

1 AN ACT relating to the Kentucky False Claims Act.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 9 of this Act:*

6 *(1) "Claim" means:*

7 *(a) Any request or demand for money or property, under a contract or*
8 *otherwise, whether the Commonwealth or the Kentucky Medical Assistance*
9 *program has title to the money or property, that is made to:*

10 *1. The Commonwealth;*

11 *2. The Kentucky Medical Assistance program as defined under KRS*
12 *205.8451;*

13 *3. Any officer, employee, fiscal intermediary, or agent of the*
14 *Commonwealth or the Kentucky Medical Assistance program;*

15 *4. Any contractor or grantee of the Commonwealth or the Kentucky*
16 *Medical Assistance program; or*

17 *5. Any other person or entity; and*

18 *(b) 1. The request or demand results in payment by the Kentucky Medical*
19 *Assistance program;*

20 *2. The Kentucky Medical Assistance program has provided or will*
21 *provide any portion of the money or property requested or demanded;*

22 *3. The Kentucky Medical Assistance program will reimburse the*
23 *contractor, grantee, or other recipient for any portion of the money or*
24 *property requested or demanded; or*

25 *4. The money or property is to be spent or used on behalf of or to*
26 *advance the Kentucky Medical Assistance program;*

27 *(c) Any request or demand for money or property that is made orally, in*

- 1 writing, electronically, or magnetically; and
- 2 (d) Each request or demand may be treated as a separate claim;
- 3 (2) "Commonwealth" means the Commonwealth of Kentucky, the Kentucky Medical
- 4 Assistance Program, and any cabinet, agency, board, commission, or similar
- 5 entity of state government, and includes within the class of persons against whom
- 6 a violation of subsection (1) of Section 2 of this Act may be committed a public or
- 7 private entity under contract with the government to accept, process, review, or
- 8 pay claims, including any managed care provider contracting with the Kentucky
- 9 Medical Assistance Program;
- 10 (3) "Documentary material" means:
- 11 (a) The original or any copy of any book, record, report, memorandum, paper,
- 12 communication, tabulation, chart, or other document;
- 13 (b) Data compilations stored in or accessible through computer or other
- 14 information-retrieval systems;
- 15 (c) Instructions and all other materials necessary to use or interpret the data
- 16 compilations; and
- 17 (d) Any product of discovery;
- 18 (4) "Knowing" and "knowingly," with respect to information, means a person,
- 19 acting with or without a specific intent to defraud, either:
- 20 (a) Has actual knowledge of the information;
- 21 (b) Acts in deliberate ignorance of the truth or falsity of the information; or
- 22 (c) Acts in reckless disregard of the truth or falsity of the information;
- 23 (5) "Material" means having a natural tendency to influence, or be capable of
- 24 influencing, the payment or receipt of money or property;
- 25 (6) "Obligation" means an established duty, whether or not fixed, arising from:
- 26 (a) An express or implied contractual, grantor-grantee, or licensor-licensee
- 27 relationship;

1 (b) A fee based or similar relationship;

2 (c) Statute or regulation; or

3 (d) Retention of any overpayment;

4 (7) "Original source" means an individual who:

5 (a) Has voluntarily disclosed to the government the information on which
 6 allegations or transactions in a claim are based prior to their public
 7 disclosure under circumstances described in subsection (1) of Section 3 of
 8 this Act; or

9 (b) Has knowledge that is independent of and materially adds to the publicly
 10 disclosed allegations or transactions and has provided that knowledge to the
 11 government prior to filing an action as a relator under Sections 1 to 9 of
 12 this Act;

13 (8) "Person" means any natural person, corporation, company, association, firm,
 14 partnership, society, joint-stock company, or any other entity with capacity to sue
 15 or be sued; and

16 (9) "Relator" means a private individual who brings a civil action on behalf of both
 17 the Commonwealth and the individual under Section 3 of this Act.

