, accepts membership applications, charges membership fees, and furnishes prepaid or discounted ambulance services to subscription members and designated members of their households.

➔Section 14. KRS 367.120 is amended to read as follows:

- (1) The General Assembly finds that the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services; toward this end, a Consumers' Advisory Council and an Office~~a Division~~ of Consumer Protection of the Office of the Attorney General~~Department of Law~~ are hereby created for the purpose of aiding in the development of preventive and remedial consumer protection programs and

enforcing consumer protection statutes.

(2) KRS 367.110 to 367.300 may be cited as the "Consumer Protection Act."

→Section 15. KRS 367.46951 is amended to read as follows:

As used in KRS 367.46951 to 367.46999 and 367.990, unless the context otherwise requires:

(1) "Telephone solicitation" means:

(a) A live or recorded communication sent by a telephone or message sent by a facsimile machine to a residential, mobile, or telephone paging device telephone number, including a call made by an automatic dialing or recorded message device, for the purpose of:

1. Soliciting a sale of consumer goods or services, offering an investment, business, or employment opportunity, or offering a consumer loan to the person called;
2. Obtaining information that will or may be used for the solicitation of a sale of consumer goods or services, the offering of an investment, business, or employment opportunity, or the offering of a consumer loan to the person called;
3. Offering the person called a prize, gift, or anything else of value, if payment of money or other consideration is required in order to receive the prize or gift, including the purchase of other merchandise or services or the payment of any processing fees, delivery charges, shipping and handling fees, or other fees or charges; or
4. Offering the person called a prize, gift, or other incentive to attend a sales presentation for consumer goods or services, an investment or business opportunity, or a consumer loan; or

(b) A live or recorded communication sent by telephone, facsimile machine, mobile telephone, or telephone paging device in response to inquiries

generated by unrequested notifications sent by the merchant to persons who have not previously purchased goods or services from the merchant or telemarketer or who have not previously requested credit from the merchant, to a prospective purchaser if the merchant or telemarketer represents or implies to the recipient of the notification that any of the following applies:

1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
 2. That the recipient will receive a prize or gift if the recipient calls the merchant or telemarketer; or
 3. That if the recipient buys one (1) or more items from the merchant or telemarketer, the recipient will also receive additional or other items of the same or a different type at no additional cost or for less than the regular price of the items;
- (2) "Telephone solicitation" does not mean the following:
- (a) A telephone call made in response to an express request of a person called, unless the request was made during a prior telephone solicitation;
 - (b) A telephone call made to the debtor or a party to the contract in connection with the payment or performance of an existing debt or contract, the payment or performance of which has not been completed at the time of the call;
 - (c) A telephone call to any person with whom the telemarketer or merchant has a prior or existing business relationship, including but not limited to the solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;
 - (d) A telephone call made by the following:
 1. A merchant or telemarketer located in Kentucky to a location outside of the Commonwealth of Kentucky;

2. A telephone call made by one (1) merchant to another;
- (3) "Consumer goods or services" means goods, services, or interests in real property used by natural persons primarily for personal, family, or household purposes;
- (4) "Consumer loan" means any extension of credit, including credit cards and other forms of revolving credit, to a natural person primarily for the purposes of purchasing consumer goods or services or for paying existing personal, family, or household debts;
- (5) "Consumer" means a natural person who receives a telephone solicitation;
- (6) "Legal name of the merchant" means the real name of the merchant, as defined in KRS 365.015(1), or the assumed name of the merchant for which all proper certificates have been filed pursuant to KRS 365.015;
- (7) "Merchant" means the individual or business entity offering the consumer goods or services, an investment, business, or employment opportunity, or a consumer loan;
- (8) "Caller" or "sales person" means the individual making the call or operating the automatic dialing or recorded message device and causing the call to be made;
- (9) "~~Office~~~~Division~~" means the Office of Consumer Protection~~Division~~ of the Office of the Attorney General;
- (10) "Automated calling equipment" means any device or combination of devices used to select or dial telephone numbers and to deliver recorded messages to those numbers without the use of a live operator;
- (11) "Telemarketer" means any person who under contract with a merchant or in connection with a telephone solicitation initiates or receives telephone calls to or from a consumer of goods and services. A telemarketer includes but is not limited to any such person that is an owner, operator, officer, director, or partner to the management activities of a business;
- (12) "Publicly traded corporation" means an issuer or subsidiary of an issuer that has a class of securities which is:

- (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78l) and which is registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
 - (b) Listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; or
 - (c) A reported security within the meaning of subparagraph (4) of Regulation Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A subsidiary of an issuer that qualifies for exemption under this paragraph shall not itself be exempt unless at least sixty percent (60%) of the voting power of its shares is owned by the qualifying issuer;
- (13) "Telemarketing company" means a company whose primary business is to engage in telephone solicitation; and
- (14) "Zero call list" means the national Do Not Call Registry maintained by the United States Federal Trade Commission containing the residential or wireless telephone numbers of the individuals that indicate their preference not to receive telephone solicitations.

➔Section 16. KRS 367.46971 is amended to read as follows:

- (1) At least ten (10) days prior to doing business in this state, a telemarketing company shall register with the ~~office~~^{division} by filing the information described below and paying a filing fee of three hundred dollars (\$300). A telemarketing company shall be deemed to do business in this state if the telemarketing company solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state. The information required by this section shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the telemarketing company, under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to KRS 367.46951 to 367.46999 shall be clearly identified and

appended to the filing.

- (2) Registration of a telemarketing company shall be valid for one (1) year from the effective date thereof and may be renewed annually by making the filing required by this section and paying a filing fee of fifty dollars (\$50).
- (3) If, prior to expiration of a telemarketing company's annual registration, there is a material change in the information required by KRS 367.46951 to 367.46999, the telemarketing company shall, within ten (10) days, file an addendum updating the information with the office~~[division]~~. However, changes in salespersons soliciting on behalf of a telemarketing company shall be updated by filing addenda, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall include the required information for all salespersons currently soliciting or having solicited on behalf of the telemarketing company at any time during the period between the filing of the registration, or the last addendum, and the current addendum, and shall include information on salespersons no longer soliciting for the telemarketing company as of the date of the filing of the current addendum.
- (4) Upon receiving the filing and the filing fee pursuant to this section, the office~~[division]~~ shall send the telemarketing company a written confirmation of receipt of the filing. If the telemarketing company has more than one (1) business location, the written confirmation shall be sent to the telemarketing company's principal business location as identified in the telemarketing company's filing in sufficient numbers so that the telemarketing company can meet the requirements of this subsection. Within ten (10) days of receipt of the confirmation, the telemarketing company shall post in a conspicuous place at each of the telemarketing company's business locations within this state a copy of the entire registration statement which has been filed with the office~~[division]~~. Until confirmation of receipt of filing is received and posted, the telemarketing company

shall post in a conspicuous place at each of the telemarketing company's business locations within this state a copy of the first page of the registration form sent to the office~~[department]~~. The telemarketing company shall also post in close proximity to either the confirmation of receipt of filing or the first page of the submitted registration form the name of the individual in charge of each location from which the telemarketing company does business in this state.

