

1 AN ACT relating to reorganization.

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

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

4 (1) The Attorney General is the head of the Department of Law.

5 (2) The Department of Law shall include the following major organizational units:

6 (a) ***Office of Criminal Appeals***~~[Appellate Division];~~

7 (b) ***Office of Consumer Protection***~~[Division];~~

8 (c) ***Department of Criminal Investigations***~~[Special Investigations Division];~~

9 (d) ***Office of Special Prosecutions***~~[Division];~~

10 (e) ***Office of Prosecutors Advisory Council***~~[Services Division];~~

11 (f) ***Office of Medicaid Fraud and Abuse Control***~~[Division];~~

12 (g) ***Office of Civil and Environmental Law***~~[Division];~~

13 (h) ***Office of Victims Advocacy***~~[Division];~~

14 (i) ***Office of Child Abuse and Human Trafficking Prevention and***  
 15 ***Prosecution***~~[Administrative Hearings Division];~~

16 (j) Office of Rate Intervention;

17 (k) ***Office of Administrative Services***~~[Division];~~ and

18 (l) ***Office of Senior Protection***~~[Financial Integrity Enforcement Division].~~

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

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

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

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

1 of state government authorized by law to conduct administrative hearings.

2 (2) "Administrative hearing" or "hearing" means any type of formal adjudicatory  
3 proceeding conducted by an agency as required or permitted by statute or regulation  
4 to adjudicate the legal rights, duties, privileges, or immunities of a named person.

5 (3) "Party" means:

6 (a) The named person whose legal rights, duties, privileges, or immunities are  
7 being adjudicated in the administrative hearing;

8 (b) Any other person who is duly granted intervention in an administrative  
9 hearing; and

10 (c) Any agency named as a party to the adjudicatory proceeding or entitled or  
11 permitted by the law being enforced to participate fully in the administrative  
12 hearing.

13 (4) "Agency head" means the individual or collegial body in an agency that is  
14 responsible for entry of a final order.

15 (5) "Recommended order" means the whole or part of a preliminary hearing report to an  
16 agency head for the disposition of an administrative hearing.

17 (6) "Final order" means the whole or part of the final disposition of an administrative  
18 hearing, whenever made effective by an agency head, whether affirmative, negative,  
19 injunctive, declaratory, agreed, or imperative in form.

20 (7) "Hearing officer" means the individual, duly qualified and employed pursuant to  
21 this chapter, assigned by an agency head as presiding officer for an administrative  
22 hearing or the presiding member of the agency head.

23 (8) "~~Office~~~~[Division]~~" means the ***Office of Civil and Environmental Law***~~[Division of~~  
24 ~~Administrative Hearings]~~ in the Office of the Attorney General created pursuant to  
25 KRS 15.111.

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

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

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

8       (2) (a) In securing hearing officers as necessary to conduct administrative hearings  
9       under the jurisdiction of the agency, an agency may:

- 10       1.   Employ hearing officers;
- 11       2.   Contract with another agency for hearing officers; or
- 12       3.   Contract with private attorneys through personal service contract.

13       (b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this  
14       section only if the Attorney General has first determined that the Attorney  
15       General's Office cannot provide the needed hearing officers to the agency. If  
16       the Attorney General determines that the Attorney General's Office can  
17       provide the needed hearing officers to the agency, the agency shall use the  
18       hearing officers provided by the Attorney General's Office. The expenses  
19       incurred by the Attorney General's Office in providing the hearing officers to  
20       the agency shall be paid to the Attorney General's Office by the agency in the  
21       following manner:

- 22       1.   The amount to be paid by the agency to the Attorney General's Office  
23       shall be established by vouchers submitted by the Attorney General's  
24       Office to the agency which shall be promptly paid by the agency, at the  
25       beginning of, at the end of, or at any time during the provision of the  
26       hearing officers by the Attorney General's Office.
- 27       2.   The expenses to be paid to the Attorney General's Office shall be

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

11 (3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and  
12          the employing agency, with the advice of the office~~[division]~~, may find necessary to  
13          assure competency in the conduct of an administrative hearing. The qualifications in  
14          this subsection shall not, however, apply to a member of a board, commission, or  
15          other collegial body who may serve as a hearing officer in his capacity as a member  
16          of the collegial body.

17 (4) All hearing officers, including members of collegial bodies who serve as hearing  
18          officers, shall receive training necessary to prepare them to conduct a competent  
19          administrative hearing. The training shall pertain to the conduct of administrative  
20          hearings generally and to the applications of the provisions of this chapter,  
21          specifically. The office~~[division]~~ shall establish by administrative regulation  
22          minimum standards concerning the length of training, course content, and instructor  
23          qualifications. Required training shall not exceed eighteen (18) classroom hours for  
24          initial training and six (6) classroom hours per year for continuing training. Actual  
25          training may be conducted by an agency or any other organization, if the training  
26          program offered has been approved by the office~~[division]~~ as meeting minimum  
27          standards.

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

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

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

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

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

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

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

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

23   (6)~~[(f)]~~ Reporting to the Legislative Research Commission by July 1 of each odd-  
24           numbered year, the status of the administrative hearing process in Kentucky. The  
25           report shall include a compilation of statistical data and other information necessary  
26           to assess the effectiveness and efficiency of hearing procedures and  
27           recommendations for making improvements to the system. Agencies shall provide

1 the information requested by the *Office of Civil and Environmental Law*~~[Division~~  
2 ~~of Administrative Hearings]~~ necessary to complete the report.

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

4 (1) The *Department of Criminal Investigations*~~[Financial Integrity Enforcement~~  
5 ~~Division]~~ is created in the *the Office of the Attorney General*~~[Department of Law]~~.

6 The *department*~~[division]~~ shall:

- 7 (a) Investigate illegal redemption of food stamp benefits in cooperation with the  
8 United States Department of Agriculture and the Cabinet for Health and  
9 Family Services;
- 10 (b) Verify eligibility of food stamp program applicants as to past criminal history;
- 11 (c) Investigate the illegal distribution of counterfeit merchandise; and
- 12 (d) Investigate the use of personal identification and financial information by  
13 persons for the purpose of theft, or fraud, or both theft and fraud, and other  
14 illegal or fraudulent activity which may involve electronic commerce.

15 (2) The Office of the Attorney General shall coordinate with the Department of  
16 Financial Institutions, the United States Secret Service, the Federal Trade  
17 Commission, the Kentucky Bankers' Association, and any other agency or  
18 organization to prepare and disseminate information to prevent identity theft.

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

20 (1) This section shall apply to:

- 21 (a) The Attorney General and his staff;
- 22 (b) A county attorney and his staff; and
- 23 (c) A Commonwealth's attorney and his staff.

24 (2) A person named in subsection (1) of this section who is sued for any act or omission  
25 in the course of his duties and who has a judgment for monetary damages rendered  
26 against him and who personally suffers actual financial loss, unreimbursed from any  
27 source, by the enforcement and satisfaction of the judgment, including any costs or

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

4 (3) The indemnification shall be contingent upon an express determination by the  
5 **Prosecutors**~~Prosecutor's~~ Advisory Council that the act or omission which resulted  
6 in liability was within the scope and course of the officer's employment and  
7 occurred during the performance of duty and was committed or omitted in the good  
8 faith belief that the act or omission was lawful and proper.

9 (4) If the officer seeking indemnification is the Attorney General, the determination  
10 referred to in subsection (3) of this section shall be made by the Governor.

11 (5) The indemnification shall not be construed to abrogate or limit any privilege,  
12 immunity, or matter of defense otherwise available to the person claiming  
13 indemnification and shall not constitute a waiver of any privilege, immunity, or  
14 matter or defense including the sovereign immunity of the Commonwealth.

15 (6) The indemnification shall not be the subject of comment, directly or indirectly,  
16 before any jury hearing any cause of action in which the Attorney General, a county  
17 or Commonwealth's attorney, or a member of their staff is a party, and any comment  
18 before the jury shall result in an immediate mistrial.

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

20 (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall  
21 be sentenced to pay a service fee of three hundred seventy-five dollars (\$375),  
22 which shall be in addition to all other penalties authorized by law.

23 (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS  
24 534.020 and KRS 534.060.

25 (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid  
26 into the general fund, and the remainder of the revenue collected from the service  
27 fee imposed by this section shall be utilized as follows:

- 1 (a) Twelve percent (12%) of the amount collected shall be transferred to the  
2 Department of Kentucky State Police forensic laboratory for the acquisition,  
3 maintenance, testing, and calibration of alcohol concentration testing  
4 instruments and the training of laboratory personnel to perform these tasks;
- 5 (b) Twenty percent (20%) of the service fee collected pursuant to this section  
6 shall be allocated to the Department of Public Advocacy;
- 7 (c) One percent (1%) shall be transferred to the Prosecutors~~[Prosecutor's]~~  
8 Advisory Council for training of prosecutors for the prosecution of persons  
9 charged with violations of this chapter and for obtaining expert witnesses in  
10 cases involving the prosecution of persons charged with violations of this  
11 chapter or any other offense in which driving under the influence is a factor in  
12 the commission of the offense charged;
- 13 (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
- 14 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust  
15 fund established under KRS 211.476; and
- 16 2. Fifty percent (50%) shall be credited to the Cabinet for Health and  
17 Family Services, Department for Behavioral Health, Developmental and  
18 Intellectual Disabilities, for the purposes of providing direct services to  
19 individuals with brain injuries that may include long-term supportive  
20 services and training and consultation to professionals working with  
21 individuals with brain injuries. As funding becomes available under this  
22 subparagraph, the cabinet may promulgate administrative regulations  
23 pursuant to KRS Chapter 13A to implement the services permitted by  
24 this subparagraph;
- 25 (e) Any amount specified by a specific statute shall be transferred as provided in  
26 that statute;
- 27 (f) Forty-six percent (46%) of the amount collected shall be transferred to be



1 utilized to fund enforcement of this chapter and for the support of jails,  
 2 recordkeeping, treatment, and educational programs authorized by this chapter  
 3 and by the Department of Public Advocacy; and

4 (g) The remainder of the amount collected shall be transferred to the general fund.