18 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) No person shall:

21 (a) Knowingly present, or cause to be presented, to any officer, employee, fiscal
 22 intermediary, contractor, grantee, or agent of the Commonwealth, or to the
 23 Kentucky Medical Assistance program, a false or fraudulent claim for
 24 payment or approval;

25 (b) Knowingly make, use, or cause to be made or used, a false record or
 26 statement material to a false or fraudulent claim;

27 (c) Have possession, custody, or control of property or money used, or to be

1 used, by the Commonwealth or the Kentucky Medical Assistance program,
2 and knowingly deliver, or cause to be delivered, less than all of that money
3 or property;

4 (d) Authorize to make or deliver a document certifying receipt of property used,
5 or to be used, by the Commonwealth or the Kentucky Medical Assistance
6 Program and, intending to defraud the Commonwealth or the Kentucky
7 Medical Assistance Program, make or deliver the receipt without completely
8 knowing that the information on the receipt is true;

9 (e) Knowingly buy, or receive as a pledge of an obligation or debt, public
10 property from an officer or employee of the Commonwealth or the Kentucky
11 Medical Assistance Program who lawfully may not sell or pledge the
12 property;

13 (f) Knowingly make, use, or cause to be made or used, a false record or
14 statement material to an obligation to pay or transmit money or property to
15 the Commonwealth or the Kentucky Medical Assistance Program;

16 (g) Knowingly conceal or knowingly and improperly avoid or decrease an
17 obligation to pay or transmit property or money to the Commonwealth or
18 the Kentucky Medical Assistance Program; or

19 (h) Conspire to commit a violation of this section, including conspire to defraud
20 the Commonwealth or the Kentucky Medical Assistance Program by getting
21 a false or fraudulent claim allowed or paid.

22 (2) A person who violates subsection (1) of this section shall be liable to the
23 Commonwealth in a civil action brought under Sections 1 to 9 of this Act for:

24 (a) Three (3) times the amount of damages sustained by the Commonwealth or
25 the Kentucky Medical Assistance Program because of the acts of the
26 person;

27 (b) A civil penalty of not less than five thousand five hundred dollars (\$5,500)

1 and not more than eleven thousand dollars (\$11,000) for each false and
2 fraudulent claim; and

3 (c) All costs of any civil action brought to recover the penalties and damages
4 provided under this subsection, including a reasonable attorney's fee.

5 (3) In determining the amount of the civil penalty imposed under subsection (2)(b) of
6 this section for a violation under this section, the court shall consider:

7 (a) The nature, circumstances, extent, and gravity of the violation;

8 (b) Whether the person has previously violated this section;

9 (c) The violation's threat to public or individual health and safety;

10 (d) Whether the person acted in bad faith in committing the violation; and

11 (e) The amount necessary to deter future violations.

12 (4) The court may reduce a person's liability under subsection (2)(a) of this section to
13 not more than two (2) times the actual amount of the damages sustained if, prior
14 to the Attorney General, Kentucky Medical Assistance Program, agency, or other
15 authorized investigative entity commencing any criminal prosecution, civil
16 action, or administrative proceeding regarding the violation, the person
17 committing the violation:

18 (a) Furnished all information known to the person about the violation to the
19 Attorney General, Kentucky Medical Assistance Program, agency, or other
20 authorized investigative entity not later than thirty (30) days after the date
21 on which the person first obtained the information;

22 (b) Fully cooperated with any governmental investigation of the violation; and

23 (c) Did not have actual knowledge of the existence of any investigation
24 regarding the violation at the time the person furnished the information
25 about the violation to the Attorney General, Kentucky Medical Assistance
26 Program, agency, or other authorized investigative entity.

27 (5) No civil action may be brought under Sections 1 to 9 of this Act for any claim

1 relating to the assessment, payment, nonpayment, refund, or collection of taxes
2 imposed by the Commonwealth.

3 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) In addition to the investigative and enforcement authority of the Attorney
6 General under KRS 205.8469, if the Attorney General finds that a person has
7 violated or is violating Section 2 of this Act, the Attorney General shall be
8 authorized to bring a civil action to recover the damages, penalties, and costs
9 authorized by this section, or to obtain appropriate injunctive relief restraining
10 future violations, or both.

11 (2) A private person may bring a civil action as a relator to recover the amounts
12 allowed under Section 2 of this Act if:

13 (a) The relator has not been convicted of a criminal offense arising out of the
14 violation;

15 (b) The violation is not the basis of a previously initiated criminal, civil, or
16 administrative action in which the Commonwealth is already a party; and

17 (c) The violation has not been previously disclosed in the news media or in a
18 legislative or administrative report, hearing, audit, or investigation unless
19 the relator is an original source for information on the violation.