➔Section 17. KRS 367.46981 is amended to read as follows:

- (1) Every telemarketing company shall maintain a bond issued by a surety company admitted to do business in this state. The bond shall be in the amount of fifty thousand dollars (\$50,000) in favor of the Attorney General for the benefit of any person suffering injury or loss by reason of any violation of KRS 367.46951 to 367.46999 to be paid under the terms of any order of a court of competent jurisdiction obtained by the Attorney General, as a result of any violation of KRS 367.46951 to 367.46999. A copy of the bond shall be filed with the office~~[division]~~.
- (2) At least ten (10) days prior to the inception of any promotion offering a premium with an actual market value or advertised value of five hundred dollars (\$500) or more, the telemarketing company shall notify the Attorney General in writing of the details of the promotion, describing the premium and its current market value, the value at which it is advertised or held out to the customer, the date the premium shall be awarded, and the conditions under which the award shall be made. The telemarketing company shall maintain an additional bond for the greater of the current total market value or the advertised value of the premiums held out or advertised to be available to a purchaser or recipient. A copy of the bond shall be filed with the office~~[division]~~. The bond, or a portion of it necessary to cover the cost of the award, shall be forfeited if the premium is not awarded to a bona fide customer within thirty (30) days of the date disclosed as the time of award or the time otherwise required by law. The proceeds of the bond shall be paid to any

person suffering injury or loss by reason of any violation of KRS 367.46951 to 367.46999 or shall be paid pursuant to the terms of any order of a court of competent jurisdiction obtained by the Attorney General, Commonwealth's attorney, or county attorney as a result of any violation of KRS 367.46951 to 367.46999. The bond shall be maintained until the telemarketing company files with the Attorney General proof that the premium was awarded.

➔Section 18. KRS 367.801 is amended to read as follows:

As used in KRS 367.801 to 367.819 and KRS 367.990, unless the context requires otherwise:

- (1) "Office~~[Division]~~" means the Office~~[Division]~~ of Consumer Protection of the Office of the Attorney General.
- (2) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, or any other legal entity.
- (3) "Offeror" means a person who is engaged in the business of selling business opportunities including any subsidiary business which affiliates with the offeror for goods or services or locations.
- (4) "Consumer/investor" means a person who has purchased or is solicited for the purchase of a business opportunity.
- (5) "Business opportunity" means the sale or lease, or offer to sell or lease, of any products, equipment, supplies, or services for the purpose of enabling the consumer investor to start a business when:
 - (a) The offeror obtains an initial required consideration of not less than five hundred dollars (\$500) from the purchase or lease of the business opportunity or inventory associated therewith; and
 - (b) The offeror has represented, directly or indirectly, that the consumer/investor will earn, can earn, or is likely to earn a gross or net profit in excess of the initial required investment paid by the consumer/investor for the business

opportunity; or

- (c) 1. The offeror has represented that he has knowledge of the relevant market and that the market demand will enable the consumer/investor to earn a profit from the business opportunity; or
2. The offeror has represented that locations will be provided or assistance will be given directly or indirectly to the consumer/investor in finding locations for the use or operation of the business opportunity including, but not limited to, supplying the consumer/investor with names of locator companies, contracting with the consumer/investor to provide assistance with or supply names of or collect a fee on behalf of or for a locator company; or
3. The offeror has represented that there is a guaranteed market or that the offeror will buy back or is likely to buy back any product made, manufactured, produced, fabricated, grown, or bred by the consumer/investor using, in whole or in part, the products, supplies, equipment, or services which were initially sold or offered for sale to the consumer/investor by the offeror.

➔Section 19. KRS 367.805 is amended to read as follows:

- (1) It is unlawful for any person to engage in the sale of business opportunities unless prior to the offering the offeror has registered with the office~~[division]~~ and has furnished a bond pursuant to KRS 367.815(2) and provided all of the following:
 - (a) All trade names, assumed names, and all trademarks by which the offeror or the prospective consumer/investor of the business opportunity will be doing business.
 - (b) The names, home addresses, and home telephone numbers of the persons and company offering the business opportunity, and the company's directors and chief executive officers, and the names, home addresses, and home telephone

- numbers of all representatives selling business opportunities in Kentucky.
- (c) A statement as to the length of time the person and company offering the business opportunity has conducted a business of the type being offered both within and without Kentucky.
 - (d) A statement as to whether the person or company offering the business opportunity or any of its directors or chief executive officers or sales representatives operating in Kentucky is currently involved in litigation or has been held liable in a civil action by final judgment for having engaged in unfair, false, misleading, or deceptive practices or is currently charged with or has been convicted of or pleaded nolo contendere to a felony involving fraud, embezzlement, fraudulent conversion, or misappropriation of property during the most recent seven (7) year period, or has entered into any agreed settlements or is currently in any bankruptcy proceeding or has been declared bankrupt in any judicial proceeding during the most recent seven (7) year period.
 - (e) A statement as to whether the person or the company offering the business opportunity or its officers, directors, or agents making the offering of the business opportunity has been a party to any legal cause of action brought by a consumer/investor of the business opportunity within the last seven (7) year period and, if so, the name and address of such individual who has brought the legal action.
 - (f) A statement disclosing the names, addresses, and telephone numbers of all persons who have been sold a business opportunity by the offeror within the last two (2) year period.
 - (g) A statement listing the names and addresses of any consumer/investor who has requested within the preceding three (3) years that the offeror return his money.

- (h) A current audited financial statement of the offeror.
 - (i) A specimen of each contract proposed for use in connection with the business opportunity.
 - (j) A full and detailed description of the actual services that the offeror of the business opportunity undertakes to perform for the consumer/investor.
 - (k) If training is promised by the offeror, a complete description of the training, including length of the training and costs.
- (2) The offeror shall immediately notify the office~~[division]~~ of any material change in information contained in the application for registration and shall make appropriate amendment of the disclosure statement.
- (3) The office~~[division]~~ shall collect, from any offeror required to comply with this section, an initial fee of one hundred fifty dollars (\$150), and an annual renewal fee of fifty dollars (\$50), and an update fee of twenty-five dollars (\$25) for the administration and enforcement of KRS 367.801 to 367.819. Funds so collected shall be credited to a trust or agency account for the administrative purpose of the Attorney General's Office~~[office, Division]~~ of Consumer Protection.
- (4) The Attorney General may promulgate administrative regulations as needed to provide for: a hearing, to be conducted in accordance with KRS Chapter 13B, for any business opportunity which the Attorney General initially determines should not be registered or should have registration revoked or suspended; for the establishment of specific standards for the form and content of the disclosure document; and for registration procedures including fee schedules.

➔Section 20. KRS 367.807 is amended to read as follows:

- (1) An offeror is exempt from the provisions of KRS 367.801 to 367.819 and KRS 367.990 when the offeror:
- (a) Meets the definition of a franchise as defined in the Federal Trade Commission's Regulation on Disclosure Requirements and Prohibitions

Concerning Franchising and Business Opportunity Ventures, as set forth in 16 C.F.R. 436 et seq., and has complied with these and filed written notice so stating with the office[division]; or

- (b) Offers a security pursuant to KRS 292.313;
 - (c) Offers an ongoing business for sale; or
 - (d) Offers a not-for-profit sale of sales demonstration equipment, materials, or samples for use in making sales and not for resale for a total price of \$500 or less.
- (2) The Attorney General may promulgate administrative regulations as needed to provide for additional exemptions. Is offering to sell or selling a package franchise as described in KRS 367.801(7).

