

1 AN ACT relating to civil rights.

2 WHEREAS, in 1992 the General Assembly enacted amendments to the Kentucky
3 Civil Rights Act ("KCRA") to prohibit discrimination on the basis of disability in a
4 manner similar to the Americans with Disabilities Act of 1990 and now wishes to adopt
5 measures similar to those subsequently enacted by Congress in the Americans with
6 Disabilities Act Amendments Act of 2008, thus resolving the question posed in *Turner v.*
7 *Norton Healthcare, Inc.*, 681 S.W.3d 26 (Ky. 2023); and

8 WHEREAS, the General Assembly desires to resolve procedural issues stemming
9 from the KCRA's election of remedies statute, KRS 344.270, that were identified by the
10 Kentucky Supreme Court in *Owen v. University of Kentucky*, 486 S.W.3d 266 (Ky.
11 2016); and

12 WHEREAS, the right to a trial by jury in civil causes of action is enshrined in
13 Section 7 of the Constitution of Kentucky and in the Seventh Amendment to the
14 Constitution of the United States; and

15 WHEREAS, the General Assembly maintains that the laws of this Commonwealth
16 should respect the right to a trial by jury for those causes of action to which the
17 constitutional right to a trial by jury attaches, and provide an appropriate forum for the
18 adjudication of those causes of action; and

19 WHEREAS, the General Assembly believes that the Court of Justice, not an
20 administrative agency, is the appropriate forum for the adjudication of those causes of
21 action; and

22 WHEREAS, the General Assembly recognizes the valuable contributions of the
23 Kentucky Commission on Human Rights in the years since its creation in 1960; and

24 WHEREAS, the General Assembly desires for the Commission on Human Rights
25 to continue to perform its longstanding investigative and other non-adjudicative
26 functions; and

27 WHEREAS, the General Assembly believes that the adjudicative functions

1 previously performed by the Commission on Human Rights should hereafter be
 2 performed by the Court of Justice, where jury trials are available;

3 NOW, THEREFORE,

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

5 ➔Section 1. KRS 344.010 is amended to read as follows:

6 ***As used*** in this chapter:

- 7 (1) ***"Commission" means the Kentucky Commission on Human Rights;***~~["Person"~~
 8 ~~includes one (1) or more individuals, labor organizations, joint apprenticeship~~
 9 ~~committees, partnerships, associations, corporations, legal representatives, mutual~~
 10 ~~companies, joint stock companies, trusts, unincorporated organizations, trustees,~~
 11 ~~trustees in bankruptcy, fiduciaries, receivers, or other legal or commercial entity;~~
 12 ~~the state, any of its political or civil subdivisions or agencies.]~~
- 13 (2) ***"Commissioner" means a member of the commission;***~~["Commission" means the~~
 14 ~~Kentucky Commission on Human Rights.]~~
- 15 (3) ***"Credit transaction" means any open-end or closed-end credit transaction,***
 16 ***whether in the nature of a loan, retail installment transaction, credit card issue or***
 17 ***charge, or otherwise, and whether for personal or for business purposes, in which***
 18 ***a service, finance, or interest charge is imposed, or which provides for repayment***
 19 ***in scheduled payments, when credit is extended in the regular course of business***
 20 ***of any trade or commerce, including but not limited to transactions by banks,***
 21 ***savings and loan associations, or other financial lending institutions of whatever***
 22 ***nature, by stock brokers, or by a merchant or mercantile establishment which as***
 23 ***part of its ordinary business permits or provides that payment for purchases of***
 24 ***property or services therefrom may be deferred;***~~["Commissioner" means a member~~
 25 ~~of the commission.]~~
- 26 (4) (a) "Disability" means, with respect to an individual:
 27 ***1.*** ~~{(a)}~~ A physical or mental impairment that substantially limits one (1)

1 or more of the major life activities of the individual;

2 2. ~~[(b)]~~ A record of such an impairment; or

3 3. ~~[(c)]~~ Being regarded as having such an impairment.

4 **(b) "Disability" and "substantially limits" shall be interpreted in a manner**
 5 **consistent with the Americans with Disabilities Act Amendments Act of**
 6 **2008, Pub. L. No. 110-325, as amended;**~~]~~

7 ~~— Persons with current or past controlled substances abuse or alcohol abuse problems~~
 8 ~~and persons excluded from coverage by the Americans with Disabilities Act of~~
 9 ~~1990 (P.L. 101-336) shall be excluded from this section.]~~

10 (5) "Discrimination" means any direct or indirect act or practice of exclusion,
 11 distinction, restriction, segregation, limitation, refusal, denial, or any other act or
 12 practice of differentiation or preference in the treatment of a person or persons, or
 13 the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under
 14 this chapter;~~]~~