20 (3) In initiating the civil action, a relator, in addition to any other filing
21 requirements, shall:

22 (a) Bring the action in the name of the Commonwealth of Kentucky;

23 (b) Notify the circuit clerk in writing that the action is being brought under
24 Sections 1 to 9 of this Act, which the Court of Justice may require by rule be
25 submitted on a form provided by the Administrative Office of the Courts;

26 (c) Serve a copy of the complaint and a written disclosure of substantially all
27 material evidence and information possessed by the person pertaining to the

1 alleged violation upon the Attorney General.

2 (4) A circuit clerk receiving a complaint under subsection (3) of this section shall:

3 (a) Immediately send a copy of the complaint to the Attorney General;

4 (b) Place the case record under seal for at least sixty (60) days, or until
5 otherwise authorized by the court after the expiration of the initial sixty (60)
6 day period, with access being allowed only to the court, the relator, and the
7 Attorney General, to provide the Attorney General time to investigate the
8 allegations of the complaint if he or she elected to do so; and

9 (c) Issue process for the defendant only after ordered to do so by the court.

10 (5) Once a civil action under Sections 1 to 9 of this Act has been filed, no other
11 person may act as a relator in a civil action alleging a violation of Section 2 of
12 this Act based upon the same facts and circumstances.

13 (6) While under seal, a civil action may only be dismissed on motion of the relator
14 with either the Attorney General's consent, or upon a showing of good cause
15 made in a hearing where the Attorney General may be heard on the motion.

16 (7) Within sixty (60) days following both the filing of the complaint and delivery of
17 the material evidence and information by the relator, the Attorney General may:

18 (a) Intervene in the action and assume representation of the Commonwealth's
19 interest;

20 (b) Move the court for extensions of time to investigate the allegations of the
21 complaint with proper notice to the relator, during which time the
22 complaint shall remain under seal. The motions may be supported by
23 affidavits or other submissions in camera, and the court may grant the
24 extensions, following an in camera hearing, for good cause shown; or

25 (c) Decline to intervene.

26 (8) If the Attorney General intervenes under this section, the Attorney General shall:

27 (a) Notify the relator of the intervention and move the court to direct the clerk

1 to unseal the case record and issue process to the defendant either
2 immediately or at a future time certain;

3 (b) Have primary responsibility for prosecuting the action and shall not be
4 bound by any act of the relator, although the relator may continue as a
5 party, subject to the limitations under this section;

6 (c) Have the authority to seek dismissal of the action over the relator's
7 objection if the relator has been notified by the Attorney General of the
8 filing of any motion seeking dismissal, and the court has provided the
9 relator with an opportunity for a hearing on the motion; and

10 (d) Have the authority to settle the civil action over the objection of the relator
11 if the court finds, after a hearing, that the settlement is fair, adequate, and
12 reasonable under all the circumstances. Upon a showing of good cause, the
13 hearing may be held in camera; and

14 (e) May file his or her own complaint or amend the complaint of the relator to
15 clarify or add detail to the claims in which the Attorney General is
16 intervening and to assert any additional claims to which the Commonwealth
17 contends it is entitled to relief. For purposes of the Statute of Limitations,
18 and notwithstanding any other provision to the contrary, any pleading filed
19 under this paragraph by the Attorney General shall relate back to the filing
20 date of the complaint of the relator, to the extent that the claim of the
21 Commonwealth arises out of the conduct, transactions, or occurrences set
22 forth, or attempted to be set forth, in the original complaint of the relator.

23 (9) If the Attorney General does not intervene under this section:

24 (a) The Attorney General shall notify the relator and the court of the decision
25 not to intervene and the relator shall have the right to proceed with the civil
26 action;

27 (b) The relator shall then move the court to direct the clerk to unseal the case

1 record and issue process to the defendant;

2 (c) The court, without limiting the status and rights of the relator, may permit
3 the Attorney General to intervene at a later date upon a showing of good
4 cause for any purpose including but not limited to a dismissal of the action
5 over the relator's objection if the relator has been notified by the Attorney
6 General of the filing of any motion seeking dismissal, and the court has
7 provided the relator with an opportunity for a hearing on the motion; and

8 (d) At the Attorney General's request and expense, a relator shall provide
9 copies of all pleadings and discovery in the action.

10 (10) A defendant's time period for filing an answer shall not begin to run until
11 process is issued for that defendant.