5 (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be  
 6 placed in trust and agency accounts that shall not lapse.

7 ➔Section 8. KRS 205.8465 is amended to read as follows:

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

13 (a) The name and address of the offender;

14 (b) The offender's place of employment;

15 (c) The nature and extent of the violation;

16 (d) The identity of the complainant; and

17 (e) Any other information that the receiving person reasonably believes might be  
 18 helpful in investigation of the alleged fraud, abuse, or misappropriation.

19 The state Office of Medicaid Fraud and Abuse Control~~Medicaid Fraud Control~~  
 20 ~~Unit~~ shall periodically publicize the provisions of this subsection.

21 (2) The identity of any person making a report under this section shall be considered  
 22 confidential by the receiving party. Any person making a report under this section  
 23 regarding the offenses of another shall not be liable in any civil or criminal action  
 24 based on the report if it was made in good faith.

25 (3) No employer shall, without just cause, discharge or in any manner discriminate or  
 26 retaliate against any person who in good faith makes a report required or permitted  
 27 by KRS 205.8451 to 205.8483, testifies, or is about to testify, in any proceeding

1 with regard to any report or investigation. Any individual injured by any act in  
2 violation of the provisions of this subsection shall have a civil cause of action in  
3 Circuit Court to enjoin further violations, and to recover the actual damages  
4 sustained, together with the costs of the lawsuit, including a reasonable fee for the  
5 individual's attorney of record.

6 (4) No employee of the *Office of Medicaid Fraud and Abuse Control*~~[state Medicaid~~  
7 ~~Fraud Control Unit]~~, the Office of the Attorney General, the Office of the Inspector  
8 General, or the Cabinet for Health and Family Services shall notify the alleged  
9 offender of the identity of the person who in good faith makes a report required or  
10 permitted by KRS 205.8451 to 205.8483 nor shall the employee notify the alleged  
11 offender that a report has been made alleging a violation of KRS 205.8451 to  
12 205.8483 until such time as civil or criminal proceedings have been initiated or a  
13 formal investigation has been initiated. Any information or report concerning an  
14 alleged offender shall be considered confidential in accordance with the Kentucky  
15 Open Records Law, KRS 61.870 to 61.884.

16 ➔Section 9. KRS 205.8483 is amended to read as follows:

17 (1) The Office of the Inspector General in the Cabinet for Health and Family Services  
18 shall establish, maintain, and publicize a twenty-four (24) hour toll-free hotline for  
19 the purpose of receiving reports of alleged fraud and abuse by Medical Assistance  
20 Program recipients and participating providers.

21 (2) The Office of the Inspector General in the Cabinet for Health and Family Services  
22 shall develop and implement procedures for screening alleged fraud and abuse of  
23 the Medical Assistance Program to ensure that appropriate written referrals are  
24 made to:

25 (a) The *Office of the Medicaid Fraud and Abuse Control*~~[state Medicaid Fraud~~  
26 ~~Control Unit]~~ and to the Office of the Attorney General of credible allegations  
27 of fraud and abuse by providers participating in the Medical Assistance

1 Program; and

2 (b) Other agencies and licensure boards of all allegations received on the hotline  
3 that are relevant to their jurisdiction.

4 (3) The Office of the Inspector General in the Cabinet for Health and Family Services  
5 shall provide, upon request, a Medicaid fraud and abuse report that shall include but  
6 not be limited to the following information from the prior fiscal year:

7 (a) The number and type of reports received in the Office of the Inspector General  
8 in the Cabinet for Health and Family Services, from the Medicaid fraud and  
9 abuse hotline categorized by recipient and provider groups; and

10 (b) The number and type of alleged Medicaid recipient fraud and abuse reports  
11 which were opened for investigation by the Office of Inspector General and  
12 their disposition.

13 ➔Section 10. KRS 217.896 is amended to read as follows:

14 The Office~~[Division]~~ of Consumer Protection of the Office of the Attorney General shall  
15 develop and distribute to licensed pharmacies without charge a pamphlet for citizens of  
16 the Commonwealth which explains the provisions of KRS 217.815 to 217.826 and  
17 217.895. Pharmacists shall display such distributed pamphlets in a prominent place and  
18 make them available without charge. Pharmacies shall maintain a sufficient stock of the  
19 distributed pamphlets to assure that the supply will not become exhausted for any lengthy  
20 time.

21 ➔Section 11. KRS 248.353 is amended to read as follows:

22 (1) Compliance with the provisions of KRS 248.350 shall be monitored by the  
23 department with enforcement assistance provided by the Office of Special  
24 Prosecutions~~[Unit]~~ of the Office of the Attorney General.

25 (2) The Attorney General at the request of the commissioner:

26 (a) May make such public or private investigations within or outside of this state  
27 as he deems necessary to determine if any person has violated or is about to

- 1           violate KRS 248.350 or any administrative regulation or order thereunder, or  
2           to aid in the enforcement of KRS 248.350 or in the prescribing of  
3           administrative regulations and forms thereunder;
- 4           (b) May require or permit any person to file a statement in writing, under oath or  
5           otherwise as the Attorney General may determine, as to all the facts and  
6           circumstances concerning the matter to be investigated; and
- 7           (c) May publish information concerning any violation of KRS 248.350 or any  
8           administrative regulation or order thereunder.
- 9           (3) For the purpose of any investigation or proceeding under KRS 248.350, the  
10          Attorney General or any officer designated by him may administer oaths and  
11          affirmations, subpoena witnesses, compel their attendance, take evidence, and  
12          require production of any books, papers, correspondence, memoranda, agreements,  
13          or other documents or records which the Attorney General deems relevant or  
14          material to the inquiry.
- 15          (4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any  
16          court of competent jurisdiction, upon application by the Attorney General, may  
17          issue to that person an order requiring him to appear before the Attorney General, or  
18          the officer designated by him, there to produce documentary evidence if so ordered  
19          or to give evidence touching the matter under investigation or in question; and any  
20          failure to obey the order of the court may be punished by the court as a contempt of  
21          court.
- 22          (5) No person is excused from attending and testifying or from producing any  
23          document or record before the Attorney General, or in obedience to the subpoena of  
24          the Attorney General or any officer designated by him, or in any proceeding  
25          instituted by the Attorney General, on the ground that the testimony or evidence  
26          (documentary or otherwise) required of him may tend to incriminate him or subject  
27          him to a penalty or forfeiture; but no individual may be prosecuted or subjected to

1 any penalty or forfeiture for or on account of any transaction, matter, or thing  
2 concerning which he is compelled, after claiming his privilege against self-  
3 incrimination, to testify or produce evidence (documentary or otherwise), except  
4 that the individual so testifying shall not be exempt from prosecution and  
5 punishment for perjury committed in so testifying.

6 ➔Section 12. KRS 304.1-120 is amended to read as follows:

7 No provision of this code shall apply to:

- 8 (1) Fraternal benefit societies (as identified in Subtitle 29), except as stated in Subtitle  
9 29.
- 10 (2) Nonprofit hospital, medical-surgical, dental, and health service corporations (as  
11 identified in Subtitle 32) except as stated in Subtitle 32.
- 12 (3) Burial associations (as identified in KRS Chapter 303), except as stated in Subtitle  
13 31.
- 14 (4) Assessment or cooperative insurers (as identified in KRS Chapter 299), except as  
15 stated in KRS Chapter 299.
- 16 (5) Insurance premium finance companies (as identified in Subtitle 30), except as stated  
17 in Subtitle 30.
- 18 (6) Qualified organizations which issue charitable gift annuities within the  
19 Commonwealth of Kentucky. For the purposes of this subsection:
- 20 (a) A "qualified organization" means one which is:
- 21 1. Exempt from taxation under Section 501(c)(3) of the Internal Revenue  
22 Code as a charitable organization, if it files a copy of federal form 990  
23 with the Office~~Division~~ of Consumer Protection in the Office of the  
24 Attorney General; or
- 25 2. Exempt from taxation under Section 501(c)(3) of the Internal Revenue  
26 Code as a religious organization; or
- 27 3. Exempt as a publicly owned or nonprofit, privately endowed educational

1 institution approved or licensed by the State Board of Education, the  
2 Southern Association of Colleges and Schools, or an equivalent public  
3 authority of the jurisdiction where the institution is located; and

4 (b) A "charitable gift annuity" means a giving plan or method by which a gift of  
5 cash or other property is made to a qualified organization in exchange for its  
6 agreement to pay an annuity.

