

1 AN ACT relating to public employee trainings and declaring an emergency.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) As used in this section, unless the context requires otherwise;*

6 *(a) "Bigotry" means any of the following concepts:*

7 *1. The belief that an individual or group is inherently superior or*  
8 *inferior to others based on their race or sex;*

9 *2. The belief that individuals do not or should not possess equal rights,*  
10 *regardless of their race or sex;*

11 *3. The belief that an individual or group, by virtue of their race, sex, or*  
12 *religion;*

13 *a. Bears responsibility or accountability for actions committed by*  
14 *other individuals of the same race, sex, or religion; or*

15 *b. Should feel personal guilt, anguish, shame, or embarrassment*  
16 *on account of their race, sex, or religion;*

17 *4. The belief that an individual or group should be discriminated against*  
18 *or otherwise receive adverse treatment solely, or partly, because of*  
19 *their race, sex, or religion;*

20 *5. The belief that an individual or group should not, or cannot, attempt*  
21 *to treat others of a different race without respect to race;*

22 *6. Race or sex essentialism, meaning:*

23 *a. Assigning values, moral and ethical codes, privileges, status, or*  
24 *beliefs to an individual or group of persons based on their race*  
25 *or sex, including the assumption that an individual or group's*  
26 *race or sex makes them fundamentally or inherently dominant,*  
27 *privileged, oppressed, oppressive, or victimized;*

1                   **b. The belief that an individual or group's moral character or**  
2                   **moral worth is determined, in whole or part, by their race or sex;**  
3                   **or**

4                   **c. The belief that meritocracy or merit-based systems, or related**  
5                   **character traits such as a hard work ethic, self-reliance,**  
6                   **objectivity, rational or linear thinking, planning for the future,**  
7                   **or delayed gratification:**

8                   **i. Are racist, sexist, or oppressive;**

9                   **ii. Were created by members of a particular race or sex to**  
10                   **protect their political, financial, or social status or to**  
11                   **oppress members of another race or sex; or**

12                   **iii. Are traits that generally differentiate Americans on the**  
13                   **basis of race or sex; or**

14                   **7. Race or sex scapegoating, meaning the assigning or imputing of**  
15                   **intrinsically negative characteristics to a sex or race, or to individuals**  
16                   **because of their race or sex, including but not limited to bias, blame,**  
17                   **domination, fault, harm, oppression, sexism, or racism, regardless of**  
18                   **whether the negative characteristics are assumed to be held**  
19                   **consciously or unconsciously. This shall not include discussions**  
20                   **relating to the historical fact of past oppression of one (1) group by**  
21                   **another on the basis of race or sex;**

22                   **(b) "Critical social justice theory" means the ideological worldview that:**

23                   **1. Sees people primarily in terms of their immutable characteristics or**  
24                   **social group membership;**

25                   **2. Holds that a relationship exists between those immutable**  
26                   **characteristics or social groups and societal power and privilege and**  
27                   **seeks to disrupt that relationship; and**

- 1           3. Holds those immutable characteristics or social groups intersect in a  
2           matrix of domination, oppression, and marginalization that provides  
3           the foundation for and protects societal systems that preserve the  
4           interests of the dominant while excluding or harming everyone else  
5           and demands action to dismantle those systems;
- 6           (c) "Public employee" means an employee of a public employer;
- 7           (d) "Public employer" has the same meaning as "public agency" in KRS  
8           61.870 and includes but is not limited to public school districts, public  
9           charter schools, and public postsecondary education institutions;
- 10          (e) "Qualified plaintiff" means:
- 11           1. A public employee of the defendant public employer;
- 12           2. A student, or parent or guardian of a minor student, enrolled at an  
13           educational institution that is the defendant public employer; or
- 14           3. A Kentucky resident, including any individual residing in the  
15           Commonwealth, a domestic business entity residing in the  
16           Commonwealth, or a foreign business entity that is registered and in  
17           good standing with the Secretary of State;
- 18          (f) "Revisionist history of America's founding" means one (1) or more of the  
19          following concepts:
- 20           1. Slavery, racism, sexism, and white supremacy are practices and  
21           principles that are fundamental to America rather than deviations  
22           from the American promise of life, liberty, and the pursuit of  
23           happiness, as expressed in the Declaration of Independence and  
24           enshrined in the Constitution of the Commonwealth of Kentucky and  
25           the Constitution of the United States;
- 26           2. The advent of slavery in the territory that is now the United States  
27           constituted the true founding of the United States; or

1           3. The United States or the Commonwealth of Kentucky is  
2           fundamentally or inherently racist or sexist because racism and  
3           sexism are not merely products of individual prejudice but are  
4           embedded in American society for the purpose of upholding white  
5           supremacy; and

6           (g) "Student" means an individual:

7           1. Attending a Kentucky public school or public charter school; or

8           2. Enrolled in a Kentucky public postsecondary education institution.