12 (11) In any civil action brought under Sections 1 to 9 of this Act, the Commonwealth
13 or any relator bringing the civil action shall be required to prove all essential
14 elements of the claim, including damages, by a preponderance of the evidence.

15 (12) The Commonwealth shall not be liable for expenses or attorney's fees that a
16 relator incurs in bringing an action under this section.

17 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
18 READ AS FOLLOWS:

19 The proceeds of a civil action brought under Sections 1 to 9 of this Act or any
20 resulting settlement shall be distributed to the Commonwealth subject to the following
21 awards made by the court:

22 (1) (a) Except as otherwise provided in this section, if the Attorney General
23 intervenes and assumes control of an action brought by a relator, the court
24 shall award the relator not less than fifteen percent (15%) but not more
25 than twenty-five percent (25%) of the total proceeds after consideration of
26 the extent to which the relator substantially contributed to the prosecution
27 of the action; or

1 **(b) The court shall limit the relator's share to not more than ten percent (10%)**
2 **of the proceeds if the court finds the civil action is based primarily on**
3 **disclosures of specific information, other than information provided by the**
4 **relator as an original source, relating to allegations or transactions in:**

5 **1. Any criminal, civil, or administrative hearing in which the**
6 **Commonwealth, Kentucky Medical Assistance program, or its**
7 **employee, agent, or contractor is a party;**

8 **2. Any congressional, legislative, or other state or federal report,**
9 **hearing, audit, or investigation; or**

10 **3. The news media; and**

11 **(c) The Attorney General, and any relator awarded a share of the proceeds**
12 **under this subsection, shall also be awarded their reasonable expenses,**
13 **attorney's fees, and costs that the court finds to have been necessarily**
14 **incurred in bringing and prosecuting the action, with these expenses, fees,**
15 **and costs being paid by the defendant. In addition, the court shall award the**
16 **Attorney General twenty-five percent (25%) of any additional damages**
17 **recovered beyond the actual damages suffered by the Kentucky Medical**
18 **Assistance Program.**

19 **(2) (a) If the Attorney General does not intervene or proceed with a civil action**
20 **under Sections 1 to 9 of this Act, the relator shall receive an amount that**
21 **the court determines is reasonable for collecting the civil penalty and**
22 **damages of not less than twenty-five percent (25%) and not more than thirty**
23 **percent (30%) of the proceeds of the civil action or settlement; and**

24 **(b) Any relator who is awarded a share of the proceeds under this subsection**
25 **shall also be awarded the reasonable expenses, attorney's fees, and costs**
26 **that the court finds to have been necessarily incurred in bringing and**
27 **prosecuting the action, with these expenses, fees, and costs being paid by the**

1 defendant.

- 2 (3) Whether or not the Attorney General proceeds with a civil action under Sections
3 1 to 9 of this Act, if the court finds that the civil action was brought by a relator
4 who planned and initiated the violation upon which the civil action was based,
5 the court may reduce the share of the proceeds that the relator would otherwise
6 receive, taking into account the role of the relator in advancing the case to
7 litigation and any relevant circumstances pertaining to the violation.
- 8 (4) If the relator bringing the civil action is convicted of criminal conduct arising
9 from the relator's role in the violation upon which the civil action was based, the
10 court shall dismiss the relator from the civil action and the relator shall not
11 receive any share of the proceeds of the civil action. A dismissal of the relator
12 shall not prejudice the right of the Commonwealth to continue the civil action,
13 represented by the Attorney General.
- 14 (5) If the Attorney General does not intervene in the civil action and the relator
15 bringing the civil action prosecutes the civil action independently, the court may
16 award the defendant reasonable attorney's fees and expenses against the relator
17 bringing the civil action if the defendant prevails and the court finds that the
18 claim was clearly frivolous, clearly vexatious, or brought primarily for purposes
19 of harassment.
- 20 (6) Any proceeds distributed to the Commonwealth in accordance with this section
21 shall be remitted to the unit of government injured by the violation of Section 2 of
22 this Act up to the amount required to reimburse that unit for its loss. Proceeds
23 recovered on behalf of the Kentucky Medical Assistance Program shall be
24 deposited in the Medicaid trust fund in accordance with Section 12 of this Act.
25 Any remaining proceeds distributed to the Commonwealth shall be deposited in
26 the Kentucky False Claims Recovery Fund, which shall be a separate,
27 nonlapsing, interest bearing fund within the State Treasury. Amounts deposited

1 in or accruing to the fund, including interest, shall remain inviolate until
2 appropriated by the General Assembly for a specific purpose.