➔Section 21. KRS 367.809 is amended to read as follows:

- (1) The office[division], after ascertaining that the applicant has complied with KRS 367.805, shall issue a registration number.
- (2) It shall be unlawful for the registrant to fail to include the registration number in any advertising.

➔Section 22. KRS 367.811 is amended to read as follows:

It shall be unlawful for any offeror to make any oral or written representation, actual or hypothetical, regarding the business opportunity's potential sales, income, gross or net profit unless such sales, income, or profits are examples based upon the actual earnings made by existing consumer/investors of the business opportunity. Upon request by the office[division], names and addresses of the consumer/investors shall be made available for verification of the earnings claims. If such actual or hypothetical earnings examples are in excess of the average net earnings realized by all of the consumer/investors of the business opportunity, then there must be a full and complete disclosure of the average net earnings actually realized by all of these consumer/investors.

➔Section 23. KRS 367.813 is amended to read as follows:

- (1) Prior to the solicitation of potential consumer/investors the offeror shall furnish and display to the potential consumer/investor a copy of the material required to be furnished the office~~[division]~~ when registering pursuant to KRS 367.805.
- (2) When furnishing the information required by subsection (1) of this section, the offeror shall furnish the prospective consumer/investor with a notice in at least ten (10) point bold-face type, stating that registration with the office~~[division]~~ does not directly or indirectly imply approval by the office~~[division]~~ or the Commonwealth of Kentucky of the business opportunity or any of the activities of representatives selling such business opportunities.

➔Section 24. KRS 367.815 is amended to read as follows:

- (1) Any person who offers a business opportunity and makes representations that are false, misleading, or deceptive shall be liable to the consumer/investor of such business opportunity in an amount equal to the sum of his actual damages or fifteen hundred dollars (\$1,500), whichever is greater, as well as the cost of the action together with reasonable attorney's fees, as determined by the court.
- (2)
 - (a) All persons registering pursuant to KRS 367.805 shall either furnish a bond by a surety company authorized to do business in the Commonwealth or establish a full cash certificate of deposit with a licensed and insured bank or savings institution located in the Commonwealth to insure the veracity of all statements contained in the registration. The amount of the bond or certificate of deposit shall be in an amount equal to the total amount of the initial payments under all business opportunity agreements the offeror has entered into in the Commonwealth during the previous year but in no case shall the amount be less than seventy-five thousand dollars (\$75,000). The bond or certificate of deposit shall be in the favor of the Attorney General of Kentucky.
 - (b) Any person who is damaged by any violation of KRS 367.801 to 367.819, or

by the offeror's breach of contract for the business opportunity sale, or of any obligation arising therefrom may bring an action against the bond or certificate of deposit to recover damages suffered, provided that the aggregate liability of the surety or trustee shall be only for the actual damages and shall not exceed the amount of the bond or trust account.

- (3) A person who has furnished a bond described in subsection (2) of this section may petition the office~~[division]~~ for release of the bond by submitting a verified statement that such person has not offered business opportunities in the state for the last five (5) years.
- (4) Any offeror of a business opportunity who has offered or sold in this state shall maintain a complete set of books, records, and accounts of its business opportunity sales. The sale documents shall be maintained on each transaction for a period of four (4) years after the date of agreement. The offeror shall make the books and records available to the office~~[division]~~ upon demand at a location within the state.

➔Section 25. KRS 367.905 is amended to read as follows:

- (1) Any person, corporation, partnership, association, or group intending to open or operate a health spa within the Commonwealth, shall:
 - (a) File a registration statement, accompanied by a one hundred dollar (\$100) initial registration fee, with the Attorney General's Office~~[Division]~~ of Consumer Protection prior to the sale of any memberships in the Commonwealth of Kentucky. Such a registration statement shall contain the name and address of the health spa; the names and addresses of the officers, directors, and stockholders of the health spa and its parent corporation, if such an entity exists; the type of available facilities; approximate size of the health spa measured in square feet; whether or not a shower area is provided; the names and addresses of employees and their respective qualifications for employment in the health spa field; type of membership plans to be offered

and their cost; and a full and complete disclosure of any completed or pending litigation initiated against the health spa and any of its officers or directors within the last three (3) years.

- (b) Prior to the sale of any memberships in the Commonwealth of Kentucky, provide the Attorney General's Office~~[Division]~~ of Consumer Protection with a surety bond meeting the requirements of KRS 367.906.
- (2) A new registration statement, accompanied by an annual registration fee of fifty dollars (\$50), shall be filed with the Attorney General's Office~~[Division]~~ of Consumer Protection on or before July 1 of each year following the opening of the health spa.
- (3) Each health spa selling contracts on a prepayment basis shall deposit all funds received from such contracts in an escrow account until the health spa has remained open for a period of thirty (30) days. At the end of this thirty (30) day period, such prepayment funds shall be eligible for withdrawal at the depositor's discretion.
- (4) Each health spa registering pursuant to this statute shall maintain in the files of the health spa, a copy of its registration statement filed pursuant to this section. This registration statement shall be made available for inspection by current health spa members or prospective purchasers of health spa memberships.
- (5) The registration fees required by this section shall be credited to a trust or agency account for the administrative purposes of the Attorney General's Office~~[Division]~~ of Consumer Protection, as set forth in KRS 367.900 to 367.930.
- (6) Each separate location where health spa services are offered shall be considered a separate health spa and shall file a separate registration statement and surety bond, even though the separate locations are owned or operated by the same owner.

➔Section 26. KRS 367.906 is amended to read as follows:

- (1) The surety bond required by KRS 367.905(1)(b) shall be in favor of the Attorney General's Office~~[Division]~~ of Consumer Protection and shall be held for

compensation to any member who suffers loss of money paid due to the insolvency of the health spa, cessation of operation of the health spa, or failure of the health spa to open for business within ninety (90) days from the sale of the first contract.

(2) The bond shall be in a form prescribed by the Attorney General's Office~~[Division]~~ of Consumer Protection and shall be issued by a company authorized to transact business in the Commonwealth of Kentucky.

(3) The amount of the bond shall be computed as follows:

Number of unexpired contracts	Amount of bond
150 or fewer	\$10,000
151 to 300	\$25,000
301 or more	\$50,000

(4) The Attorney General's Office~~[Division]~~ of Consumer Protection shall exempt a spa from the bonding requirement if all of its unexpired contracts and present membership plans meet the following criteria:

(a) No initiation fee, or similar nonrecurring fee, is charged at or near the beginning of the contract term or renewal period, and

(b) At no time is any member charged for use of facilities or services more than thirty-one (31) days in advance.

(5) If, because of an increase in membership or change in membership plans, a spa is required to file a bond or increase the amount of its bond, it shall notify the Attorney General's Office~~[Division]~~ of Consumer Protection in writing at least thirty (30) days prior to the expected change. No contract in excess of the limits stated in subsection (3) of this section or not in compliance with subsection (4) of this section shall be sold until a new bond in the required amount has been provided.

(6) A change in ownership shall not release, cancel or terminate liability under any

bond previously filed unless the Attorney General's Office of Consumer Protection~~Division~~ agrees in writing to the release, cancellation or termination because the new owner has filed a new bond for the benefit of the previous owner's members, or because the former owner has paid the required refunds to its members.