7 (7) A religious organization, as identified in this subsection, or its participants, that:

8 (a) Is a nonprofit religious organization;

9 (b) Is limited to participants who are members of the same denomination or  
10 religion;

11 (c) Matches its participants who have financial, physical, or medical needs with  
12 participants who choose to assist with those needs;

13 (d) 1. Includes the following notice for delivery to all participants, printed in  
14 not less than ten (10) point, bold-faced type on or accompanying all  
15 applications, guideline materials, or any similar documents:

16 "NOTICE: UNDER KENTUCKY LAW, THE RELIGIOUS  
17 ORGANIZATION FACILITATING THE SHARING OF MEDICAL  
18 EXPENSES IS NOT AN INSURANCE COMPANY, AND ITS  
19 GUIDELINES, PLAN OF OPERATION, OR ANY OTHER  
20 DOCUMENT OF THE RELIGIOUS ORGANIZATION DO NOT  
21 CONSTITUTE OR CREATE AN INSURANCE POLICY.  
22 PARTICIPATION IN THE RELIGIOUS ORGANIZATION OR A  
23 SUBSCRIPTION TO ANY OF ITS DOCUMENTS SHALL NOT BE  
24 CONSIDERED INSURANCE. ANY ASSISTANCE YOU RECEIVE  
25 WITH YOUR MEDICAL BILLS WILL BE TOTALLY VOLUNTARY.  
26 NEITHER THE ORGANIZATION OR ANY PARTICIPANT SHALL  
27 BE COMPELLED BY LAW TO CONTRIBUTE TOWARD YOUR

1 MEDICAL BILLS. WHETHER OR NOT YOU RECEIVE ANY  
 2 PAYMENTS FOR MEDICAL EXPENSES, AND WHETHER OR  
 3 NOT THIS ORGANIZATION CONTINUES TO OPERATE, YOU  
 4 SHALL BE PERSONALLY RESPONSIBLE FOR THE PAYMENT  
 5 OF YOUR MEDICAL BILLS."

6 2. A participant shall acknowledge receipt of the "Notice" by signing  
 7 below the "Notice" on the application;

8 (e) Suggests amounts to give that are voluntary among the participants, with no  
 9 assumption of risk or promise to pay either among the participants or between  
 10 the participants and the organization.

11 (8) A public or private ambulance service licensed and regulated by the Cabinet for  
 12 Health and Family Services to the extent that it solicits membership subscriptions,  
 13 accepts membership applications, charges membership fees, and furnishes prepaid  
 14 or discounted ambulance services to subscription members and designated members  
 15 of their households.

16 (9) A direct primary care agreement established under KRS 311.6201, 311.6202,  
 17 314.198, and 314.199.

18 ➔Section 13. KRS 367.120 is amended to read as follows:

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

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

1           ➔Section 14. KRS 367.46951 is amended to read as follows:

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

4       (1) "Telephone solicitation" means:

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

9               1. Soliciting a sale of consumer goods or services, offering an investment,  
10              business, or employment opportunity, or offering a consumer loan to the  
11              person called;

12              2. Obtaining information that will or may be used for the solicitation of a  
13              sale of consumer goods or services, the offering of an investment,  
14              business, or employment opportunity, or the offering of a consumer loan  
15              to the person called;

16              3. Offering the person called a prize, gift, or anything else of value, if  
17              payment of money or other consideration is required in order to receive  
18              the prize or gift, including the purchase of other merchandise or services  
19              or the payment of any processing fees, delivery charges, shipping and  
20              handling fees, or other fees or charges; or

21              4. Offering the person called a prize, gift, or other incentive to attend a  
22              sales presentation for consumer goods or services, an investment or  
23              business opportunity, or a consumer loan; or

24           (b) A live or recorded communication sent by telephone, facsimile machine,  
25           mobile telephone, or telephone paging device in response to inquiries  
26           generated by unrequested notifications sent by the merchant to persons who  
27           have not previously purchased goods or services from the merchant or



1 telemarketer or who have not previously requested credit from the merchant,  
2 to a prospective purchaser if the merchant or telemarketer represents or  
3 implies to the recipient of the notification that any of the following applies:

- 4 1. That the recipient has in any manner been specially selected to receive  
5 the notification or the offer contained in the notification;
- 6 2. That the recipient will receive a prize or gift if the recipient calls the  
7 merchant or telemarketer; or
- 8 3. That if the recipient buys one (1) or more items from the merchant or  
9 telemarketer, the recipient will also receive additional or other items of  
10 the same or a different type at no additional cost or for less than the  
11 regular price of the items;

12 (2) "Telephone solicitation" does not mean the following:

- 13 (a) A telephone call made in response to an express request of a person called,  
14 unless the request was made during a prior telephone solicitation;
- 15 (b) A telephone call made to the debtor or a party to the contract in connection  
16 with the payment or performance of an existing debt or contract, the payment  
17 or performance of which has not been completed at the time of the call;
- 18 (c) A telephone call to any person with whom the telemarketer or merchant has a  
19 prior or existing business relationship, including but not limited to the  
20 solicitation of contracts for the maintenance or repair of items previously  
21 purchased from the person making the solicitation or on whose behalf the  
22 solicitation is made;
- 23 (d) A telephone call made by the following:
  - 24 1. A merchant or telemarketer located in Kentucky to a location outside of  
25 the Commonwealth of Kentucky;
  - 26 2. A telephone call made by one (1) merchant to another;

27 (3) "Consumer goods or services" means goods, services, or interests in real property

- 1 used by natural persons primarily for personal, family, or household purposes;
- 2 (4) "Consumer loan" means any extension of credit, including credit cards and other  
3 forms of revolving credit, to a natural person primarily for the purposes of  
4 purchasing consumer goods or services or for paying existing personal, family, or  
5 household debts;
- 6 (5) "Consumer" means a natural person who receives a telephone solicitation;
- 7 (6) "Legal name of the merchant" means the real name of the merchant, as defined in  
8 KRS 365.015(1), or the assumed name of the merchant for which all proper  
9 certificates have been filed pursuant to KRS 365.015;
- 10 (7) "Merchant" means the individual or business entity offering the consumer goods or  
11 services, an investment, business, or employment opportunity, or a consumer loan;
- 12 (8) "Caller" or "sales person" means the individual making the call or operating the  
13 automatic dialing or recorded message device and causing the call to be made;
- 14 (9) "~~Office~~~~Division~~" means the Office of Consumer Protection~~Division~~ of the  
15 Office of the Attorney General;
- 16 (10) "Automated calling equipment" means any device or combination of devices used  
17 to select or dial telephone numbers and to deliver recorded messages to those  
18 numbers without the use of a live operator;
- 19 (11) "Telemarketer" means any person who under contract with a merchant or in  
20 connection with a telephone solicitation initiates or receives telephone calls to or  
21 from a consumer of goods and services. A telemarketer includes but is not limited  
22 to any such person that is an owner, operator, officer, director, or partner to the  
23 management activities of a business;
- 24 (12) "Publicly traded corporation" means an issuer or subsidiary of an issuer that has a  
25 class of securities which is:
- 26 (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec.  
27 781) and which is registered or exempt from registration under paragraph (A),

- 1 (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
- 2 (b) Listed on the New York Stock Exchange, the American Stock Exchange, or
- 3 the NASDAQ National Market System; or
- 4 (c) A reported security within the meaning of subparagraph (4) of Regulation
- 5 Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A
- 6 subsidiary of an issuer that qualifies for exemption under this paragraph shall
- 7 not itself be exempt unless at least sixty percent (60%) of the voting power of
- 8 its shares is owned by the qualifying issuer;

9 (13) "Telemarketing company" means a company whose primary business is to engage in

10 telephone solicitation; and

11 (14) "Zero call list" means the national Do Not Call Registry maintained by the United

12 States Federal Trade Commission containing the residential or wireless telephone

13 numbers of the individuals that indicate their preference not to receive telephone

14 solicitations.

15 ➔Section 15. KRS 367.46971 is amended to read as follows:

16 (1) At least ten (10) days prior to doing business in this state, a telemarketing company

17 shall register with the office~~[division]~~ by filing the information described below and

18 paying a filing fee of three hundred dollars (\$300). A telemarketing company shall

19 be deemed to do business in this state if the telemarketing company solicits

20 prospective purchasers from locations in this state or solicits prospective purchasers

21 who are located in this state. The information required by this section shall be

22 submitted on a form provided by the Attorney General and shall be verified by a

23 declaration signed by each principal of the telemarketing company, under penalty of

24 perjury. The declaration shall specify the date and location of signing. Information

25 submitted pursuant to KRS 367.46951 to 367.46999 shall be clearly identified and

26 appended to the filing.

27 (2) Registration of a telemarketing company shall be valid for one (1) year from the

1 effective date thereof and may be renewed annually by making the filing required by  
2 this section and paying a filing fee of fifty dollars (\$50).

3 (3) If, prior to expiration of a telemarketing company's annual registration, there is a  
4 material change in the information required by KRS 367.46951 to 367.46999, the  
5 telemarketing company shall, within ten (10) days, file an addendum updating the  
6 information with the office~~[division]~~. However, changes in salespersons soliciting  
7 on behalf of a telemarketing company shall be updated by filing addenda, if  
8 necessary, in quarterly intervals computed from the effective date of registration.  
9 The addendum shall include the required information for all salespersons currently  
10 soliciting or having solicited on behalf of the telemarketing company at any time  
11 during the period between the filing of the registration, or the last addendum, and  
12 the current addendum, and shall include information on salespersons no longer  
13 soliciting for the telemarketing company as of the date of the filing of the current  
14 addendum.

15 (4) Upon receiving the filing and the filing fee pursuant to this section, the  
16 office~~[division]~~ shall send the telemarketing company a written confirmation of  
17 receipt of the filing. If the telemarketing company has more than one (1) business  
18 location, the written confirmation shall be sent to the telemarketing company's  
19 principal business location as identified in the telemarketing company's filing in  
20 sufficient numbers so that the telemarketing company can meet the requirements of  
21 this subsection. Within ten (10) days of receipt of the confirmation, the  
22 telemarketing company shall post in a conspicuous place at each of the  
23 telemarketing company's business locations within this state a copy of the entire  
24 registration statement which has been filed with the office~~[division]~~. Until  
25 confirmation of receipt of filing is received and posted, the telemarketing company  
26 shall post in a conspicuous place at each of the telemarketing company's business  
27 locations within this state a copy of the first page of the registration form sent to the

1        ~~office~~[department]. The telemarketing company shall also post in close proximity to  
2        either the confirmation of receipt of filing or the first page of the submitted  
3        registration form the name of the individual in charge of each location from which  
4        the telemarketing company does business in this state.