15 (6) **"Discriminatory housing practice" means an act that is unlawful under KRS**
 16 **344.360, 344.367, 344.370, 344.380, or 344.680;**~~["Real property" includes~~
 17 ~~buildings, structures, real estate, lands, tenements, leaseholds, cooperatives,~~
 18 ~~condominiums, and hereditaments, corporeal and incorporeal, or any interest in the~~
 19 ~~above.]~~

20 (7) **(a) "Familial status" means one (1) or more individuals who have not attained**
 21 **the age of eighteen (18) and are domiciled with:**

22 **1. A parent or other person having legal custody of the individual or**
 23 **individuals; or**

24 **2. The designee of a parent or other person having custody, with the**
 25 **written permission of the parent or other person.**

26 **(b) The protection afforded against discrimination on the basis of familial**
 27 **status shall apply to any person who is pregnant or is in the process of**

1 securing legal custody of any individual who has not attained the age of
 2 eighteen (18);~~["Housing accommodations" includes improved and~~
 3 ~~unimproved property and means any building, structure, lot or portion thereof,~~
 4 ~~which is used or occupied, or is intended, arranged, or designed to be used or~~
 5 ~~occupied as the home or residence of one (1) or more families, and any vacant~~
 6 ~~land which is offered for sale or lease for the construction or location thereon~~
 7 ~~of any such building or structure.]~~

8 (8) "Family" includes a single individual;~~["Real estate operator" means any~~
 9 ~~individual or combination of individuals, labor organizations, joint apprenticeship~~
 10 ~~committees, partnerships, associations, corporations, legal representatives, mutual~~
 11 ~~companies, joint stock companies, trusts, unincorporated organizations, trustees in~~
 12 ~~bankruptcy, receivers, or other legal or commercial entity, the county, or any of its~~
 13 ~~agencies, that is engaged in the business of selling, purchasing, exchanging, renting,~~
 14 ~~or leasing real estate, or the improvements thereon, including options, or that~~
 15 ~~derives income, in whole or in part, from the sale, purchase, exchange, rental, or~~
 16 ~~lease of real estate; or an individual employed by or acting on behalf of any of~~
 17 ~~these.]~~

18 (9) "Financial institution" means a bank, banking organization, mortgage company,
 19 insurance company, or other lender to whom application is made for financial
 20 assistance for the purchase, lease, acquisition, construction, rehabilitation,
 21 repair, maintenance, or improvement of real property, or an individual employed
 22 by or acting on behalf of any of these;~~["Real estate broker" or "real estate~~
 23 ~~salesman" means any individual, whether licensed or not, who, on behalf of others,~~
 24 ~~for a fee, commission, salary, or other valuable consideration, or who with the~~
 25 ~~intention or expectation of receiving or collecting the same, lists, sells, purchases,~~
 26 ~~exchanges, rents, or leases real estate, or the improvements thereon, including~~
 27 ~~options, or who negotiates or attempts to negotiate on behalf of others such an~~

1 activity; or who advertises or holds himself out as engaged in these activities; or
2 who negotiates or attempts to negotiate on behalf of others a loan secured by
3 mortgage or other encumbrance upon a transfer of real estate, or who is engaged in
4 the business of charging an advance fee or contracting for collection of a fee in
5 connection with a contract whereby he undertakes to promote the sale, purchase,
6 exchange, rental, or lease of real estate through its listing in a publication issued
7 primarily for this purpose; or any person employed by or acting on behalf of any of
8 these.}]

9 (10) **"Housing accommodations" includes improved and unimproved property and**
10 **means a building, structure, lot, or portion thereof, which is used or occupied, or**
11 **is intended, arranged, or designed to be used or occupied, as the home or**
12 **residence of one (1) or more families, and any vacant land which is offered for**
13 **sale or lease for the construction or location thereon of any building or**
14 **structure;**["Financial institution" means bank, banking organization, mortgage
15 company, insurance company, or other lender to whom application is made for
16 financial assistance for the purchase, lease, acquisition, construction, rehabilitation,
17 repair, maintenance, or improvement of real property, or an individual employed by
18 or acting on behalf of any of these.}]

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

24 (12) **"Major life activities":**

25 **(a) Includes but is not limited to caring for oneself, performing manual tasks,**
26 **seeing, hearing, eating, sleeping, walking, standing, lifting, bending,**
27 **speaking, breathing, learning, reading, concentrating, thinking,**