➔Section 27. KRS 367.932 is amended to read as follows:

As used in KRS 367.934 to 367.974 and 367.991, unless the context requires otherwise:

- (1) "Attorney General" means the Office~~Division~~ of Consumer Protection in the Office~~office~~ of the Attorney General.
- (2) "Financial institution" means a bank, trust company, federally chartered credit union, or savings and loan association authorized by law to do business in this state.
- (3) "Preneed burial contract" means a contract, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person whose body is to be disposed of; but does not mean the furnishing of a cemetery lot or mausoleum.
- (4) "Agent" means the licensee who is the person, partnership, association or corporation receiving any payments on a preneed funeral contract.
- (5) "Trustee" means the financial institution.
- (6) "Person" means an individual, corporation, partnership, joint venture, association, business trust, or any other form of business organization; provided, however, that an individual employee of an entity registered pursuant to KRS 367.934 to 367.974 and 367.991 shall not be required to comply with the registration requirement herein.
- (7) "Remains" means the bodies of deceased persons, in whatever stage of decomposition, and cremated remains.
- (8) "Cemetery" means any one (1) or combination of more than one (1) of the following

in a place used or to be used and dedicated or designated for such purposes:

- (a) A burial park, for earth interment.
 - (b) A mausoleum, for entombment.
 - (c) A columbarium, for inurnment.
- (9) "Mausoleum" means a building or structure substantially exposed above ground used or intended to be used for the entombment of human remains, which is sold or offered for sale to the public.
- (10) "Columbarium" means a structure or building substantially exposed above ground intended to be used for the inurnment of cremated remains and sold or offered for sale to the public.
- (11) "Columbarium niche" means an inurnment space in a columbarium as defined herein.
- (12) "Cemetery company" means any person who conducts the business of a cemetery. Excepted are small community cemeteries, their agents, lessees and otherwise that operate nonprofit; have no salaried employees, directors, officers or managers other than maintenance caretakers; are owned, controlled by lot owners; and do not sell any preneed merchandise or services.
- (13) "Grave space" means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of one (1) human being.
- (14) "Underground crypt" means a single unit entombment space in preplaced chambers below ground and also known as lawn crypt, westminister turftop mausoleum or below ground crypt.
- (15) "Bank of underground crypts" means any construction unit of twenty (20) or more underground crypts designed as a part of a below ground crypt program, whether physically connected or not, having a common drainage system.
- (16) "Mausoleum crypt" means an entombment space in a mausoleum as defined herein.
- (17) "Cemetery merchandise" means urns, memorials, monuments, markers, vases,

foundations, memorial bases, and other similar personal property commonly sold by or used in cemeteries.

- (18) "Preneed cemetery merchandise contract" means any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or delivery of cemetery merchandise, which within six (6) months of the date of the contract is not attached to the realty and permanently installed or which is not stored in a bonded warehouse with the receipt of ownership issued by the manufacturer in the name of the purchaser and transmitted to the purchaser.

➔Section 28. KRS 367.954 is amended to read as follows:

- (1) Forty percent (40%), not including interest or finance charges, of all payments of money made to any person, partnership, association, or corporation upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or delivery of cemetery merchandise, which within six (6) months of the date of the contract is not delivered by attachment to the realty and permanent installation or which is not stored in a bonded warehouse with the receipt of ownership issued by the manufacturer in the name of the purchaser and transmitted to the purchaser are held to be trust funds. The person, partnership, association, or corporation receiving the payments shall deposit forty percent (40%) of all payments received on a preneed cemetery merchandise contract in a trust fund account within six (6) months of the date of contract, and forty percent (40%) of all payments received thereafter on said contract shall be deposited in the trust fund account within thirty (30) days after each calendar quarter of operation. The trustee shall be the financial institution holding said funds. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained.

- (2) All trust funds mentioned in this section shall be deposited in the name of the person making said deposits, with the financial institution as trustee, and shall be held together with the interest, dividends, or accretions thereon, in trust, subject to the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of making deposit or investment shall furnish to the financial institution the name of each payor, and the amount of payment on each account for which the deposit or investment is being made.
- (3) Forty percent (40%) of all payments, not including interest or finance charges, made under the agreement, contract, or plan are and shall remain trust funds with the financial institution, until the financial institution receives a sworn affidavit from the depositor stating one of the following:
 - (a) That the delivery of all merchandise by attachment to the realty, or permanent installation of the merchandise has been completed and that there has been full performance of all services called for by the agreement, contract or plan; or
 - (b) That there has been delivery of all of the merchandise called for by the agreement by storing the same in a bonded warehouse with the receipt of ownership issued by the manufacturer in the name of the purchaser and transmitted to the purchaser.

Upon receiving said affidavit, the financial institution shall remit the funds on deposit for the performed contract, plus interest, to the depositor. Release of funds may also be made pursuant to a request for a refund or cancellation under KRS 367.932 to 367.974 and 367.991.

- (4) In the event that a purchaser is in default of a preneed cemetery merchandise contract, the financial institution shall release to the depositor the funds, plus interest, deposited on behalf of the defaulted contract upon receiving from the depositor a sworn affidavit stating that the purchaser is in default of the preneed cemetery merchandise agreement, the date of the default, an explanation of the

default, and that the depositor has mailed a copy of the affidavit to the purchaser's last known address at least thirty (30) days prior to said request for release.

- (5) Deposits to such funds and the amounts deposited may be commingled, but the accounting records shall establish a separate account for each prepaid contract and shall show amounts deposited and the income and loss occurring thereon with respect to each contract.
- (6) The trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not be liable to any person for such reliance.
- (7) In lieu of the trust fund deposits required herein, the person may post with the Attorney General, Office~~[Division]~~ of Consumer Protection, a good and sufficient bond by a surety company licensed to do business in Kentucky and in an amount sufficient to cover all payments made by or on account of purchasers who have not received the purchased property and services. This bond shall be held for the benefit of a purchaser, or his or her heir or assign or duly authorized representative, who suffers a loss of money paid pursuant to a preneed cemetery merchandise contract entered into after July 13, 1984, due to the insolvency of the registrant, or failure to provide the cemetery merchandise called for by contract that has been paid in full and not provided after a ninety (90) day request in writing to do so. If a bond is posted, the Attorney General's office shall receive sixty (60) days' written notice in the event of cancellation. On or before the cancellation date, the person shall comply with the trust fund requirements herein or post another good and sufficient bond.
- (8) Any person selling a preneed cemetery merchandise contract shall pay to the Attorney General five dollars (\$5), for each said contract entered into and all of which fees shall be remitted by the person collecting them to the Attorney General at least once each month, and such funds shall be used by the Attorney General in

administering this chapter.