5        ➔Section 16. KRS 367.46981 is amended to read as follows:

6        (1) Every telemarketing company shall maintain a bond issued by a surety company  
7        admitted to do business in this state. The bond shall be in the amount of fifty  
8        thousand dollars (\$50,000) in favor of the Attorney General for the benefit of any  
9        person suffering injury or loss by reason of any violation of KRS 367.46951 to  
10       367.46999 to be paid under the terms of any order of a court of competent  
11       jurisdiction obtained by the Attorney General, as a result of any violation of KRS  
12       367.46951 to 367.46999. A copy of the bond shall be filed with the ~~office~~[division].

13       (2) At least ten (10) days prior to the inception of any promotion offering a premium  
14       with an actual market value or advertised value of five hundred dollars (\$500) or  
15       more, the telemarketing company shall notify the Attorney General in writing of the  
16       details of the promotion, describing the premium and its current market value, the  
17       value at which it is advertised or held out to the customer, the date the premium  
18       shall be awarded, and the conditions under which the award shall be made. The  
19       telemarketing company shall maintain an additional bond for the greater of the  
20       current total market value or the advertised value of the premiums held out or  
21       advertised to be available to a purchaser or recipient. A copy of the bond shall be  
22       filed with the ~~office~~[division]. The bond, or a portion of it necessary to cover the  
23       cost of the award, shall be forfeited if the premium is not awarded to a bona fide  
24       customer within thirty (30) days of the date disclosed as the time of award or the  
25       time otherwise required by law. The proceeds of the bond shall be paid to any  
26       person suffering injury or loss by reason of any violation of KRS 367.46951 to  
27       367.46999 or shall be paid pursuant to the terms of any order of a court of

1 competent jurisdiction obtained by the Attorney General, Commonwealth's attorney,  
2 or county attorney as a result of any violation of KRS 367.46951 to 367.46999. The  
3 bond shall be maintained until the telemarketing company files with the Attorney  
4 General proof that the premium was awarded.

5 ➔Section 17. KRS 367.801 is amended to read as follows:

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

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

1 and that the market demand will enable the consumer/investor to earn a  
2 profit from the business opportunity; or

3 2. The offeror has represented that locations will be provided or assistance  
4 will be given directly or indirectly to the consumer/investor in finding  
5 locations for the use or operation of the business opportunity including,  
6 but not limited to, supplying the consumer/investor with names of  
7 locator companies, contracting with the consumer/investor to provide  
8 assistance with or supply names of or collect a fee on behalf of or for a  
9 locator company; or

10 3. The offeror has represented that there is a guaranteed market or that the  
11 offeror will buy back or is likely to buy back any product made,  
12 manufactured, produced, fabricated, grown, or bred by the  
13 consumer/investor using, in whole or in part, the products, supplies,  
14 equipment, or services which were initially sold or offered for sale to the  
15 consumer/investor by the offeror.

16 ➔Section 18. KRS 367.805 is amended to read as follows:

17 (1) It is unlawful for any person to engage in the sale of business opportunities unless  
18 prior to the offering the offeror has registered with the office~~[division]~~ and has  
19 furnished a bond pursuant to KRS 367.815(2) and provided all of the following:

20 (a) All trade names, assumed names, and all trademarks by which the offeror or  
21 the prospective consumer/investor of the business opportunity will be doing  
22 business.

23 (b) The names, home addresses, and home telephone numbers of the persons and  
24 company offering the business opportunity, and the company's directors and  
25 chief executive officers, and the names, home addresses, and home telephone  
26 numbers of all representatives selling business opportunities in Kentucky.

27 (c) A statement as to the length of time the person and company offering the

1 business opportunity has conducted a business of the type being offered both  
2 within and without Kentucky.

3 (d) A statement as to whether the person or company offering the business  
4 opportunity or any of its directors or chief executive officers or sales  
5 representatives operating in Kentucky is currently involved in litigation or has  
6 been held liable in a civil action by final judgment for having engaged in  
7 unfair, false, misleading, or deceptive practices or is currently charged with or  
8 has been convicted of or pleaded nolo contendere to a felony involving fraud,  
9 embezzlement, fraudulent conversion, or misappropriation of property during  
10 the most recent seven (7) year period, or has entered into any agreed  
11 settlements or is currently in any bankruptcy proceeding or has been declared  
12 bankrupt in any judicial proceeding during the most recent seven (7) year  
13 period.

14 (e) A statement as to whether the person or the company offering the business  
15 opportunity or its officers, directors, or agents making the offering of the  
16 business opportunity has been a party to any legal cause of action brought by a  
17 consumer/investor of the business opportunity within the last seven (7) year  
18 period and, if so, the name and address of such individual who has brought the  
19 legal action.

20 (f) A statement disclosing the names, addresses, and telephone numbers of all  
21 persons who have been sold a business opportunity by the offeror within the  
22 last two (2) year period.

23 (g) A statement listing the names and addresses of any consumer/investor who  
24 has requested within the preceding three (3) years that the offeror return his  
25 money.

26 (h) A current audited financial statement of the offeror.

27 (i) A specimen of each contract proposed for use in connection with the business



1 opportunity.

2 (j) A full and detailed description of the actual services that the offeror of the  
3 business opportunity undertakes to perform for the consumer/investor.

4 (k) If training is promised by the offeror, a complete description of the training,  
5 including length of the training and costs.

6 (2) The offeror shall immediately notify the office~~[division]~~ of any material change in  
7 information contained in the application for registration and shall make appropriate  
8 amendment of the disclosure statement.

9 (3) The office~~[division]~~ shall collect, from any offeror required to comply with this  
10 section, an initial fee of one hundred fifty dollars (\$150), and an annual renewal fee  
11 of fifty dollars (\$50), and an update fee of twenty-five dollars (\$25) for the  
12 administration and enforcement of KRS 367.801 to 367.819. Funds so collected  
13 shall be credited to a trust or agency account for the administrative purpose of the  
14 Attorney General's Office~~[office, Division]~~ of Consumer Protection.

15 (4) The Attorney General may promulgate administrative regulations as needed to  
16 provide for: a hearing, to be conducted in accordance with KRS Chapter 13B, for  
17 any business opportunity which the Attorney General initially determines should not  
18 be registered or should have registration revoked or suspended; for the  
19 establishment of specific standards for the form and content of the disclosure  
20 document; and for registration procedures including fee schedules.

21 ➔Section 19. KRS 367.807 is amended to read as follows:

22 (1) An offeror is exempt from the provisions of KRS 367.801 to 367.819 and KRS  
23 367.990 when the offeror:

24 (a) Meets the definition of a franchise as defined in the Federal Trade  
25 Commission's Regulation on Disclosure Requirements and Prohibitions  
26 Concerning Franchising and Business Opportunity Ventures, as set forth in 16  
27 C.F.R. 436 et seq., and has complied with these and filed written notice so

1           stating with the office[division]; or

2           (b) Offers a security pursuant to KRS 292.313;

3           (c) Offers an ongoing business for sale; or

4           (d) Offers a not-for-profit sale of sales demonstration equipment, materials, or  
5           samples for use in making sales and not for resale for a total price of \$500 or  
6           less.

7           (2) The Attorney General may promulgate administrative regulations as needed to  
8           provide for additional exemptions. Is offering to sell or selling a package franchise  
9           as described in KRS 367.801(7).

10          ➔Section 20. KRS 367.809 is amended to read as follows:

11          (1) The office[division], after ascertaining that the applicant has complied with KRS  
12          367.805, shall issue a registration number.

13          (2) It shall be unlawful for the registrant to fail to include the registration number in any  
14          advertising.

15          ➔Section 21. KRS 367.811 is amended to read as follows:

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

25          ➔Section 22. KRS 367.813 is amended to read as follows:

26          (1) Prior to the solicitation of potential consumer/investors the offeror shall furnish and  
27          display to the potential consumer/investor a copy of the material required to be

1 furnished the office[division] when registering pursuant to KRS 367.805.

2 (2) When furnishing the information required by subsection (1) of this section, the  
3 offeror shall furnish the prospective consumer/investor with a notice in at least ten  
4 (10) point bold-face type, stating that registration with the office[division] does not  
5 directly or indirectly imply approval by the office[division] or the Commonwealth  
6 of Kentucky of the business opportunity or any of the activities of representatives  
7 selling such business opportunities.

8 ➔Section 23. KRS 367.815 is amended to read as follows:

9 (1) Any person who offers a business opportunity and makes representations that are  
10 false, misleading, or deceptive shall be liable to the consumer/investor of such  
11 business opportunity in an amount equal to the sum of his actual damages or fifteen  
12 hundred dollars (\$1,500), whichever is greater, as well as the cost of the action  
13 together with reasonable attorney's fees, as determined by the court.

14 (2) (a) All persons registering pursuant to KRS 367.805 shall either furnish a bond by  
15 a surety company authorized to do business in the Commonwealth or establish  
16 a full cash certificate of deposit with a licensed and insured bank or savings  
17 institution located in the Commonwealth to insure the veracity of all  
18 statements contained in the registration. The amount of the bond or certificate  
19 of deposit shall be in an amount equal to the total amount of the initial  
20 payments under all business opportunity agreements the offeror has entered  
21 into in the Commonwealth during the previous year but in no case shall the  
22 amount be less than seventy-five thousand dollars (\$75,000). The bond or  
23 certificate of deposit shall be in the favor of the Attorney General of  
24 Kentucky.

25 (b) Any person who is damaged by any violation of KRS 367.801 to 367.819, or  
26 by the offeror's breach of contract for the business opportunity sale, or of any  
27 obligation arising therefrom may bring an action against the bond or

1 certificate of deposit to recover damages suffered, provided that the aggregate  
2 liability of the surety or trustee shall be only for the actual damages and shall  
3 not exceed the amount of the bond or trust account.