1 communicating, and working; and

2 (b) Includes the operation of a major bodily function, including but not limited
 3 to function of the immune system, normal cell growth, digestive, bowel,
 4 bladder, neurological, brain, respiratory, circulatory, endocrine, and
 5 reproductive functions;~~["Credit transaction" shall mean any open or closed~~
 6 ~~end credit transaction whether in the nature of a loan, retail installment~~
 7 ~~transaction, credit card issue or charge, or otherwise, and whether for personal~~
 8 ~~or for business purposes, in which a service, finance, or interest charge is~~
 9 ~~imposed, or which provides for repayment in scheduled payments, when such~~
 10 ~~credit is extended in the course of the regular course of any trade or~~
 11 ~~commerce, including but not limited to transactions by banks, savings and~~
 12 ~~loan associations, or other financial lending institutions of whatever nature,~~
 13 ~~stock brokers, or by a merchant or mercantile establishment which as part of~~
 14 ~~its ordinary business permits or provides that payment for purchases of~~
 15 ~~property or services therefrom may be deferred.]~~

16 (13) "Person" includes one (1) or more individuals, labor organizations, joint
 17 apprenticeship committees, partnerships, associations, corporations, legal
 18 representatives, mutual companies, joint-stock companies, limited liability
 19 companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy,
 20 fiduciaries, receivers, or other legal or commercial entities, the Commonwealth,
 21 or any of its political or civil subdivisions or agencies;~~["To rent" means to lease, to~~
 22 ~~sublease, to let, or otherwise to grant for a consideration the right to occupy~~
 23 ~~premises not owned by the occupant.]~~

24 (14) "Real estate broker" or "real estate salesperson" means any individual, whether
 25 licensed or not, who:

26 (a) On behalf of others, for a fee, commission, salary, or other valuable
 27 consideration, or who with the intention or expectation of receiving or

1 collecting valuable consideration, lists, sells, purchases, exchanges, rents,
2 or leases real estate, or the improvements thereon, including options;

3 (b) Negotiates or attempts to negotiate on behalf of others:

4 1. An activity described in paragraph (a) of this subsection; or

5 2. A loan secured by a mortgage or other encumbrance upon a transfer
6 of real estate;

7 (c) Advertises or holds oneself out as engaged in an activity described in
8 paragraph (a) of this subsection;

9 (d) Is engaged in the business of charging an advance fee or contracting for
10 collection of a fee in connection with a contract whereby the individual
11 undertakes to promote the sale, purchase, exchange, rental, or lease of real
12 estate through its listing in a publication issued primarily for this purpose;
13 or

14 (e) Is employed by or acting on behalf of any person described in paragraphs
15 (a) to (d) of this subsection;["Family" includes a single individual.]

16 (15) "Real estate operator" means:

17 (a) Any individual or combination of individuals, labor organizations, joint
18 apprenticeship committees, partnerships, associations, corporations, legal
19 representatives, mutual companies, joint stock companies, limited liability
20 companies, trusts, unincorporated organizations, trustees in bankruptcy,
21 receivers, or other legal or commercial entities, or a local government or
22 any of its agencies that:

23 1. Is engaged in the business of selling, purchasing, exchanging, renting,
24 or leasing real estate, or the improvements thereon, including options;

25 or

26 2. Derives income, in whole or in part, from the sale, purchase,
27 exchange, rental, or lease of real estate; or

1 (b) An individual employed by or acting on behalf of any individual or entity
 2 described in paragraph (a) of this subsection;[(a) "Familial status" means
 3 one (1) or more individuals who have not attained the age of eighteen (18)
 4 years and are domiciled with:
 5 1. A parent or another person having legal custody of the individual or
 6 individuals; or
 7 2. The designee of a parent or other person having custody, with the
 8 written permission of the parent or other person.
 9 (b) The protection afforded against discrimination on the basis of familial status
 10 shall apply to any person who is pregnant or is in the process of securing legal
 11 custody of any individual who has not attained the age of eighteen (18) years.]

12 (16) "Real property" includes buildings, structures, real estate, lands, tenements,
 13 leaseholds, cooperatives, condominiums, and hereditaments, corporeal and
 14 incorporeal, or any interest in those;["Discriminatory housing practice" means an
 15 act that is unlawful under KRS 344.360, 344.367, 344.370, 344.380, or 344.680.]

16 (17) "Regarded as having such an impairment":

17 (a) Means an individual has established that he or she has been subjected to an
 18 action prohibited under this chapter because of an actual or perceived
 19 physical or mental impairment, whether or not the impairment limits or is
 20 perceived to limit a major life activity; and

21 (b) Shall not apply to transitory and minor impairments;

22 (18) "To rent" means to lease, to sublease, to let, or otherwise to grant for a
 23 consideration the right to occupy premises not owned by the occupant; and

24 (19) "Transitory impairment" means an impairment with an actual or expected
 25 duration of six (6) months or less.