➔Section 29. KRS 367.958 is amended to read as follows:

- (1) Every person before engaging in a sale, contract for sale, reservation for sale or agreement for sale of a mausoleum crypt within a mausoleum, underground crypt within a crypt section, or columbarium niche within a mausoleum prior to the completion of the construction thereof, shall give notice in writing to the Attorney General of the commencement of such sale at least thirty (30) days prior thereto and register with the Attorney General. Such registration shall be on forms provided by the Attorney General.
- (2) Every person engaged in the sale of a mausoleum crypt, underground crypt or columbarium niche shall commence construction thereof within twenty-four (24) months of the date of such sale and shall complete such construction within sixty (60) months of the date of such sale. A delay caused by strike, national emergency, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of such person shall extend the time of such commencement and completion by the length of such delay. This subsection shall not apply to the sale of mausoleum crypts, underground crypts or columbarium niches if there has been any sale in the same project prior to July 13, 1984. Prior projects shall have commenced construction thereof within thirty-six (36) months of the date of such sale and shall complete construction within seventy-two (72) months of the date of such sale.
- (3) Every person who plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in this chapter and shall be exclusive of the merchandise trust account or such other trust accounts or funds that may be required by law.
- (4) Every person shall place thirty-six percent (36%), not including interest or finance

charges, of all payments of money made to any person pursuant to any agreement, contract or any series or combination of agreements or contracts which are for the purchase of sections in a mausoleum, columbarium, or any kind of underground crypt which at the time of the payment of money have not been completely and totally constructed, in a trust fund account in a financial institution within thirty (30) days after each calendar quarter of operations. Excepted therefrom, however, are persons who have constructed in the past their own mausoleum using primarily equipment owned by the self-constructing person and their own personnel with a minimum of subcontracting, and in that event there shall be deposited a minimum of twenty percent (20%) of all payments of money, subject, however, to the actual cost. If, from project to project, their actual cost is in excess of twenty percent (20%), the full cost percentage shall be deposited from project to project, not to exceed thirty-six percent (36%). At the time of notification to the Attorney General's office the self-constructing mausoleum person shall also notify the Attorney General that he intends to self-construct and the percentage of contribution of trust that is required.

- (5) All trust funds mentioned in this section shall be deposited in the name of the person depositing said funds, with the financial institution as trustee, and shall be held together with the interest, dividends, or accretions thereon, in trust, subject to the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of making deposit or investment shall furnish to the financial institution the name of each payor, and the amount of payment on each account for which the deposit or investment is being made.
- (6) Deposits to such funds and the amounts deposited may be commingled, but the accounting records shall establish a separate account for each prepaid contract and shall show amounts deposited and the income and loss occurring thereon with respect to each contract.

- (7) All payments made to the preconstruction trust fund account shall remain in the trust fund with the financial institution until the financial institution receives a certified statement from the depositor stating that the particular project for which the preconstruction trust fund has been established is totally completed. During the construction stage, trust funds may be withdrawn by presenting the trustee with appropriate evidence of expenditure for construction cost. The trustee shall thereupon disburse moneys from the trust fund to pay for the expenses of construction presented for payment.
- (8) A trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not be liable to any person for such reliance.
- (9) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in KRS 367.932 to 367.974 and 367.991, the financial institution acting as trustee, if any, may contract for and cause said project to be completed and paid therefor from the trust account funds deposited to the project's account, paying any balance, less cost and expenses, to the depositor. In the event there is no corporate trustee, or the trustee chooses not to serve in the capacity to complete construction, the Attorney General shall appoint a committee to serve as trustees to trust account funds deposited to the project's account, paying any balance, less cost and expenses, to the cemetery company.
- (10) If it is determined by the trustee after the expiration of the time of construction set out above that there is not enough money in the trust fund account to complete the project, the trustee shall make a refund of all moneys held to all purchasers, or his heirs or assigns, in the amount of the deposit to the credit of their particular contract and all income those funds have earned. The purchasers shall be entitled to receive any remainder of the purchase price paid from the depositor. However, nothing herein contained shall relieve any person from any liability for nonperformance of

the contract terms.

- (11) If temporary entombment or inurnment is not used, upon written notification to the seller, the personal representative or any purchaser of such space who dies before completion of construction shall be entitled to a refund of all moneys paid into the preconstruction trust fund for such space, including any income earned thereon, and from the seller, the remainder of the purchase price paid.
- (12) In lieu of the trust fund deposits required herein, the person may post with the Attorney General, Office~~Division~~ of Consumer Protection, a good and sufficient bond by a surety company licensed to do business in Kentucky and in an amount sufficient to cover all payments made by or on account of purchasers who have not received the purchased property and services. This bond shall be held for the benefit of any purchaser, or his or her heir or assign or duly authorized representative, who suffers a loss of money paid for a preconstructed mausoleum crypt or niche or underground crypt after July 13, 1984, due to the insolvency of the registrant, or failure to construct within the time limits set out herein. If a bond is posted, the Attorney General's office shall receive sixty (60) days' written notice in the event of cancellation. On or before the cancellation date, the person shall comply with the trust fund requirements herein or post another good and sufficient bond.
- (13) Any person selling preconstruction mausoleum, columbarium or underground crypt contracts shall pay to the Attorney General five dollars (\$5) for each sale of said contract and all of which fees shall be remitted by the person collecting them to the Attorney General at least once each month, and such funds shall be used by the Attorney General in administering this chapter.

➔Section 30. KRS 367.976 is amended to read as follows:

As used in KRS 367.976 to 367.985, unless the context otherwise requires:

- (1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists directly or indirectly a rental-purchase agreement, excluding in-store

merchandising aids.

- (2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental-purchase agreement.
- (3) "Consumer" means a natural person who rents personal property under a rental-purchase agreement.
- (4) "Consummation" means the time a consumer becomes contractually obligated on a rental-purchase agreement.
- (5) ~~["Division" means the Division of Consumer Protection in the Office of the Attorney General.~~
- ~~(6)~~ "Lessor" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental-purchase agreement.

(6) "Office" means the Office of Consumer Protection of the Office of the Attorney General.

- (7) "Rental-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four (4) months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the consumer to become the owner of the property. The term rental-purchase agreement shall not be construed to be, nor be governed by, any of the following:
 - (a) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R. part 226.2(a)(16) and Section 1602(g) of the Truth in Lending Act, 15 U.S.C. secs. 1601 et seq.;
 - (b) A lease which constitutes a consumer lease as defined in 12 C.F.R. part 213.2(a)(6);
 - (c) Any lease for agricultural, business, or commercial purposes;

- (d) Any lease made to an organization;
- (e) A lease or agreement which constitutes a retail installment transaction or retail installment contract as defined in KRS 371.210;
- (f) A security interest as defined in KRS 355.1-201(37); or
- (g) A home solicitation sale as that term is defined in KRS 367.410.

➔Section 31. KRS 367.981 is amended to read as follows:

- (1) A renegotiation shall occur when an existing rental-purchase agreement is satisfied and replaced by a new lease agreement undertaken by the same consumer. A renegotiation shall be a new agreement covered by KRS 367.976 to 367.985. However, events such as the following shall not be treated as a renegotiation:

- (a) The addition or return of property in a multiple item agreement or the substitution of lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent (25%);
- (b) A deferral or extension of one (1) or more periodic payments, or portions of a periodic payment;
- (c) A reduction in charges in the agreement;
- (d) An agreement involving a court proceeding; or
- (e) Any other event described in administrative regulations prescribed by the office~~[division]~~.

- (2) No disclosures shall be required for any extension of a rental-purchase agreement.

➔Section 32. KRS 367.985 is amended to read as follows:

- (1) A lessor shall not be liable under KRS 367.983 for a violation of KRS 367.976 to 367.985 if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, such as a clerical miscalculation, computer malfunctions, programming error, or printing error, even though the lessor maintained procedures reasonably adapted to avoid such an error. An error of legal judgment with respect to requirements of this title shall not be

considered a bona fide error.