4 (3) A person who has furnished a bond described in subsection (2) of this section may  
5 petition the office~~[division]~~ for release of the bond by submitting a verified  
6 statement that such person has not offered business opportunities in the state for the  
7 last five (5) years.

8 (4) Any offeror of a business opportunity who has offered or sold in this state shall  
9 maintain a complete set of books, records, and accounts of its business opportunity  
10 sales. The sale documents shall be maintained on each transaction for a period of  
11 four (4) years after the date of agreement. The offeror shall make the books and  
12 records available to the office~~[division]~~ upon demand at a location within the state.

13 ➔Section 24. KRS 367.905 is amended to read as follows:

14 (1) Any person, corporation, partnership, association, or group intending to open or  
15 operate a health spa within the Commonwealth, shall:

16 (a) File a registration statement, accompanied by a one hundred dollar (\$100)  
17 initial registration fee, with the Attorney General's Office~~[Division]~~ of  
18 Consumer Protection prior to the sale of any memberships in the  
19 Commonwealth of Kentucky. Such a registration statement shall contain the  
20 name and address of the health spa; the names and addresses of the officers,  
21 directors, and stockholders of the health spa and its parent corporation, if such  
22 an entity exists; the type of available facilities; approximate size of the health  
23 spa measured in square feet; whether or not a shower area is provided; the  
24 names and addresses of employees and their respective qualifications for  
25 employment in the health spa field; type of membership plans to be offered  
26 and their cost; and a full and complete disclosure of any completed or pending  
27 litigation initiated against the health spa and any of its officers or directors

1 within the last three (3) years.

2 (b) Prior to the sale of any memberships in the Commonwealth of Kentucky,  
3 provide the Attorney General's Office[Division] of Consumer Protection with  
4 a surety bond meeting the requirements of KRS 367.906.

5 (2) A new registration statement, accompanied by an annual registration fee of fifty  
6 dollars (\$50), shall be filed with the Attorney General's Office[Division] of  
7 Consumer Protection on or before July 1 of each year following the opening of the  
8 health spa.

9 (3) Each health spa selling contracts on a prepayment basis shall deposit all funds  
10 received from such contracts in an escrow account until the health spa has remained  
11 open for a period of thirty (30) days. At the end of this thirty (30) day period, such  
12 prepayment funds shall be eligible for withdrawal at the depositor's discretion.

13 (4) Each health spa registering pursuant to this statute shall maintain in the files of the  
14 health spa, a copy of its registration statement filed pursuant to this section. This  
15 registration statement shall be made available for inspection by current health spa  
16 members or prospective purchasers of health spa memberships.

17 (5) The registration fees required by this section shall be credited to a trust or agency  
18 account for the administrative purposes of the Attorney General's Office[Division]  
19 of Consumer Protection, as set forth in KRS 367.900 to 367.930.

20 (6) Each separate location where health spa services are offered shall be considered a  
21 separate health spa and shall file a separate registration statement and surety bond,  
22 even though the separate locations are owned or operated by the same owner.

23 ➔Section 25. KRS 367.906 is amended to read as follows:

24 (1) The surety bond required by KRS 367.905(1)(b) shall be in favor of the Attorney  
25 General's Office[Division] of Consumer Protection and shall be held for  
26 compensation to any member who suffers loss of money paid due to the insolvency  
27 of the health spa, cessation of operation of the health spa, or failure of the health spa

1 to open for business within ninety (90) days from the sale of the first contract.

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

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

6	Number of	Amount of bond
7	unexpired contracts	
8	150 or fewer	\$10,000
9	151 to 300	\$25,000
10	301 or more	\$50,000

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

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

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

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

25 (6) A change in ownership shall not release, cancel or terminate liability under any  
26 bond previously filed unless the Attorney General's Office of Consumer Protection~~[~~  
27 ~~Division]~~ agrees in writing to the release, cancellation or termination because the

1 new owner has filed a new bond for the benefit of the previous owner's members, or  
2 because the former owner has paid the required refunds to its members.

3 ➔Section 26. KRS 367.932 is amended to read as follows:

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

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

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



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

7 ➔Section 27. KRS 367.954 is amended to read as follows:

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

26 (2) All trust funds mentioned in this section shall be deposited in the name of the  
27 person making said deposits, with the financial institution as trustee, and shall be

1 held together with the interest, dividends, or accretions thereon, in trust, subject to  
2 the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of  
3 making deposit or investment shall furnish to the financial institution the name of  
4 each payor, and the amount of payment on each account for which the deposit or  
5 investment is being made.

6 (3) Forty percent (40%) of all payments, not including interest or finance charges, made  
7 under the agreement, contract, or plan are and shall remain trust funds with the  
8 financial institution, until the financial institution receives a sworn affidavit from  
9 the depositor stating one of the following:

10 (a) That the delivery of all merchandise by attachment to the realty, or permanent  
11 installation of the merchandise has been completed and that there has been full  
12 performance of all services called for by the agreement, contract or plan; or

13 (b) That there has been delivery of all of the merchandise called for by the  
14 agreement by storing the same in a bonded warehouse with the receipt of  
15 ownership issued by the manufacturer in the name of the purchaser and  
16 transmitted to the purchaser.

17 Upon receiving said affidavit, the financial institution shall remit the funds on  
18 deposit for the performed contract, plus interest, to the depositor. Release of funds  
19 may also be made pursuant to a request for a refund or cancellation under KRS  
20 367.932 to 367.974 and 367.991.

21 (4) In the event that a purchaser is in default of a preneed cemetery merchandise  
22 contract, the financial institution shall release to the depositor the funds, plus  
23 interest, deposited on behalf of the defaulted contract upon receiving from the  
24 depositor a sworn affidavit stating that the purchaser is in default of the preneed  
25 cemetery merchandise agreement, the date of the default, an explanation of the  
26 default, and that the depositor has mailed a copy of the affidavit to the purchaser's  
27 last known address at least thirty (30) days prior to said request for release.

- 1 (5) Deposits to such funds and the amounts deposited may be commingled, but the  
2 accounting records shall establish a separate account for each prepaid contract and  
3 shall show amounts deposited and the income and loss occurring thereon with  
4 respect to each contract.
- 5 (6) The trustee may rely upon all certifications and affidavits made pursuant to or  
6 required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not  
7 be liable to any person for such reliance.
- 8 (7) In lieu of the trust fund deposits required herein, the person may post with the  
9 Attorney General, Office~~[Division]~~ of Consumer Protection, a good and sufficient  
10 bond by a surety company licensed to do business in Kentucky and in an amount  
11 sufficient to cover all payments made by or on account of purchasers who have not  
12 received the purchased property and services. This bond shall be held for the benefit  
13 of a purchaser, or his or her heir or assign or duly authorized representative, who  
14 suffers a loss of money paid pursuant to a preneed cemetery merchandise contract  
15 entered into after July 13, 1984, due to the insolvency of the registrant, or failure to  
16 provide the cemetery merchandise called for by contract that has been paid in full  
17 and not provided after a ninety (90) day request in writing to do so. If a bond is  
18 posted, the Attorney General's office shall receive sixty (60) days' written notice in  
19 the event of cancellation. On or before the cancellation date, the person shall  
20 comply with the trust fund requirements herein or post another good and sufficient  
21 bond.
- 22 (8) Any person selling a preneed cemetery merchandise contract shall pay to the  
23 Attorney General five dollars (\$5), for each said contract entered into and all of  
24 which fees shall be remitted by the person collecting them to the Attorney General  
25 at least once each month, and such funds shall be used by the Attorney General in  
26 administering this chapter.
- 27 ➔Section 28. KRS 367.958 is amended to read as follows:

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

1 purchase of sections in a mausoleum, columbarium, or any kind of underground  
2 crypt which at the time of the payment of money have not been completely and  
3 totally constructed, in a trust fund account in a financial institution within thirty (30)  
4 days after each calendar quarter of operations. Excepted therefrom, however, are  
5 persons who have constructed in the past their own mausoleum using primarily  
6 equipment owned by the self-constructing person and their own personnel with a  
7 minimum of subcontracting, and in that event there shall be deposited a minimum  
8 of twenty percent (20%) of all payments of money, subject, however, to the actual  
9 cost. If, from project to project, their actual cost is in excess of twenty percent  
10 (20%), the full cost percentage shall be deposited from project to project, not to  
11 exceed thirty-six percent (36%). At the time of notification to the Attorney  
12 General's office the self-constructing mausoleum person shall also notify the  
13 Attorney General that he intends to self-construct and the percentage of contribution  
14 of trust that is required.

15 (5) All trust funds mentioned in this section shall be deposited in the name of the  
16 person depositing said funds, with the financial institution as trustee, and shall be  
17 held together with the interest, dividends, or accretions thereon, in trust, subject to  
18 the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of  
19 making deposit or investment shall furnish to the financial institution the name of  
20 each payor, and the amount of payment on each account for which the deposit or  
21 investment is being made.

22 (6) Deposits to such funds and the amounts deposited may be commingled, but the  
23 accounting records shall establish a separate account for each prepaid contract and  
24 shall show amounts deposited and the income and loss occurring thereon with  
25 respect to each contract.

26 (7) All payments made to the preconstruction trust fund account shall remain in the  
27 trust fund with the financial institution until the financial institution receives a

1 certified statement from the depositor stating that the particular project for which  
2 the preconstruction trust fund has been established is totally completed. During the  
3 construction stage, trust funds may be withdrawn by presenting the trustee with  
4 appropriate evidence of expenditure for construction cost. The trustee shall  
5 thereupon disburse moneys from the trust fund to pay for the expenses of  
6 construction presented for payment.