3 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) Whether or not the Attorney General proceeds with any civil action brought
6 under Sections 1 to 9 of this Act, any discovery in the civil action may be stayed
7 or limited by the court if the Attorney General shows that the discovery may
8 unreasonably interfere with a separate civil or criminal action in which the
9 Commonwealth is a party, and which the Attorney General has pursued with
10 reasonable diligence. The showing shall be conducted in camera.

11 (2) Upon a showing by the Attorney General that unrestricted participation during
12 the course of litigation by the relator would interfere with or unduly delay the
13 Commonwealth's prosecution of the case, or would be repetitious, irrelevant, or
14 for purposes of harassment, the court may impose limitations on the relator's
15 participation, including:

16 (a) Limiting the number of witnesses the relator may call;

17 (b) Limiting the length of the testimony of witnesses called by the relator;

18 (c) Limiting the relator's cross-examination of witnesses; or

19 (d) Otherwise limiting the participation by the relator in the litigation.

20 (3) Upon a showing by the defendant that unrestricted participation during the
21 course of litigation by the relator would be for purposes of harassment or would
22 cause the defendant undue burden or unnecessary expense, the court may limit
23 the participation by the relator in the litigation.

24 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) Notwithstanding the provisions of Section 2 of this Act, the Attorney General may
27 elect to pursue the Commonwealth's claim through any alternate remedy

1 available to the Attorney General, including any administrative proceeding to
2 determine a civil money penalty.

3 (2) If any alternate remedy is pursued in another proceeding, the relator initiating
4 the civil action shall have the same rights in the alternate proceeding as the
5 relator would have had if the civil action had continued under Section 2 of this
6 Act.

7 (3) Any finding of fact or conclusion of law made in any alternate proceeding that
8 has become final shall be conclusive as to all parties to the civil action under
9 Section 2 of this Act. For purposes of this subsection, a finding or conclusion of
10 law is final when it is not subject to further administrative or judicial review, or
11 when the time for appeal has expired.

12 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) Whenever the Attorney General has reasonable cause to believe that any person
15 may be in possession, custody, or control of any information or documentary
16 material relevant to an investigation of a violation of Section 2 of this Act, the
17 Attorney General may, prior to the initiation of a civil action regarding the
18 violation, issue and cause to be served on any person an administrative subpoena
19 requiring the recipient to provide testimony, information, or records pertaining to
20 the alleged violation by means of a deposition, deposition upon written questions,
21 interrogatories, or request for the production of documents in the same manner
22 and using the same process, standards, and protections as provided for
23 depositions and discovery under the Kentucky Rules of Civil Procedure.

24 (2) The administrative subpoena shall be served in the same manner as a subpoena
25 in a civil action.

26 (3) (a) Information and records held by the Attorney General after being gathered
27 pursuant to this section or having been voluntarily provided in lieu of an

1 administrative subpoena shall not be an open record under KRS 61.870 to
 2 61.884, and shall not be released or disclosed by the Attorney General
 3 except:

4 1. With the consent of the person who provided or who is the subject of
 5 the information or record;

6 2. Pursuant to a court order;

7 3. In the course of civil litigation under Sections 1 to 9 of this Act,
 8 subject to applicable rules of court;

9 4. To an agency of this state, the United States, or another state;

10 5. To a Commonwealth's attorney, county attorney, or political
 11 subdivision of this state;

12 6. To a state or federal grand jury;

13 7. To the United States Attorney General; or

14 8. To any other person authorized by law to receive the information.

15 (b) The provisions of this subsection shall not alter the accessibility,
 16 releaseability, or open records status of information or records gathered by
 17 or provided to the Attorney General which continue to be held by the person
 18 or entity from whom the information or records were obtained.

19 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
 20 READ AS FOLLOWS:

21 (1) Any employee, contractor, or agent shall be entitled to all relief necessary to make
 22 that employee, contractor, or agent whole, if that employee, contractor, or agent
 23 is discharged, demoted, suspended, threatened, harassed, or in any other manner
 24 discriminated against in the terms and conditions of employment because of
 25 lawful acts done by the employee, contractor, agent, or associated others in
 26 furtherance of an action under Sections 1 to 9 of this Act or other efforts to stop
 27 one or more violations of Section 2 of this Act.