- (2) A lessor shall not be liable under KRS 367.983 for any act done or omitted in good faith in conformity with any administrative regulation or interpretation promulgated by the Attorney General or by the ~~office~~^{division} or by an official duly authorized by the Attorney General or by the ~~office~~^{division}. This rule shall apply even if, after the act or omission has occurred, the regulation or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.
- (3) A lessor shall not be liable under KRS 367.983 for any error if, before the thirty-first day after the date the merchant discovers the error and before an action against the lessor has been filed or written notice of the error received by the lessor, the lessor gives the consumer written notice of the error and makes adjustments in the consumer's account as necessary to assure that the consumer will not be required to pay an amount in excess of the amount disclosed and that the agreement otherwise complies with KRS 367.976 to 367.985.

➔Section 33. KRS 367.990 is amended to read as follows:

- (1) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties.
- (2) In any action brought under KRS 367.190, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars (\$2,000) per violation, or where the defendant's conduct is directed at a person aged

sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the trier of fact determines that the defendant knew or should have known that the person aged sixty (60) or older is substantially more vulnerable than other members of the public.

- (3) Any person with actual notice that an investigation has begun or is about to begin pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys, or falsifies documentary material is guilty of a Class A misdemeanor.
- (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240 or 367.250, intentionally falsifies or withholds documents, records, or pertinent materials that are not privileged shall be subject to a fine as provided in subsection (3) of this section.
- (5) The Circuit Court of any county in which any plan described in KRS 367.350 is proposed, operated, or promoted may grant an injunction without bond, upon complaint filed by the Attorney General to enjoin the further operation thereof, and the Attorney General may ask for and the court may assess civil penalties against the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000) which shall be for the benefit of the Commonwealth of Kentucky.
- (6) Any person, business, or corporation who knowingly violates the provisions of KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense each time a magazine is mailed into the state; but it shall be considered only one (1) offense for any quantity of the same issue of a magazine mailed into Kentucky.
- (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty of a Class A misdemeanor.
- (8) In addition to the penalties contained in this section, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth a civil penalty of not more than the greater of five thousand dollars (\$5,000) or two hundred dollars (\$200) per day for each and every violation of KRS 367.175.

- (9) Any person who shall willfully and intentionally violate any provision of KRS 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- (10) (a) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.665 shall forfeit and pay to the Commonwealth a penalty of not more than five thousand dollars (\$5,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties;
- (b) The Attorney General may, upon petition to a court having jurisdiction under KRS 367.190, recover on behalf of the Commonwealth from any person found to have willfully committed an act declared unlawful by KRS 367.667 a penalty of not more than two thousand dollars (\$2,000) per violation; and
- (c) Any person who knowingly violates any provision of KRS 367.652, 367.653, 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false or incorrect information to the Attorney General in filing statements or reports required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per violation to be collected in the name of the Commonwealth upon action of the Attorney General.
- (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in the name of the Commonwealth upon action by the Attorney General.
- (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or 367.816 shall be guilty of a Class C felony.
- (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have

authority to prosecute violations of KRS 367.801 to 367.819.

- (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- (17) Any person, partnership, or corporation who violates the provisions of KRS 367.850 shall be guilty of a Class A misdemeanor.
- (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets back, disconnects, fails to connect, or causes to be changed, set back, or disconnected, the speedometer or odometer of any motor vehicle, to effect the sale of the motor vehicle shall be guilty of a Class D felony.
- (19) Any person who negotiates a contract of membership on behalf of a club without having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty of a Class D felony.
- (20) Any person or corporation who operates or attempts to operate a health spa in violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
(b) The appropriate Commonwealth's attorney shall have authority to prosecute felony violations of KRS 367.832.
- (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be guilty of a violation. Either the Attorney General or the appropriate county health department may prosecute violators of KRS 367.855 or 367.857.
(b) The provisions of this subsection shall not apply to any retail establishment if the wholesaler, distributor, or processor fails to comply with the provisions of KRS 367.857.
- (23) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class D felony when that

telemarketing company, telemarketer, caller, or merchant three (3) times in one (1) calendar year knowingly and willfully violates KRS 367.46955(15) by making or causing to be made an unsolicited telephone solicitation call to a telephone number that appears in the current publication of the zero call list maintained by the Office of Consumer Protection of the Office of the Attorney General, ~~Division of Consumer Protection~~.

- (24) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when that telemarketing company, telemarketer, caller, or merchant uses a zero call list identified in KRS 367.46955(15) for any purpose other than complying with the provisions of KRS 367.46951 to 367.46999.
- (25) (a) Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999 shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each offense.
- (b) The Attorney General, or any person authorized to act in his or her behalf, shall initiate enforcement of a civil penalty imposed under paragraph (a) of this subsection.
- (c) Any civil penalty imposed under paragraph (a) of this subsection may be compromised by the Attorney General or his or her designated representative. In determining the amount of the penalty or the amount agreed upon in compromise, the Attorney General, or his or her designated representative, shall consider the appropriateness of the penalty to the financial resources of the telemarketing company, telemarketer, caller, or merchant charged, the gravity of the violation, the number of times the telemarketing company, telemarketer, caller, or merchant charged has been cited, and the good faith of the telemarketing company, telemarketer, caller, or merchant charged in

attempting to achieve compliance, after notification of the violation.

- (d) If a civil penalty is imposed under this subsection, a citation shall be issued which describes the violation which has occurred and states the penalty for the violation. If, within fifteen (15) working days from the receipt of the citation, the affected party fails to pay the penalty imposed, the Attorney General, or any person authorized to act in his or her behalf, shall initiate a civil action to collect the penalty. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.
- (26) Any person who violates KRS 367.500 shall be liable for a penalty of two thousand five hundred dollars (\$2,500) per violation. Either the Attorney General or the appropriate Commonwealth's attorney may prosecute violations of KRS 367.500.

➔Section 34. KRS 380.040 is amended to read as follows:

- (1) Subject to subsection (3) of this section, a person, whether or not located in this state, who is engaged in debt adjusting and actually or constructively receives any money or other thing of value, other than the fees permitted by this chapter, for the purpose of disbursing the money or thing of value to the debtor's creditors, shall do both of the following:
- (a) Unless specifically instructed otherwise by a debtor, disburse to the appropriate creditors all funds received from the debtor, less any contributions or fees not prohibited by subsection (2) of this section, within thirty (30) days of receipt of the funds from the debtor; and
- (b) Maintain a separate trust account for the receipt of any funds from debtors and the disbursement of the funds to creditors on behalf of the debtors.
- (2) If a fee, contribution, or other consideration for engaging in debt adjusting is accepted, directly or indirectly, a person engaged in debt adjusting shall not do any of the following:
- (a) Accept a fee, contribution, or other consideration exceeding seventy-five

- dollars (\$75) from a debtor residing in this state for an initial set up;
- (b) Accept a fee, contribution, or other consideration exceeding fifty dollars (\$50) per calendar year from a debtor residing in this state for consultation;
 - (c) If money or anything else of value is received and held by the person engaged in debt adjusting for the purpose of disbursing the money or thing of value to the debtor's unsecured creditors, accept a periodic fee, contribution, or other consideration from a debtor who resides in this state that exceeds the greater of eight and one-half percent (8.5%) of the amount paid by the debtor each month for distribution to the debtor's creditors or thirty dollars (\$30); or
 - (d) Accept any other fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt. Acceptance of a fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt, including the placement of the fee, contribution, or other consideration into an escrow account to be paid upon completion of the services, is specifically prohibited. For purposes of this paragraph, "secured debt" means any debt primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property.
- (3) Subsections (1) and (2) of this section shall not prohibit a person engaged in debt adjusting for a debtor who resides in this state from charging the debtor a bad check charge of twenty dollars (\$20) or the amount passed on from the debt adjuster's bank, whichever is greater, in addition to fees, contributions, or other consideration not prohibited by subsection (2) of this section.
- (4) Fees, contributions, or other consideration permitted in subsections (1), (2), and (3) of this section may be adjusted on an annual basis by the amount equivalent to any

increase in the consumer price index, published by the United States Department of Labor, Bureau of Labor Statistics.

