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KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2024 REGULAR SESSION

Amend printed copy of **HB 509/GA**

Starting on page 1, line 5, and continuing through page 3, line 25, delete all those lines in their entirety and insert the following in lieu thereof:

"(1) A public agency shall provide for each of its personnel not identified under subsection (2) of this section at least one (1) agency-furnished account or agency-designated account for the purpose of conducting the business of the public agency.

(2) The governing body of a public agency or its appointing authority shall have the authority to identify, in writing, the names of specific personnel whose job functions and responsibilities are not compatible with, or do not require, the use of an agency-furnished account or agency-designated account. Nothing in this section shall require a public agency to provide an agency-furnished account or agency-designated account to those personnel identified under this subsection.

(3) The governing body of a public agency or its appointing authority shall have the authority to identify, in writing, the names of specific personnel approved to use a named agency-designated account to conduct public business.

(4) A public agency or its appointing authority shall:

(a) Maintain the public agency's or the appointing authority's access to agency-designated accounts by:

1. Creating an agency-designated account and providing access to personnel

Amendment No. SFA 4

Rep. Sen. Gex Williams

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

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- approved under subsection (3) of this section; or
2. Requiring personnel approved under subsection (3) of this section to:
- a. Create an agency-designated account; and
- b. Provide the public agency and its appointing authority with access to the agency-designated account; and
- (b) Deem information contained in an agency-designated account to be in the possession of the public agency and subject to the provisions of KRS 61.870 to 61.884.
- (5) Personnel of a public agency shall not use an electronic communication service account other than an agency-furnished account or agency-designated account to conduct the business of the public agency.
- (6) In addition to other remedies prescribed by law:
- (a) Any personnel who violate subsection (5) of this section shall be subject to appropriate discipline by his or her agency's appointing authority or governing body; and
- (b) An officer, board member, or commission member of a board, commission, or public agency who violates subsection (5) of this section shall be subject to removal by the authority who appointed that officer or member or who otherwise has the authority to remove the officer or member.
- (7) (a) If a public agency appoints a member to a board or commission, the board or commission shall publish on its website for the duration of the appointed board or commission member's term:
1. The name of the board or commission member;
2. a. The board or commission member's agency-furnished account or agency-designated account name; or

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- b. A link to a form to contact the board or commission member;**
- 3. The board or commission member's appointment date; and**
- 4. The date upon which the term of the board or commission member ends.**
- (b) If the board or commission does not have a website, then the public agency that appointed the board or commission member shall publish the information specified in paragraph (a) of this subsection on its website.**
- (8) Notwithstanding any other provision of KRS 61.870 to 61.884, a public agency that complies with subsections (1) to (4) of this section shall only be required to search for or produce to a requesting party electronic information or documents that are stored or contained in:**

 - (a) An electronic device or system that is the property of, or under the control of, the public agency; or**
 - (b) An agency-furnished account or agency-designated account.**

➔Section 2. KRS 61.870 is amended to read as follows:

As used in KRS 61.870 to 61.884, unless the context requires otherwise:

- (1) "Public agency" means:

 - (a) Every state or local government officer;
 - (b) Every state or local government department, division, bureau, board, commission, and authority;
 - (c) Every state or local legislative board, commission, committee, and officer;
 - (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
 - (e) Every state or local court or judicial agency;
 - (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive

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- order, ordinance, resolution, or other legislative act;
- (g) Any body created by state or local authority in any branch of government;
 - (h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;
 - (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
 - (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
 - (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;
- (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, *electronic communication*, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;
- (3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records

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exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

- (b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;
- (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.
 - (b) "Commercial purpose" shall not include:
 - 1. Publication or related use of a public record by a newspaper or periodical;
 - 2. Use of a public record by a radio or television station in its news or other informational programs; or
 - 3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;
- (5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether ~~the~~_[such] records are in his or her actual personal custody and control;
- (6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;

- (7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards;
- (8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device;
- (9) "Booking photograph and photographic record of inmate" means a photograph or image of an individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or photograph and image of an inmate taken pursuant to KRS 196.099;~~and~~
- (10) "Resident of the Commonwealth" means:
- (a) An individual residing in the Commonwealth;
 - (b) A domestic business entity with a location in the Commonwealth;
 - (c) A foreign business entity registered with the Secretary of State;
 - (d) An individual that is employed and works at a location or locations within the Commonwealth;
 - (e) An individual or business entity that owns real property within the Commonwealth;
 - (f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or
 - (g) A news-gathering organization as defined in KRS 189.635(8)(b)1.a. to e.;
- (11) "Agency-designated account" means an account on an electronic communication service provided by a third party;**
- (12) "Agency-furnished account" means an account on an electronic communication service provided by a public agency;**
- (13) "Electronic communication" means any transfer of information including signs,**

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signals, writings, images, sounds, text, data, voice, video, or intelligence by radio, electromagnetic, photoelectronic, or photo optical system;

(14) "Electronic communication service" means any service which provides users the ability to send or receive electronic communications; and

(15) "Personnel" means officers, board members, commission members, employees, contract employees, or volunteers."; and

Renumber the subsequent section accordingly.