9           (2) Public employer diversity and inclusion efforts shall, first and foremost,  
10           encourage public employees and students not to judge each other or treat each  
11           other differently based on race, sex, or religion and not to grant mental assent to  
12           bigotry, critical social justice theory, race and sex essentialism, or a revisionist  
13           history of America's founding. Nothing in this section shall be construed to  
14           prohibit or discourage public employers from providing workplace sensitivity  
15           training based on the inherent humanity and equality of all persons and the ideal  
16           that all persons should be treated with equality, dignity, and respect, provided  
17           such training is consistent with the requirements of this section.

18           (3) Subject to KRS Chapter 344 and subsection (6) of this section, it shall be an  
19           unlawful practice for a public employer to:

20           (a) Act directly or indirectly to compel, inculcate, instruct, teach, train, or  
21           orient any individual, including but not limited to a public employee,  
22           student, service recipient, contractor, staff member, volunteer or inmate, to  
23           adhere to, affirm, adopt, believe, or otherwise assent to bigotry, critical  
24           social justice theory, race and sex essentialism, or a revisionist history of  
25           America's founding; or

26           (b) Subject any public employee or student to any adverse employment action,  
27           warning, discipline, or adverse consequences of any kind for refusing to

1 participate in any training, orientation, program, or other activity at which  
2 the public employer violates the requirements of paragraph (a) of this  
3 subsection.

4 (4) Every public employer shall review all trainings, orientations, or similar  
5 programming related to diversity and inclusion at least once a year to ensure  
6 compliance with the requirements of this section. If a training program violates  
7 the requirements of subsection (3) of this section, the public employer shall  
8 promptly terminate its use. If the training, orientation, or similar programing is  
9 offered through a third party, such as a contractor, the public employer shall:

10 (a) Terminate any contract with the third party, consistent with applicable law  
11 and regulations; and

12 (b) Evaluate whether permanently to bar the third party from contracts with the  
13 public employer, consistent with applicable law and regulations.

14 (5) Willful or repeated violations of subsection (3) of this section by a specific public  
15 employee of a public employer shall be considered a violation of the employee  
16 code of conduct that justifies disciplinary sanction, up to and including  
17 termination of employment, in accordance with applicable law and regulation.

18 (6) (a) Notwithstanding any provision of law to the contrary, including but not  
19 limited to any claim for civil immunity, the Attorney General or a qualified  
20 plaintiff may file an action in any court of competent jurisdiction for  
21 injunctive relief and damages, including but not limited to reasonable  
22 attorney's fees and litigation costs, against a public employer for a violation  
23 of subsection (3) of this section.

24 (b) A qualified plaintiff bringing an action under this paragraph shall exhaust  
25 the administrative remedies set forth in KRS Chapter 344 by filing a  
26 complaint with the Human Rights Commission prior to filing the action. All  
27 qualified plaintiffs shall be deemed to have standing to seek the

1 administrative remedies set forth in KRS Chapter 344.

2 (c) A claim brought pursuant to this subsection may be asserted within one (1)  
 3 year of the date that the complaint filed with the Human Rights  
 4 Commission is finally resolved pursuant to KRS 344.200.

5 (d) The remedies identified in this subsection shall be in addition to, not in lieu  
 6 of, any other remedies available at law or equity.

7 (7) Nothing in this section shall be construed to limit or otherwise impair:

8 (a) Academic freedom of faculty members of any public postsecondary  
 9 education institution of the Commonwealth of Kentucky to conduct  
 10 research, publish, lecture, or teach in the academic setting; or

11 (b) Conduct or speech of students acting on their own behalf or otherwise  
 12 acting in a private capacity.

13 ➔Section 2. KRS 344.010 is amended to read as follows:

14 In this chapter:

15 (1) "Person" includes one (1) or more individuals, labor organizations, joint  
 16 apprenticeship committees, partnerships, associations, corporations, legal  
 17 representatives, mutual companies, joint-stock companies, trusts, unincorporated  
 18 organizations, trustees, trustees in bankruptcy, fiduciaries, receivers, or other legal  
 19 or commercial entity; the state, any of its political or civil subdivisions or agencies.

20 (2) "Commission" means the Kentucky Commission on Human Rights.

21 (3) "Commissioner" means a member of the commission.