1 (2) An employee, contractor, or agent who is injured by a violation of this section
 2 may petition a court for:

3 (a) Injunctive relief reinstating the employee, contractor, or agent with the
 4 same seniority status the employee, contractor, or agent would have had but
 5 for the discrimination;

6 (b) A monetary award of not less than two (2) times the amount of back pay
 7 and interest, and an amount compensating the employee, contractor, or
 8 agent for any other damages sustained as a result of the violation; and

9 (c) The litigation costs and fees, including a reasonable attorney's fee, of the
 10 employee, contractor, or agent.

11 (3) A public employee may utilize this section notwithstanding the administrative
 12 remedies granted by KRS Chapters 16, 18A, 78, 90, 95, and 156, and other
 13 chapters of the Kentucky Revised Statutes.

14 (4) An action alleging a violation of this section shall be brought within three (3)
 15 years of the cause of action accruing.

16 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
 17 READ AS FOLLOWS:

18 (1) A civil action brought under Sections 1 to 9 of this Act or an action to enforce or
 19 limit an administrative subpoena issued under Section 7 of this Act:

20 (a) Shall be brought in the Circuit Court of any county in which any part of the
 21 violation occurred;

22 (b) Shall not, except as provided in Section 8 of this Act, be brought:

23 1. More than six (6) years after the date on which the violation of Section
 24 2 of this Act occurred; or

25 2. More than three (3) years after the date when facts material to the
 26 right of action are known or reasonably should have been known to
 27 an official of the Commonwealth charged with responsibility to act in

1 the circumstances, but no more than ten (10) years after the date on
 2 which the violation of Section 2 of this Act is committed; and

3 (c) Shall require that all elements of a case, including damages, be proven by a
 4 preponderance of the evidence.

5 (2) Any remedies or investigatory authority granted under Sections 1 to 9 of this Act
 6 shall be ancillary and supplemental to other criminal, civil, or administrative
 7 remedies or authority, including professional or vocational discipline.

8 (3) Sections 1 to 9 of this Act shall not waive sovereign immunity.

9 (4) The provisions of Sections 1 to 9 of this Act adopt the intent underlying the
 10 federal False Claims Act, 31 U.S.C. secs. 3729 to 3733, as amended, and the
 11 decisions of the courts of the United States under that Act may be used as an aid
 12 in construing the provisions of Sections 1 to 9 of this Act.

13 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
 14 READ AS FOLLOWS:

15 Sections 1 to 9 of this Act shall be known as and may be cited as the Kentucky False
 16 Claims Act.

17 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO
 18 READ AS FOLLOWS:

19 (1) (a) The Attorney General shall have access to all documentary materials
 20 generated by the Medical Assistance Program which are under the care,
 21 custody, or control of any state or local agency. Any documentary material
 22 gathered by the Attorney General under this subsection shall not be an open
 23 record under KRS 61.870 to 61.884, and shall not be released or disclosed,
 24 except under the same circumstances as delineated under subsection (3) of
 25 Section 7 of this Act for the release of information gathered under that
 26 section.

27 (b) To the extent permitted by 31 U.S.C. secs. 3729 to 3733, the Attorney

1 General may bring an action as relator under 31 U.S.C. sec. 3730 with
 2 respect to an act in connection with the Medical Assistance Program for
 3 which a person may be held liable under 31 U.S.C. sec. 3729.

4 (2) If a civil action brought under Sections 1 to 9 of this Act recovers damages
 5 arising from an unlawful act involving the Medical Assistance Program,
 6 proceeds directed by Section 4 of this Act to be repaid to the Commonwealth or
 7 deposited into the Kentucky False Claims Act Recovery Fund shall be paid to the
 8 Medical Assistance Program which shall repay to the federal government any
 9 required amounts out of these funds.

10 (3) The cabinet shall develop a system of administrative sanctions for Medical
 11 Assistance Program providers who violate Section 2 of this Act, with sanctions
 12 including suspension or termination of participation in the program. The
 13 sanctioning system may be triggered by a finding of liability in a civil action
 14 brought under Sections 1 to 9 of this Act.