7 (8) A trustee may rely upon all certifications and affidavits made pursuant to or  
8 required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not  
9 be liable to any person for such reliance.

10 (9) If a mausoleum section or bank of underground crypts is not completed within the  
11 time limits set out in KRS 367.932 to 367.974 and 367.991, the financial institution  
12 acting as trustee, if any, may contract for and cause said project to be completed and  
13 paid therefor from the trust account funds deposited to the project's account, paying  
14 any balance, less cost and expenses, to the depositor. In the event there is no  
15 corporate trustee, or the trustee chooses not to serve in the capacity to complete  
16 construction, the Attorney General shall appoint a committee to serve as trustees to  
17 trust account funds deposited to the project's account, paying any balance, less cost  
18 and expenses, to the cemetery company.

19 (10) If it is determined by the trustee after the expiration of the time of construction set  
20 out above that there is not enough money in the trust fund account to complete the  
21 project, the trustee shall make a refund of all moneys held to all purchasers, or his  
22 heirs or assigns, in the amount of the deposit to the credit of their particular contract  
23 and all income those funds have earned. The purchasers shall be entitled to receive  
24 any remainder of the purchase price paid from the depositor. However, nothing  
25 herein contained shall relieve any person from any liability for nonperformance of  
26 the contract terms.

27 (11) If temporary entombment or inurnment is not used, upon written notification to the

1 seller, the personal representative or any purchaser of such space who dies before  
2 completion of construction shall be entitled to a refund of all moneys paid into the  
3 preconstruction trust fund for such space, including any income earned thereon, and  
4 from the seller, the remainder of the purchase price paid.

5 (12) In lieu of the trust fund deposits required herein, the person may post with the  
6 Attorney General, Office~~[Division]~~ of Consumer Protection, a good and sufficient  
7 bond by a surety company licensed to do business in Kentucky and in an amount  
8 sufficient to cover all payments made by or on account of purchasers who have not  
9 received the purchased property and services. This bond shall be held for the benefit  
10 of any purchaser, or his or her heir or assign or duly authorized representative, who  
11 suffers a loss of money paid for a preconstructed mausoleum crypt or niche or  
12 underground crypt after July 13, 1984, due to the insolvency of the registrant, or  
13 failure to construct within the time limits set out herein. If a bond is posted, the  
14 Attorney General's office shall receive sixty (60) days' written notice in the event of  
15 cancellation. On or before the cancellation date, the person shall comply with the  
16 trust fund requirements herein or post another good and sufficient bond.

17 (13) Any person selling preconstruction mausoleum, columbarium or underground crypt  
18 contracts shall pay to the Attorney General five dollars (\$5) for each sale of said  
19 contract and all of which fees shall be remitted by the person collecting them to the  
20 Attorney General at least once each month, and such funds shall be used by the  
21 Attorney General in administering this chapter.

22 ➔Section 29. KRS 367.976 is amended to read as follows:

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

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

27 (2) "Cash price" means the price at which the lessor would have sold the property to the

1 consumer for cash on the date of the rental-purchase agreement.

2 (3) "Consumer" means a natural person who rents personal property under a rental-  
3 purchase agreement.

4 (4) "Consummation" means the time a consumer becomes contractually obligated on a  
5 rental-purchase agreement.

6 (5) ~~["Division" means the Division of Consumer Protection in the Office of the~~  
7 ~~Attorney General.~~

8 ~~(6)~~ "Lessor" means a person who, in the ordinary course of business, regularly leases,  
9 offers to lease, or arranges for the leasing of property under a rental-purchase  
10 agreement.

11 **(6) "Office" means the Office of Consumer Protection in the Office of the Attorney**  
12 **General.**

13 (7) "Rental-purchase agreement" means an agreement for the use of personal property  
14 by a natural person primarily for personal, family, or household purposes, for an  
15 initial period of four (4) months or less, whether or not there is any obligation  
16 beyond the initial period, that is automatically renewable with each payment and  
17 that permits the consumer to become the owner of the property. The term rental-  
18 purchase agreement shall not be construed to be, nor be governed by, any of the  
19 following:

20 (a) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R.  
21 part 226.2(a)(16) and Section 1602(g) of the Truth in Lending Act, 15 U.S.C.  
22 secs. 1601 et seq.;

23 (b) A lease which constitutes a consumer lease as defined in 12 C.F.R. part  
24 213.2(a)(6);

25 (c) Any lease for agricultural, business, or commercial purposes;

26 (d) Any lease made to an organization;

27 (e) A lease or agreement which constitutes a retail installment transaction or retail



1 installment contract as defined in KRS 371.210;

2 (f) A security interest as defined in KRS 355.1-201(37); or

3 (g) A home solicitation sale as that term is defined in KRS 367.410.

4 ➔Section 30. KRS 367.981 is amended to read as follows:

5 (1) A renegotiation shall occur when an existing rental-purchase agreement is satisfied  
6 and replaced by a new lease agreement undertaken by the same consumer. A  
7 renegotiation shall be a new agreement covered by KRS 367.976 to 367.985.

8 However, events such as the following shall not be treated as a renegotiation:

9 (a) The addition or return of property in a multiple item agreement or the  
10 substitution of lease property, if in either case the average payment allocable  
11 to a payment period is not changed by more than twenty-five percent (25%);

12 (b) A deferral or extension of one (1) or more periodic payments, or portions of a  
13 periodic payment;

14 (c) A reduction in charges in the agreement;

15 (d) An agreement involving a court proceeding; or

16 (e) Any other event described in administrative regulations prescribed by the  
17 office~~[division]~~.

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

19 ➔Section 31. KRS 367.985 is amended to read as follows:

20 (1) A lessor shall not be liable under KRS 367.983 for a violation of KRS 367.976 to  
21 367.985 if the lessor shows by a preponderance of the evidence that the violation  
22 was not intentional and resulted from a bona fide error, such as a clerical  
23 miscalculation, computer malfunctions, programming error, or printing error, even  
24 though the lessor maintained procedures reasonably adapted to avoid such an error.  
25 An error of legal judgment with respect to requirements of this title shall not be  
26 considered a bona fide error.

27 (2) A lessor shall not be liable under KRS 367.983 for any act done or omitted in good

1 faith in conformity with any administrative regulation or interpretation promulgated  
2 by the Attorney General or by the office~~[division]~~ or by an official duly authorized  
3 by the Attorney General or by the office~~[division]~~. This rule shall apply even if,  
4 after the act or omission has occurred, the regulation or interpretation is amended,  
5 rescinded, or determined by judicial or other authority to be invalid for any reason.

6 (3) A lessor shall not be liable under KRS 367.983 for any error if, before the thirty-  
7 first day after the date the merchant discovers the error and before an action against  
8 the lessor has been filed or written notice of the error received by the lessor, the  
9 lessor gives the consumer written notice of the error and makes adjustments in the  
10 consumer's account as necessary to assure that the consumer will not be required to  
11 pay an amount in excess of the amount disclosed and that the agreement otherwise  
12 complies with KRS 367.976 to 367.985.

13 ➔Section 32. KRS 367.990 is amended to read as follows:

14 (1) Any person who violates the terms of a temporary or permanent injunction issued  
15 under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of  
16 not more than twenty-five thousand dollars (\$25,000) per violation. For the  
17 purposes of this section, the Circuit Court issuing an injunction shall retain  
18 jurisdiction, and the cause shall be continued, and in such cases the Attorney  
19 General acting in the name of the Commonwealth may petition for recovery of civil  
20 penalties.

21 (2) In any action brought under KRS 367.190, if the court finds that a person is  
22 willfully using or has willfully used a method, act, or practice declared unlawful by  
23 KRS 367.170, the Attorney General, upon petition to the court, may recover, on  
24 behalf of the Commonwealth, a civil penalty of not more than two thousand dollars  
25 (\$2,000) per violation, or where the defendant's conduct is directed at a person aged  
26 sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)  
27 per violation, if the trier of fact determines that the defendant knew or should have

- 1 known that the person aged sixty (60) or older is substantially more vulnerable than  
2 other members of the public.
- 3 (3) Any person with actual notice that an investigation has begun or is about to begin  
4 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,  
5 or falsifies documentary material is guilty of a Class A misdemeanor.
- 6 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240  
7 or 367.250, intentionally falsifies or withholds documents, records, or pertinent  
8 materials that are not privileged shall be subject to a fine as provided in subsection  
9 (3) of this section.
- 10 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is  
11 proposed, operated, or promoted may grant an injunction without bond, upon  
12 complaint filed by the Attorney General to enjoin the further operation thereof, and  
13 the Attorney General may ask for and the court may assess civil penalties against  
14 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)  
15 which shall be for the benefit of the Commonwealth of Kentucky.
- 16 (6) Any person, business, or corporation who knowingly violates the provisions of KRS  
17 367.540 shall be guilty of a violation. It shall be considered a separate offense each  
18 time a magazine is mailed into the state; but it shall be considered only one (1)  
19 offense for any quantity of the same issue of a magazine mailed into Kentucky.
- 20 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty  
21 of a Class A misdemeanor.
- 22 (8) In addition to the penalties contained in this section, the Attorney General, upon  
23 petition to the court, may recover, on behalf of the Commonwealth a civil penalty of  
24 not more than the greater of five thousand dollars (\$5,000) or two hundred dollars  
25 (\$200) per day for each and every violation of KRS 367.175.
- 26 (9) Any person who shall willfully and intentionally violate any provision of KRS  
27 367.976 to 367.985 shall be guilty of a Class B misdemeanor.