22 (4) "Disability" means, with respect to an individual:

23 (a) A physical or mental impairment that substantially limits one (1) or more of  
 24 the major life activities of the individual;

25 (b) A record of such an impairment; or

26 (c) Being regarded as having such an impairment.

27 Persons with current or past controlled substances abuse or alcohol abuse problems

1 and persons excluded from coverage by the Americans with Disabilities Act of  
2 1990 (P.L. 101-336) shall be excluded from this section.

3 (5) "Discrimination" means:

4 **(a)** Any direct or indirect act or practice of exclusion, distinction, restriction,  
5 segregation, limitation, refusal, denial;~~[-or]~~

6 **(b)** Any other act or practice of differentiation or preference in the treatment of a  
7 person or persons, or the aiding, abetting, inciting, coercing, or compelling  
8 thereof made unlawful under this chapter; **or**

9 **(c) A public employee training that violates Section 1 of this Act.**

10 (6) "Real property" includes buildings, structures, real estate, lands, tenements,  
11 leaseholds, cooperatives, condominiums, and hereditaments, corporeal and  
12 incorporeal, or any interest in the above.

13 (7) "Housing accommodations" includes improved and unimproved property and means  
14 any building, structure, lot or portion thereof, which is used or occupied, or is  
15 intended, arranged, or designed to be used or occupied as the home or residence of  
16 one (1) or more families, and any vacant land which is offered for sale or lease for  
17 the construction or location thereon of any such building or structure.

18 (8) "Real estate operator" means any individual or combination of individuals, labor  
19 organizations, joint apprenticeship committees, partnerships, associations,  
20 corporations, legal representatives, mutual companies, joint-stock companies, trusts,  
21 unincorporated organizations, trustees in bankruptcy, receivers, or other legal or  
22 commercial entity, the county, or any of its agencies, that is engaged in the business  
23 of selling, purchasing, exchanging, renting, or leasing real estate, or the  
24 improvements thereon, including options, or that derives income, in whole or in  
25 part, from the sale, purchase, exchange, rental, or lease of real estate; or an  
26 individual employed by or acting on behalf of any of these.

27 (9) "Real estate broker" or "real estate salesman" means any individual, whether

1 licensed or not, who, on behalf of others, for a fee, commission, salary, or other  
2 valuable consideration, or who with the intention or expectation of receiving or  
3 collecting the same, lists, sells, purchases, exchanges, rents, or leases real estate, or  
4 the improvements thereon, including options, or who negotiates or attempts to  
5 negotiate on behalf of others such an activity; or who advertises or holds himself  
6 out as engaged in these activities; or who negotiates or attempts to negotiate on  
7 behalf of others a loan secured by mortgage or other encumbrance upon a transfer of  
8 real estate, or who is engaged in the business of charging an advance fee or  
9 contracting for collection of a fee in connection with a contract whereby he  
10 undertakes to promote the sale, purchase, exchange, rental, or lease of real estate  
11 through its listing in a publication issued primarily for this purpose; or any person  
12 employed by or acting on behalf of any of these.

13 (10) "Financial institution" means bank, banking organization, mortgage company,  
14 insurance company, or other lender to whom application is made for financial  
15 assistance for the purchase, lease, acquisition, construction, rehabilitation, repair,  
16 maintenance, or improvement of real property, or an individual employed by or  
17 acting on behalf of any of these.

18 (11) "Licensing agency" means any public or private organization which has as one (1)  
19 of its duties the issuing of licenses or the setting of standards which an individual  
20 must hold or must meet as a condition to practicing a particular trade or profession  
21 or to obtaining certain employment within the state or as a condition to competing  
22 effectively with an individual who does hold a license or meet the standards.

23 (12) "Credit transaction" shall mean any open or closed end credit transaction whether in  
24 the nature of a loan, retail installment transaction, credit card issue or charge, or  
25 otherwise, and whether for personal or for business purposes, in which a service,  
26 finance, or interest charge is imposed, or which provides for repayment in scheduled  
27 payments, when such credit is extended in the course of the regular course of any



1 trade or commerce, including but not limited to transactions by banks, savings and  
2 loan associations, or other financial lending institutions of whatever nature, stock  
3 brokers, or by a merchant or mercantile establishment which as part of its ordinary  
4 business permits or provides that payment for purchases of property or services  
5 therefrom may be deferred.

6 (13) "To rent" means to lease, to sublease, to let, or otherwise to grant for a  
7 consideration the right to occupy premises not owned by the occupant.

8 (14) "Family" includes a single individual.