15 ➔Section 12. KRS 205.8467 is amended to read as follows:

16 (1) Any provider who has been found by a preponderance of the evidence in an
 17 administrative process, in conformity with any applicable federal regulations and
 18 with due process protections, to have knowingly submitted or caused claims to be
 19 submitted for payment for furnishing treatment, services, or goods under a medical
 20 assistance program provided under this chapter, which payment the provider was
 21 not entitled to receive by reason of a violation of this chapter or who has violated
 22 Section 2 of this Act, shall:

23 (a) Be liable for restitution of any payments received in violation of this chapter,
 24 and interest at the maximum legal rate pursuant to KRS 360.010 in effect on
 25 the date any payment was made, for the period from the date payment was
 26 made to the date of repayment to the Commonwealth;

27 (b) Be liable for a civil payment in an amount up to three (3) times the amount of

- 1 excess payments;
- 2 (c) Be liable for payment of a civil payment of **five thousand five hundred**
- 3 **dollars (\$5,500) to eleven thousand dollars (\$11,000)**~~five hundred dollars~~
- 4 ~~(\$500)~~ for each false or fraudulent claim submitted for providing treatment,
- 5 services, or goods;
- 6 (d) Be liable for payment of legal fees and costs of investigation and enforcement
- 7 of civil payments; and
- 8 (e) Be removed as a participating provider in the Medical Assistance Program for
- 9 two (2) months to six (6) months for a first offense, for six (6) months to one
- 10 (1) year for a second offense, and for one (1) year to five (5) years for a third
- 11 offense.
- 12 (2) **Liability for damages or penalties established under Sections 1 to 9 of this Act**
- 13 **shall take priority over and offset any liability for similar damages or penalties**
- 14 **under this section. An administrative action under this section may be stayed**
- 15 **during the pendency of a civil action brought under Sections 1 to 9 of this Act.**
- 16 **(3)** Civil payments, interest, costs of investigation, and enforcement of the civil
- 17 remedies recovered on behalf of the Commonwealth under this section shall be
- 18 remitted to the State Treasurer for deposit in a Medicaid trust fund which is hereby
- 19 created and shall not lapse. Funds deposited in the Medicaid trust fund shall not be
- 20 spent until appropriated by the General Assembly for medical assistance services.
- 21 ~~**(4)**~~~~(3)~~ The remedies under this section are separate from and cumulative to any other
- 22 administrative, civil, or criminal remedies available under federal or state law or
- 23 regulation.
- 24 ~~**(5)**~~~~(4)~~ The Cabinet for Health and Family Services, in consultation with the Office of
- 25 the Attorney General, may promulgate administrative regulations, pursuant to KRS
- 26 Chapter 13A, for the administration of the civil payments contained in this section.
- 27 ➔Section 13. KRS 194A.990 is amended to read as follows:

- 1 (1) Any person who violates the provisions of KRS 194A.505(1), (2), or (7) shall be
2 guilty of a Class A misdemeanor, unless the sum total of benefits received in excess
3 of that to which the person was entitled at the time of the offense was committed is
4 valued at or over one hundred dollars (\$100), in which case it is a Class D felony.
- 5 (2) Any person who violates KRS 194A.505(3) shall be guilty of a Class D felony.
- 6 (3) Any person who violates the provisions of KRS 194A.505(4) or (5) shall be guilty
7 of a Class C felony.
- 8 (4) Any person who violates the provisions of KRS 194A.505(6) shall be guilty of a
9 Class D felony, unless the purpose of the violation is to obtain ten thousand dollars
10 (\$10,000) or more, in which case it shall be a Class C felony.
- 11 (5) Any person who violates KRS 194A.505(1) to (6) shall, in addition to any other
12 penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet
13 in the amount of all benefits and payments to which the person was not entitled.
- 14 (6) Any provider who violates KRS 194A.505(1) to (6) shall, in addition to any other
15 penalties provided by law, including the penalty set forth in subsection (5) of this
16 section, forfeit and pay civil penalties of:
- 17 (a) Payment to the State Treasury's general revenue fund in an amount equal to
18 three (3) times the amount of the benefits and payments to which the person
19 was not entitled; and
- 20 (b) Payment to the State Treasury's general revenue fund of all reasonable
21 expenses that the court determines have been necessarily incurred by the state
22 in the enforcement of this section.