- (5) Any person that engages in debt adjusting shall file an initial registration form, accompanied by an initial registration fee of two hundred fifty dollars (\$250), and the registration shall be renewed each year thereafter for a fee of two hundred fifty dollars (\$250) to cover the actual cost of filing the registration, in accordance with administrative regulations promulgated by the Attorney General.
- (6) Any person that engages in debt adjusting shall arrange for and undergo an annual audit of the person's business, including any trust funds deposited and distributed to creditors on behalf of debtors, which shall be conducted by an independent, third-party certified public accountant. Both of the following shall apply to an audit performed under this subsection:
- (a) The person shall file the results of the audit and the auditor's opinion with the Office of Consumer Protection~~[-Division]~~ of the Office of the Attorney General within thirty (30) days of the anniversary date of filing the initial registration; and
- (b) The Attorney General shall make available a summary of the results of the audit and the auditor's opinion upon written request of any person and payment of a fee not to exceed the cost of copying the summary and opinion.
- (7) (a) A person engaged in debt adjusting shall obtain and at all times maintain insurance coverage for errors and omissions, employee dishonesty, depositor's forgery, computer fraud, and violations of this chapter in the amount of ten percent (10%) of the monthly average for the immediately preceding six (6) months of the aggregate amount of all deposits made with the person by all debtors. The insurance coverage shall comply with all of the following:
1. The minimum limit of the insurance coverage shall not be less than one hundred thousand dollars (\$100,000), and the maximum limit of the

- insurance coverage shall not be more than two hundred fifty thousand dollars (\$250,000);
2. The insurance coverage shall not include a deductible in excess of ten percent (10%) of the face amount of the policy coverage;
 3. The insurance coverage shall be issued by an insurer and rated at least A-, or its equivalent, by a nationally recognized rating organization; and
 4. The insurance coverage shall provide that the Office of Consumer Protection~~[-Division]~~ of the Office of the Attorney General shall be named as an additional interested party.
- (b) If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of insurance coverage required in paragraph (a) of this subsection shall be increased by two hundred fifty thousand dollars (\$250,000).
- (8) (a) A debt adjuster shall maintain a bond issued by a surety company admitted to do business in this Commonwealth. The bond shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth for any violation of this chapter or any person suffering injury or loss by reason of any violation of this chapter. A copy of the bond shall be filed with the Attorney General.
- (b) The bond required by paragraph (a) of this subsection shall be in effect during the period of the debt adjuster's registration as well as for two (2) years after the debt adjuster ceases to provide debt-adjusting services to debtors.
- (c) A change in ownership of a debt adjuster shall not release, cancel, or terminate liability under any bond previously filed unless the Attorney General agrees in

writing to the release, cancellation, or termination because the debt adjuster has filed a new bond meeting the requirements of paragraph (a) of this subsection.

- (d) The proceeds of the bond required by paragraph (a) of this subsection shall be paid to any person suffering injury or loss by reason of any violation of this chapter or to the Attorney General for any violation of this chapter or shall be paid pursuant to the terms of any order of a court of competent jurisdiction. Any person who is damaged by any violation of this chapter may bring an action against the bond to recover damages pursuant to this paragraph, provided the aggregate liability of the surety shall not exceed the amount of the bond.
 - (e) In lieu of the bond required by paragraph (a) of this subsection, a debt adjuster may, with the written approval of the Attorney General, deliver to the Attorney General an irrevocable letter of credit issued or confirmed by a financial institution authorized by law to transact business in the Commonwealth. The irrevocable letter of credit shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth or any person suffering injury or loss by reason of any violation of this chapter.
 - (f) If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of the bond required in paragraph (a) of this subsection or the irrevocable letter of credit approved pursuant to paragraph (e) of this subsection shall be increased by fifty thousand dollars (\$50,000).
- (9) A debt adjuster may not, directly or indirectly:

- (a) Misappropriate or misapply money held in trust;
- (b) Settle a debtor's debt if the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement unless, after the creditor has assented, the debtor assents to a settlement for which the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement;
- (c) Take a power of attorney that authorizes the debt adjuster to settle a debt, unless the power of attorney is expressly limited to the debtor's debts and grants authority to settle debts only if the amount the debtor will owe after settlement is less than fifty percent (50%) of the amount of the debt prior to settlement. However, in no event shall an agreement confer on a debt adjuster a power of attorney to negotiate or settle any of the debtor's debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property;
- (d) Exercise or attempt to exercise a power of attorney after a debtor has terminated an agreement;
- (e) Initiate a transfer from a debtor's account at a bank or with another person unless the transfer is:
 - 1. A return of money to the debtor; or
 - 2. Before termination of an agreement, properly authorized by the agreement and this chapter, and for payment to one (1) or more creditors pursuant to a plan or payment of a fee;
- (f) Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing

- debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
- (g) Settle a debt or lead a debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the debtor receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion will lead to full settlement of the debt;
 - (h) Make a representation that:
 - 1. The debt adjuster will furnish money to pay bills or prevent attachments;
 - 2. Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness;
 - 3. Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment, and will or may stop efforts to collect a debt from the debtor;
 - 4. Failure to make required minimum payments to creditors will not or may not break the terms of agreements with creditors, will not or may not lead creditors to increase finance charges and pursue litigation, will not or may not be reported to consumer reporting agencies, or will not or may not have an adverse effect on the debtor's credit report and credit score; or
 - 5. Fees paid to a debt adjuster will be used to pay creditors;
 - (i) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;
 - (j) Take a confession of judgment or power of attorney to confess judgment against a debtor;
 - (k) Purchase a debt or obligation of the debtor;
 - (l) Receive from or on behalf of the debtor:

1. A promissory note or other negotiable instrument other than a check or a demand draft; or
 2. A postdated check or demand draft;
- (m) Lend money or provide credit to the debtor, except as a deferral of a settlement fee at no additional expense to the debtor;
- (n) Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor;
- (o) Provide the debtor less than the full benefit of a compromise of a debt arranged by the debt adjuster; or
- (p) Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt adjusting services or educational services concerning personal finance.
- (10) Any unfair, false, misleading, or deceptive act or practice in the conduct of debt adjusting is prohibited. For purposes of this subsection, "unfair" shall be construed to mean unconscionable.