9 (15) (a) "Familial status" means one (1) or more individuals who have not attained the  
10 age of eighteen (18) years and are domiciled with:

11 1. A parent or another person having legal custody of the individual or  
12 individuals; or

13 2. The designee of a parent or other person having custody, with the  
14 written permission of the parent or other person.

15 (b) The protection afforded against discrimination on the basis of familial status  
16 shall apply to any person who is pregnant or is in the process of securing legal  
17 custody of any individual who has not attained the age of eighteen (18) years.

18 (16) "Discriminatory housing practice" means an act that is unlawful under KRS  
19 344.360, 344.367, 344.370, 344.380, or 344.680.

20 ➔Section 3. KRS 344.040 is amended to read as follows:

21 (1) It is an unlawful practice for an employer:

22 (a) To fail or refuse to hire, or to discharge any individual, or otherwise to  
23 discriminate against an individual with respect to compensation, terms,  
24 conditions, or privileges of employment, because of the individual's race,  
25 color, religion, national origin, sex, age forty (40) and over, because the  
26 person is a qualified individual with a disability, or because the individual is a  
27 smoker or nonsmoker, as long as the person complies with any workplace

1 policy concerning smoking;

2 (b) To limit, segregate, or classify employees in any way which would deprive or  
3 tend to deprive an individual of employment opportunities or otherwise  
4 adversely affect status as an employee, because of the individual's race, color,  
5 religion, national origin, sex, or age forty (40) and over, because the person is  
6 a qualified individual with a disability, or because the individual is a smoker  
7 or nonsmoker, as long as the person complies with any workplace policy  
8 concerning smoking;

9 (c) To fail to make reasonable accommodations for any employee with limitations  
10 related to pregnancy, childbirth, or a related medical condition who requests  
11 an accommodation, including but not limited to the need to express breast  
12 milk, unless the employer can demonstrate the accommodation would impose  
13 an undue hardship on the employer's program, enterprise, or business. The  
14 following shall be required as to reasonable accommodations:

- 15 1. An employee shall not be required to take leave from work if another  
16 reasonable accommodation can be provided;
- 17 2. The employer and employee shall engage in a timely, good faith, and  
18 interactive process to determine effective reasonable accommodations;  
19 and
- 20 3. If the employer has a policy to provide, would be required to provide, is  
21 currently providing, or has provided a similar accommodation to other  
22 classes of employees, then a rebuttable presumption is created that the  
23 accommodation does not impose an undue hardship on the employer; or

24 (d) To require as a condition of employment that any employee or applicant for  
25 employment abstain from smoking or using tobacco products outside the  
26 course of employment, as long as the person complies with any workplace  
27 policy concerning smoking.

1 (2) (a) A difference in employee contribution rates for smokers and nonsmokers in  
2 relation to an employer-sponsored health plan shall not be deemed to be an  
3 unlawful practice in violation of this section.

4 (b) The offering of incentives or benefits offered by an employer to employees  
5 who participate in a smoking cessation program shall not be deemed to be an  
6 unlawful practice in violation of this section.

7 (3) (a) An employer shall provide written notice of the right to be free from  
8 discrimination in relation to pregnancy, childbirth, and related medical  
9 conditions, including the right to reasonable accommodations, to:

- 10 1. New employees at the commencement of employment; and
- 11 2. Existing employees not later than thirty (30) days after June 27, 2019.

12 (b) An employer shall conspicuously post a written notice of the right to be free  
13 from discrimination in relation to pregnancy, childbirth, and related medical  
14 conditions, including the right to reasonable accommodations, at the  
15 employer's place of business in an area accessible to employees.

16 **(4) An employer's direct or indirect actions to compel, inculcate, instruct, teach,**  
17 **train, or orient its employees or students to adhere to, affirm, adopt, believe, or**  
18 **assent to bigotry or race and sex essentialism, as those terms are defined in**  
19 **Section 1 of this Act, shall create a rebuttable presumption that an employer**  
20 **knowingly created or contributed to a hostile work environment or hostile**  
21 **learning environment prohibited under this chapter.**

22 ➔Section 4. If any provision of this Act or the application thereof to any person or  
23 circumstance is held invalid, the invalidity shall not affect other provisions or  
24 applications of the Act that can be given effect without the invalid provision or  
25 application, and to this end the provisions of this Act are severable.

26 ➔Section 5. Whereas it is imperative that the racist indoctrination of Kentucky  
27 public employees be eradicated, an emergency is declared to exist, and this Act takes

- 1 effect upon its passage and approval by the Governor or upon its otherwise becoming a
- 2 law.