- 1 (10) (a) Any person who violates the terms of a temporary or permanent injunction  
2 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a  
3 penalty of not more than five thousand dollars (\$5,000) per violation. For the  
4 purposes of this section, the Circuit Court issuing an injunction shall retain  
5 jurisdiction, and the cause shall be continued, and in such cases the Attorney  
6 General acting in the name of the Commonwealth may petition for recovery of  
7 civil penalties;
- 8 (b) The Attorney General may, upon petition to a court having jurisdiction under  
9 KRS 367.190, recover on behalf of the Commonwealth from any person  
10 found to have willfully committed an act declared unlawful by KRS 367.667 a  
11 penalty of not more than two thousand dollars (\$2,000) per violation; and
- 12 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,  
13 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false  
14 or incorrect information to the Attorney General in filing statements or reports  
15 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- 16 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under  
17 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per  
18 violation to be collected in the name of the Commonwealth upon action of the  
19 Attorney General.
- 20 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be  
21 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in  
22 the name of the Commonwealth upon action by the Attorney General.
- 23 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or  
24 367.816 shall be guilty of a Class C felony.
- 25 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have  
26 authority to prosecute violations of KRS 367.801 to 367.819.
- 27 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the

- 1 Attorney General or the appropriate Commonwealth's attorney shall have authority  
2 to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- 3 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 4 (17) Any person, partnership, or corporation who violates the provisions of KRS  
5 367.850 shall be guilty of a Class A misdemeanor.
- 6 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets  
7 back, disconnects, fails to connect, or causes to be changed, set back, or  
8 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale  
9 of the motor vehicle shall be guilty of a Class D felony.
- 10 (19) Any person who negotiates a contract of membership on behalf of a club without  
11 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty  
12 of a Class D felony.
- 13 (20) Any person or corporation who operates or attempts to operate a health spa in  
14 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 15 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and  
16 (b) The appropriate Commonwealth's attorney shall have authority to prosecute  
17 felony violations of KRS 367.832.
- 18 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be  
19 guilty of a violation. Either the Attorney General or the appropriate county  
20 health department may prosecute violators of KRS 367.855 or 367.857.
- 21 (b) The provisions of this subsection shall not apply to any retail establishment if  
22 the wholesaler, distributor, or processor fails to comply with the provisions of  
23 KRS 367.857.
- 24 (23) Notwithstanding any other provision of law, any telemarketing company,  
25 telemarketer, caller, or merchant shall be guilty of a Class D felony when that  
26 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)  
27 calendar year knowingly and willfully violates KRS 367.46955(15) by making or

1 causing to be made an unsolicited telephone solicitation call to a telephone number  
2 that appears in the current publication of the zero call list maintained by the Office  
3 of Consumer Protection in the Office of the Attorney General, ~~Division of~~  
4 ~~Consumer Protection~~.

5 (24) Notwithstanding any other provision of law, any telemarketing company,  
6 telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when  
7 that telemarketing company, telemarketer, caller, or merchant uses a zero call list  
8 identified in KRS 367.46955(15) for any purpose other than complying with the  
9 provisions of KRS 367.46951 to 367.46999.

10 (25) (a) Notwithstanding any other provision of law, any telemarketing company,  
11 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999  
12 shall be assessed a civil penalty of not more than five thousand dollars  
13 (\$5,000) for each offense.

14 (b) The Attorney General, or any person authorized to act in his or her behalf,  
15 shall initiate enforcement of a civil penalty imposed under paragraph (a) of  
16 this subsection.

17 (c) Any civil penalty imposed under paragraph (a) of this subsection may be  
18 compromised by the Attorney General or his or her designated representative.  
19 In determining the amount of the penalty or the amount agreed upon in  
20 compromise, the Attorney General, or his or her designated representative,  
21 shall consider the appropriateness of the penalty to the financial resources of  
22 the telemarketing company, telemarketer, caller, or merchant charged, the  
23 gravity of the violation, the number of times the telemarketing company,  
24 telemarketer, caller, or merchant charged has been cited, and the good faith of  
25 the telemarketing company, telemarketer, caller, or merchant charged in  
26 attempting to achieve compliance, after notification of the violation.

27 (d) If a civil penalty is imposed under this subsection, a citation shall be issued

1           which describes the violation which has occurred and states the penalty for the  
2           violation. If, within fifteen (15) working days from the receipt of the citation,  
3           the affected party fails to pay the penalty imposed, the Attorney General, or  
4           any person authorized to act in his or her behalf, shall initiate a civil action to  
5           collect the penalty. The civil action shall be taken in the court which has  
6           jurisdiction over the location in which the violation occurred.

7 (26) Any person who violates KRS 367.500 shall be liable for a penalty of two thousand  
8       five hundred dollars (\$2,500) per violation. Either the Attorney General or the  
9       appropriate Commonwealth's attorney may prosecute violations of KRS 367.500.

10       ➔Section 33. KRS 380.040 is amended to read as follows:

11 (1) Subject to subsection (3) of this section, a person, whether or not located in this  
12       state, who is engaged in debt adjusting and actually or constructively receives any  
13       money or other thing of value, other than the fees permitted by this chapter, for the  
14       purpose of disbursing the money or thing of value to the debtor's creditors, shall do  
15       both of the following:

16       (a) Unless specifically instructed otherwise by a debtor, disburse to the  
17       appropriate creditors all funds received from the debtor, less any contributions  
18       or fees not prohibited by subsection (2) of this section, within thirty (30) days  
19       of receipt of the funds from the debtor; and

20       (b) Maintain a separate trust account for the receipt of any funds from debtors and  
21       the disbursement of the funds to creditors on behalf of the debtors.

22 (2) If a fee, contribution, or other consideration for engaging in debt adjusting is  
23       accepted, directly or indirectly, a person engaged in debt adjusting shall not do any  
24       of the following:

25       (a) Accept a fee, contribution, or other consideration exceeding seventy-five  
26       dollars (\$75) from a debtor residing in this state for an initial set up;

27       (b) Accept a fee, contribution, or other consideration exceeding fifty dollars (\$50)

- 1 per calendar year from a debtor residing in this state for consultation;
- 2 (c) If money or anything else of value is received and held by the person engaged  
3 in debt adjusting for the purpose of disbursing the money or thing of value to  
4 the debtor's unsecured creditors, accept a periodic fee, contribution, or other  
5 consideration from a debtor who resides in this state that exceeds the greater  
6 of eight and one-half percent (8.5%) of the amount paid by the debtor each  
7 month for distribution to the debtor's creditors or thirty dollars (\$30); or
- 8 (d) Accept any other fee, contribution, or other consideration in advance of the  
9 complete performance of all promised services in relation to secured debt.  
10 Acceptance of a fee, contribution, or other consideration in advance of the  
11 complete performance of all promised services in relation to secured debt,  
12 including the placement of the fee, contribution, or other consideration into an  
13 escrow account to be paid upon completion of the services, is specifically  
14 prohibited. For purposes of this paragraph, "secured debt" means any debt  
15 primarily for personal, family, or household use that is secured by a mortgage,  
16 deed of trust, other equivalent consensual security interest on residential real  
17 property, or collateral that has a mortgage lien interest in residential real  
18 property.
- 19 (3) Subsections (1) and (2) of this section shall not prohibit a person engaged in debt  
20 adjusting for a debtor who resides in this state from charging the debtor a bad check  
21 charge of twenty dollars (\$20) or the amount passed on from the debt adjuster's  
22 bank, whichever is greater, in addition to fees, contributions, or other consideration  
23 not prohibited by subsection (2) of this section.
- 24 (4) Fees, contributions, or other consideration permitted in subsections (1), (2), and (3)  
25 of this section may be adjusted on an annual basis by the amount equivalent to any  
26 increase in the consumer price index, published by the United States Department of  
27 Labor, Bureau of Labor Statistics.



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

- 1           2. The insurance coverage shall not include a deductible in excess of ten  
2           percent (10%) of the face amount of the policy coverage;
- 3           3. The insurance coverage shall be issued by an insurer and rated at least  
4           A-, or its equivalent, by a nationally recognized rating organization; and
- 5           4. The insurance coverage shall provide that the Office of Consumer  
6           Protection~~[-Division]~~ of the Office of the Attorney General shall be  
7           named as an additional interested party.
- 8           (b) If the debt adjuster engages in debt adjusting in relation to any debt that is  
9           primarily for personal, family, or household use that is secured by a mortgage,  
10          deed of trust, other equivalent consensual security interest on residential real  
11          property, or collateral that has a mortgage lien interest in residential real  
12          property, the amount of insurance coverage required in paragraph (a) of this  
13          subsection shall be increased by two hundred fifty thousand dollars  
14          (\$250,000).
- 15       (8) (a) A debt adjuster shall maintain a bond issued by a surety company admitted to  
16          do business in this Commonwealth. The bond shall be in the amount of  
17          twenty-five thousand dollars (\$25,000) in favor of the Attorney General for  
18          the benefit of the Commonwealth for any violation of this chapter or any  
19          person suffering injury or loss by reason of any violation of this chapter. A  
20          copy of the bond shall be filed with the Attorney General.
- 21       (b) The bond required by paragraph (a) of this subsection shall be in effect during  
22          the period of the debt adjuster's registration as well as for two (2) years after  
23          the debt adjuster ceases to provide debt-adjusting services to debtors.
- 24       (c) A change in ownership of a debt adjuster shall not release, cancel, or terminate  
25          liability under any bond previously filed unless the Attorney General agrees in  
26          writing to the release, cancellation, or termination because the debt adjuster  
27          has filed a new bond meeting the requirements of paragraph (a) of this

1 subsection.

2 (d) The proceeds of the bond required by paragraph (a) of this subsection shall be  
3 paid to any person suffering injury or loss by reason of any violation of this  
4 chapter or to the Attorney General for any violation of this chapter or shall be  
5 paid pursuant to the terms of any order of a court of competent jurisdiction.  
6 Any person who is damaged by any violation of this chapter may bring an  
7 action against the bond to recover damages pursuant to this paragraph,  
8 provided the aggregate liability of the surety shall not exceed the amount of  
9 the bond.