23 **(7) Liability for damages or penalties established under Sections 1 to 9 of this Act**
24 **shall take priority over and offset any liability for similar civil damages or**
25 **penalties under this section.**

26 ➔Section 14. KRS 341.990 is amended to read as follows:

- 27 (1) Except as otherwise provided in subsection (11) of this section, any employee of

- 1 any state agency who violates any of the provisions of KRS 341.110 to 341.230
2 shall be guilty of a Class B misdemeanor.
- 3 (2) Any person subpoenaed to appear and testify or produce evidence in an inquiry,
4 investigation, or hearing conducted under this chapter who fails to obey the
5 subpoena shall be guilty of a Class B misdemeanor.
- 6 (3) Any subject employer, or officer or agent of a subject employer, who violates
7 subsection (1) of KRS 341.470 shall be guilty of a Class A misdemeanor.
- 8 (4) Any person who violates subsection (2) of KRS 341.470 shall be guilty of a Class A
9 misdemeanor.
- 10 (5) Any person who knowingly makes a false statement or representation of a material
11 fact or knowingly fails to disclose a material fact to the secretary to obtain or
12 increase any benefit under this chapter or under an employment security law of any
13 other state, or of the federal government, either for himself or for any other person,
14 business entity, or organization shall be guilty of a Class A misdemeanor unless the
15 value of the benefits procured or attempted to be procured is one hundred dollars
16 (\$100) or more, in which case he shall be guilty of a Class D felony.
- 17 (6) (a) Any person who knowingly makes a false statement or representation, or who
18 knowingly fails to disclose a material fact to prevent or reduce the payment of
19 benefits to any worker entitled thereto, or to avoid becoming or remaining
20 subject to this chapter, or to avoid or reduce any payment required of an
21 employing unit under this chapter shall be guilty of a Class A misdemeanor
22 unless the liability avoided or attempted to be avoided is one hundred dollars
23 (\$100) or more, in which case he shall be guilty of a Class D felony.
- 24 (b) Any person who willfully fails or refuses to furnish any reports required, or to
25 produce or permit the inspection or copying of records required in this chapter
26 shall be guilty of a Class B misdemeanor. Each such false statement,
27 representation or failure and each day of failure or refusal shall constitute a

1 separate offense.

2 (7) In any prosecution for the violation of subsection (5) or (6) of this section, it shall
3 be a defense if the person relied on the advice of an employee or agent of the Office
4 of Unemployment Insurance, Department of Workforce Investment.

5 (8) Any person who willfully violates any provision of this chapter or any rule or
6 regulation under it, the violation of which is made unlawful or the observance of
7 which is required under the terms of this chapter, and for which no specific penalty
8 is prescribed in this chapter or in any other applicable statute, shall be guilty of a
9 violation. Each day the violation continues shall constitute a separate offense.

10 (9) In addition to the higher rates imposed under KRS 341.540(7), any person, whether
11 or not an employing unit, who knowingly advises or assists an employing unit in the
12 violation or attempted violation of KRS 341.540 or any other provision of this
13 chapter related to determining the assignment of a contribution rate shall be subject
14 to a civil monetary penalty of not less than five thousand dollars (\$5,000).

15 (10) Proceeds from all penalties imposed under subsection (9) of this section and KRS
16 341.540 shall be deposited in the unemployment compensation administration
17 account and shall be expended solely for the cost of administration of this chapter
18 consistent with KRS 341.240.

19 (11) Any person who violates the confidentiality provision in KRS 341.190(4) shall be
20 guilty of a Class A misdemeanor.

21 **(12) Any person who knowingly makes a false statement or representation of a**
22 **material fact to the secretary to obtain or increase any benefit under this chapter**
23 **or under any employment security law of any other state, or of the federal**
24 **government, either for himself or for any other person related to or arising from**
25 **the COVID-19 pandemic shall be guilty of a Class D felony. Notwithstanding any**
26 **other provision to the contrary in this chapter, the minimum term of**
27 **imprisonment shall be one (1) year, and the person shall not be released on**

1 probation, shock probation, parole, conditional discharge, or any other form of
2 early release, and shall not be eligible for pretrial diversion or any diversion
3 agreement. This subsection shall remain in effect until June 30, 2023, and
4 thereafter until all eligible claims related to a violation of this subsection are
5 finally adjudicated or resolved, or as otherwise reestablished by the General
6 Assembly, whichever shall occur last.