➔Section 35. KRS 403.707 is amended to read as follows:

- (1) The Council on Domestic Violence and Sexual Assault shall create a Sexual Assault Response Team Advisory Committee.
- (2) The Sexual Assault Response Team Advisory Committee shall be co-chaired by the executive director of the Kentucky Association of Sexual Assault Programs and the commissioner of the Department of Kentucky State Police or the commissioner's designee.
- (3) The membership of the Sexual Assault Response Team Advisory Committee shall consist of the following:
 - (a) The executive director of the Kentucky Board of Nursing or the executive director's designee;

- (b) The executive director of the Kentucky Nurses Association or the executive director's designee;
 - (c) The executive director of the Kentucky Hospital Association or the executive director's designee;
 - (d) The director of the Department of Kentucky State Police Crime Lab;
 - (e) The chief medical examiner or the chief medical examiner's designee;
 - (f) The commissioner of the Department for Community Based Services or the commissioner's designee;
 - (g) The executive director of the Office of Victims~~[Victims]~~ Advocacy~~[Division]~~ of the Office of the Attorney General or the director's designee;
 - (h) A sexual assault nurse examiner serving on the Governor's Council on Domestic Violence and Sexual Assault;
 - (i) A representative from a sexual assault response team serving on the Council on Domestic Violence and Sexual Assault;
 - (j) A physician appointed by the co-chairs of the Council on Domestic Violence and Sexual Assault; and
 - (k) A Commonwealth's attorney or an assistant Commonwealth's attorney appointed by the co-chairs of the Council on Domestic Violence and Sexual Assault.
- (4) Members appointed under subsection (3)(h) to (k) of this section shall serve at the pleasure of the appointing authority and shall not serve longer than four (4) years without reappointment.
- (5) The Sexual Assault Response Team Advisory Committee shall:
- (a) Serve in an advisory capacity to the Kentucky Board of Nursing in accomplishing the duties set forth under KRS 314.142;
 - (b) Serve in an advisory capacity to the Justice and Public Safety Cabinet in the development of the statewide sexual assault protocol required under KRS

216B.400(4);

- (c) Develop a model protocol for the operation of sexual assault response teams which shall include the roles of sexual assault nurse examiners, physicians, law enforcement, prosecutors, and victim advocates;
- (d) Provide information and recommendations concerning the activities of the agency or organization represented by each individual committee member as related to sexual assault issues and programs within the purview of the agency or organization; and
- (e) Recommend to the Council on Domestic Violence and Sexual Assault any changes in statute, administrative regulation, training, policy, and budget to promote a multidisciplinary response to sexual assault.

➔Section 36. KRS 405.430 is amended to read as follows:

- (1) When a parent presents himself to the cabinet for the voluntary establishment of paternity and clear evidence of parentage is not present, the cabinet shall pay when administratively ordered the cost of genetic testing to establish paternity, subject to recoupment from the alleged father when paternity is established.
- (2) The cabinet shall obtain additional testing in any case if an original test is contested, upon request and advance payment by the contestant.
- (3) In a contested paternity case, the child, the mother, and the putative father shall submit to genetic testing upon a request of any of the parties, unless the person or guardian of the person who is requested to submit to genetic testing shows good cause, taking into account the best interests of the child, why the genetic tests cannot be performed. The request shall be supported by a sworn statement of the party, requesting that the test be performed, which shall include the information required by 42 U.S.C. sec. 666(a)(5)(B)(i) or (ii).
- (4) When a parent who fails to support a child is not obligated to provide child support by court order, the cabinet may administratively establish a child support obligation

based upon a voluntary acknowledgment of paternity as set forth in KRS Chapter 406, the parent's minimum monthly child support obligation and proportionate share of child care costs incurred due to employment or job search of either parent, or incurred while receiving elementary or secondary education, or higher education or vocational training which will lead to employment. The monthly child support obligation shall be determined pursuant to the Kentucky child support guidelines set forth in KRS 403.212. The actual cost of child care shall be reasonable and shall be allocated between the parents in the same proportion as each parent's gross income, as determined under the guidelines, bears to the total family gross income.

- (5) The cabinet shall recognize a voluntary acknowledgment of paternity as a basis for seeking a support order, irrespective of the alleged father's willingness to consent to a support order.
- (6) When in the best interest of the child, the cabinet may review and adjust a parent's child support obligation or child care obligation as established by the cabinet, upon a request of the cabinet when an assignment has been made, or upon either parent's petition if the amount of the child support awarded under the order differs from the amount that would be awarded in accordance with KRS 403.212. The cabinet shall notify parents at least once every three (3) years of the right to a review.
- (7) In establishing or modifying a parent's monthly child support obligation, the cabinet may use automated methods to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the adjustment to eligible orders in accordance with KRS 403.212. The cabinet shall utilize information, including financial records, about the parent and child which it has good reason to believe is reliable and may require the parents to provide income verification.
- (8) In cases in which past-due support is owed for a child receiving public assistance under Title IV-A of the Federal Social Security Act, the cabinet shall issue an administrative order, or seek a judicial order, requiring the obligated parent to

participate in work activities, or educational or vocational training activities for at least twenty (20) hours per week, unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.

- (9) The cabinet may disclose financial records only for the purpose of establishing, modifying, or enforcing a child support obligation of an individual. A financial institution shall not be liable to any individual for disclosing any financial record of the individual to the cabinet attempting to establish, modify, or enforce a child support obligation.
- (10) The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.
- (11) In any case where a person or entity fails to respond to a subpoena within the specified time frame, the cabinet shall impose a penalty.
- (12) No person shall knowingly make, present, or cause to be made or presented to an employee or officer of the cabinet any false, fictitious, or fraudulent statement, representation, or entry in any application, report, document, or financial record used in determining child support or child care obligations.
- (13) If a person knowingly or by reason of negligence discloses a financial record of an individual, that individual may pursue civil action for damages in a federal District Court or appropriate state court. No liability shall arise with respect to any disclosure which results from a good faith, but erroneous, interpretation. In any civil action brought for reason of negligence of disclosure of financial records, upon finding of liability on the part of the defendant, the defendant shall be liable to the

plaintiff in an amount equal to:

- (a) The sum of the greater of one thousand dollars (\$1,000) for each act of unauthorized disclosure of financial records; or
- (b) The sum of the actual damages sustained by the plaintiff resulting from the unauthorized disclosure; plus
- (c) If willful disclosure or disclosure was a result of gross negligence, punitive damages, plus the costs, including attorney fees, of the action.

~~[(14) The cabinet shall issue an administrative order or seek a judicial order requiring a parent with a delinquent child support obligation, as defined by administrative regulation promulgated under KRS 15.055, to participate in the program described in KRS 205.732 to help low income, noncustodial parents find and keep employment unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.]~~

➔Section 37. The following KRS section is repealed:

15.290 Establishment of Child Support Enforcement Commission.

➔Section 38. All files, funds, functions, positions, and equipment of the Child Support Enforcement Commission of the Office of the Attorney General shall be transferred to the Cabinet for Health and Family Services.

➔Section 39. The General Assembly confirms the Attorney General's Executive Order 15-01, dated May 16, 2015, relating to the organization of the Office of the Attorney General, to the extent that it is not otherwise confirmed or superseded by this Act.