10 (e) In lieu of the bond required by paragraph (a) of this subsection, a debt adjuster  
11 may, with the written approval of the Attorney General, deliver to the  
12 Attorney General an irrevocable letter of credit issued or confirmed by a  
13 financial institution authorized by law to transact business in the  
14 Commonwealth. The irrevocable letter of credit shall be in the amount of  
15 twenty-five thousand dollars (\$25,000) in favor of the Attorney General for  
16 the benefit of the Commonwealth or any person suffering injury or loss by  
17 reason of any violation of this chapter.

18 (f) If the debt adjuster engages in debt adjusting in relation to any debt that is  
19 primarily for personal, family, or household use that is secured by a mortgage,  
20 deed of trust, other equivalent consensual security interest on residential real  
21 property, or collateral that has a mortgage lien interest in residential real  
22 property, the amount of the bond required in paragraph (a) of this subsection  
23 or the irrevocable letter of credit approved pursuant to paragraph (e) of this  
24 subsection shall be increased by fifty thousand dollars (\$50,000).

25 (9) A debt adjuster may not, directly or indirectly:

26 (a) Misappropriate or misapply money held in trust;

27 (b) Settle a debtor's debt if the amount the debtor will owe after settlement is

- 1 equal to or more than fifty percent (50%) of the amount of the debt prior to  
2 settlement unless, after the creditor has assented, the debtor assents to a  
3 settlement for which the amount the debtor will owe after settlement is equal  
4 to or more than fifty percent (50%) of the amount of the debt prior to  
5 settlement;
- 6 (c) Take a power of attorney that authorizes the debt adjuster to settle a debt,  
7 unless the power of attorney is expressly limited to the debtor's debts and  
8 grants authority to settle debts only if the amount the debtor will owe after  
9 settlement is less than fifty percent (50%) of the amount of the debt prior to  
10 settlement. However, in no event shall an agreement confer on a debt adjuster  
11 a power of attorney to negotiate or settle any of the debtor's debt that is  
12 primarily for personal, family, or household use that is secured by a mortgage,  
13 deed of trust, other equivalent consensual security interest on residential real  
14 property, or collateral that has a mortgage lien interest in residential real  
15 property;
- 16 (d) Exercise or attempt to exercise a power of attorney after a debtor has  
17 terminated an agreement;
- 18 (e) Initiate a transfer from a debtor's account at a bank or with another person  
19 unless the transfer is:
- 20 1. A return of money to the debtor; or
  - 21 2. Before termination of an agreement, properly authorized by the  
22 agreement and this chapter, and for payment to one (1) or more creditors  
23 pursuant to a plan or payment of a fee;
- 24 (f) Structure a plan in a manner that would result in a negative amortization of  
25 any of a debtor's debts, unless a creditor that is owed a negatively amortizing  
26 debt agrees to refund or waive the finance charge upon payment of the  
27 principal amount of the debt;

- 1 (g) Settle a debt or lead a debtor to believe that a payment to a creditor is in  
2 settlement of a debt to the creditor unless, at the time of settlement, the debtor  
3 receives a certification by the creditor that the payment is in full settlement of  
4 the debt or is part of a payment plan, the terms of which are included in the  
5 certification, that upon completion will lead to full settlement of the debt;
- 6 (h) Make a representation that:
- 7 1. The debt adjuster will furnish money to pay bills or prevent attachments;
  - 8 2. Payment of a certain amount will permit satisfaction of a certain amount  
9 or range of indebtedness;
  - 10 3. Participation in a plan will or may prevent litigation, garnishment,  
11 attachment, repossession, foreclosure, eviction, or loss of employment,  
12 and will or may stop efforts to collect a debt from the debtor;
  - 13 4. Failure to make required minimum payments to creditors will not or may  
14 not break the terms of agreements with creditors, will not or may not  
15 lead creditors to increase finance charges and pursue litigation, will not  
16 or may not be reported to consumer reporting agencies, or will not or  
17 may not have an adverse effect on the debtor's credit report and credit  
18 score; or
  - 19 5. Fees paid to a debt adjuster will be used to pay creditors;
- 20 (i) Misrepresent that it is authorized or competent to furnish legal advice or  
21 perform legal services;
- 22 (j) Take a confession of judgment or power of attorney to confess judgment  
23 against a debtor;
- 24 (k) Purchase a debt or obligation of the debtor;
- 25 (l) Receive from or on behalf of the debtor:
- 26 1. A promissory note or other negotiable instrument other than a check or a  
27 demand draft; or

- 1           2.    A postdated check or demand draft;
- 2           (m) Lend money or provide credit to the debtor, except as a deferral of a
- 3                 settlement fee at no additional expense to the debtor;
- 4           (n) Obtain a mortgage or other security interest from any person in connection
- 5                 with the services provided to the debtor;
- 6           (o) Provide the debtor less than the full benefit of a compromise of a debt
- 7                 arranged by the debt adjuster; or
- 8           (p) Charge the debtor for or provide credit or other insurance, coupons for goods
- 9                 or services, membership in a club, access to computers or the Internet, or any
- 10                other matter not directly related to debt adjusting services or educational
- 11                services concerning personal finance.

12 (10) Any unfair, false, misleading, or deceptive act or practice in the conduct of debt

13           adjusting is prohibited. For purposes of this subsection, "unfair" shall be construed

14           to mean unconscionable.

15           ➔Section 34.   KRS 403.707 is amended to read as follows:

- 16 (1) The Sexual Assault Response Team Advisory Committee is established.
- 17 (2) The Sexual Assault Response Team Advisory Committee shall be co-chaired by the
- 18           executive director of the Kentucky Association of Sexual Assault Programs and the
- 19           commissioner of the Department of Kentucky State Police or the commissioner's
- 20           designee.
- 21 (3) The membership of the Sexual Assault Response Team Advisory Committee shall
- 22           consist of the following:
- 23           (a) The executive director of the Kentucky Board of Nursing or the executive
- 24                 director's designee;
- 25           (b) The executive director of the Kentucky Nurses Association or the executive
- 26                 director's designee;
- 27           (c) The executive director of the Kentucky Hospital Association or the executive

- 1 director's designee;
- 2 (d) The executive director of the Kentucky Association of Children's Advocacy  
3 Centers;
- 4 (e) The director of the Department of Kentucky State Police Crime Lab;
- 5 (f) The commissioner of the Department for Community Based Services or the  
6 commissioner's designee;
- 7 (g) The executive director of the Office of Victims~~[Victims]~~ Advocacy~~[Division]~~  
8 of the Office of the Attorney General or the director's designee;
- 9 (h) A sexual assault nurse examiner appointed by the secretary of the Cabinet for  
10 Health and Family Services;
- 11 (i) A representative from a sexual assault response team appointed by the  
12 executive director of the Kentucky Association of Sexual Assault Programs;
- 13 (j) A physician appointed by the secretary of the Cabinet for Health and Family  
14 Services; and
- 15 (k) A Commonwealth's attorney or an assistant Commonwealth's attorney  
16 appointed by the Attorney General.
- 17 (4) Members appointed under subsection (3)(h) to (k) of this section shall serve at the  
18 pleasure of the appointing authority and shall not serve longer than four (4) years  
19 without reappointment.
- 20 (5) The Sexual Assault Response Team Advisory Committee shall:
- 21 (a) Serve in an advisory capacity to the Kentucky Board of Nursing in  
22 accomplishing the duties set forth under KRS 314.142;
- 23 (b) Serve in an advisory capacity to the Justice and Public Safety Cabinet in the  
24 development of the statewide sexual assault protocol required under KRS  
25 216B.400(4);
- 26 (c) Develop a model protocol for the operation of sexual assault response teams  
27 which shall include the roles of sexual assault nurse examiners, physicians,

- 1 law enforcement, prosecutors, and victim advocates;
- 2 (d) Provide assistance to each regional rape crisis center, as designated by the  
3 Cabinet for Health and Family Services, in establishing a regional sexual  
4 assault response team;
- 5 (e) Develop model policies for law enforcement agencies related to handling  
6 sexual assault examination kits and investigating sexual assaults with a  
7 victim-centered, evidence-based approach;
- 8 (f) By January 1, 2018, report to the General Assembly on the results of the  
9 analysis of previously untested sexual assault examination kits submitted to  
10 the Department of Kentucky State Police forensic laboratory pursuant to 2016  
11 Ky. Acts ch. 58, sec. 1, including whether analysis of those kits led to the  
12 identification and prosecution of suspects and the cost to society of the  
13 offenses committed by the suspects identified;
- 14 (g) By July 1, 2018, and by each July 1 thereafter, report to the General Assembly  
15 and to the secretary of the Justice and Public Safety Cabinet on the number of  
16 sexual assaults reported, the number of sexual assault examination kits  
17 submitted to the Department of Kentucky State Police forensic laboratory, the  
18 number of kits tested, and the number of charges filed and convictions  
19 obtained in sexual assault cases in the previous calendar year;
- 20 (h) Provide information and recommendations concerning the activities of the  
21 agency or organization represented by each individual committee member as  
22 related to sexual assault issues and programs within the purview of the agency  
23 or organization; and
- 24 (i) Recommend to the appropriate state agency any changes in statute,  
25 administrative regulation, training, policy, and budget to promote a  
26 multidisciplinary response to sexual assault.

27 ➔Section 35. The General Assembly hereby confirms the Attorney General's



- 1 Executive Order, OAG EO 18-01, dated May 1, 2018, relating to the organization of the
- 2 Office of Attorney General, to the extent that it is not otherwise confirmed or superseded
- 3 by this Act.