26 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
 27 READ AS FOLLOWS:

- 1 (1) As used in this section:
- 2 (a) "Ordinary eyeglasses or contact lenses" means lenses that are intended to
- 3 fully correct visual acuity or eliminate refractive error;
- 4 (b) "Low-vision devices" means devices that magnify, enhance, or otherwise
- 5 augment a visual image; and
- 6 (c) "Auxiliary aids and services" includes:
- 7 1. Qualified interpreters or other effective methods of making aurally
- 8 delivered materials available to individuals with hearing impairments;
- 9 2. Qualified readers, taped texts, or other effective methods of making
- 10 visually delivered materials available to individuals with visual
- 11 impairments;
- 12 3. Acquisition or modification of equipment or devices; and
- 13 4. Other similar services and actions.
- 14 (2) An impairment that substantially limits one (1) major life activity need not limit
- 15 other major life activities to be considered a disability.
- 16 (3) An impairment that is episodic or in remission is a disability if it would
- 17 substantially limit a major life activity when active.
- 18 (4) (a) The determination of whether an impairment substantially limits a major
- 19 life activity shall be made without regard to the ameliorative effects of
- 20 mitigating measures such as:
- 21 1. Medication, medical supplies, equipment, or appliances, low-vision
- 22 devices not including ordinary eyeglasses or contact lenses, prosthetics
- 23 including limbs and devices, hearing aids and cochlear implants or
- 24 other implantable hearing devices, mobility devices, or oxygen therapy
- 25 equipment and supplies;
- 26 2. Use of assistive technology;
- 27 3. Reasonable accommodations or auxiliary aids or services; or

- 1 **4. Learned behavioral or adaptive neurological modifications.**
- 2 **(b) The ameliorative effects of the mitigating measures of ordinary eyeglasses**
- 3 **or contact lenses shall be considered in determining whether an impairment**
- 4 **substantially limits a major life activity.**
- 5 **(5) An employer shall not be required to offer an accommodation to an employee**
- 6 **who is regarded as having such an impairment as defined in Section 1 of this Act.**

7 ➔Section 3. KRS 344.020 is amended to read as follows:

- 8 (1) The general purposes of this chapter are:
- 9 (a) To provide for execution within the **Commonwealth**^[state] of the policies
- 10 embodied in the ~~[Federal]~~ Civil Rights Act of 1964, **Pub. L. No. 88-352**, as
- 11 amended~~[(78 Stat. 241)]~~, Title VIII of the ~~[Federal]~~ Civil Rights Act of 1968,
- 12 **Pub. L. No. 90-284, as amended**~~[(82 Stat. 81)]~~, the Fair Housing Act, **Pub.**
- 13 **L. No. 90-284**, as amended~~[(42 U.S.C. 360)]~~, the ~~[Federal]~~ Age
- 14 Discrimination in Employment Act of 1967, **Pub. L. No. 90-202, as**
- 15 **amended**~~[(81 Stat. 602)]~~, the Americans with Disabilities Act of 1990, **Pub.**
- 16 **L. No. [(P.L. 101-336)]**, **as amended**, ~~and~~ the Civil Rights Act of 1991,
- 17 **Pub. L. No. 102-166**, as amended~~[(P.L. 102-166, amended by P.L. 102-~~
- 18 ~~392)]~~, **and the Americans with Disabilities Act Amendments Act of 2008,**
- 19 **Pub. L. No. 110-325, as amended;**
- 20 (b) To safeguard all individuals within the **Commonwealth**^[state] from
- 21 discrimination because of familial status, race, color, religion, national origin,
- 22 sex, age forty (40) and over, or because of the person's status as a qualified
- 23 individual with a disability as defined in KRS 344.010 and KRS 344.030;
- 24 thereby to protect their interest in personal dignity and freedom from
- 25 humiliation, to make available to the **Commonwealth**^[state] their full
- 26 productive capacities, to secure the **Commonwealth**^[state] against domestic
- 27 strife and unrest which would menace its democratic institutions, to preserve

1 the public safety, health, and general welfare, and to further the interest,
2 rights, and privileges of individuals within the Commonwealth^[state]; and

3 (c) To establish as the policy of the Commonwealth the safeguarding of the rights
4 of an individual selling or leasing his or her primary residence through private
5 sale without the aid of any real estate operator, broker, or
6 salesperson^[salesman] and without advertising or public display.

7 (2) This chapter shall be construed to further the general purposes stated in this section
8 and the special purposes of the particular provision involved.

9 (3) ~~Nothing in~~ This chapter shall not be construed as indicating an intent to exclude
10 local laws on the same subject matter not inconsistent with this chapter.

11 (4) ~~Nothing contained in~~ This chapter shall not be deemed to repeal any other law of
12 this Commonwealth^[state] relating to discrimination because of familial status,
13 race, color, religion, national origin, sex, age forty (40) and over, or because of the
14 person's status as a qualified individual with a disability as defined in KRS 344.030.

15 ➔Section 4. KRS 344.030 is amended to read as follows:

16 For the purposes of KRS 344.030 to 344.110:

17 (1) (a) "Qualified individual with a disability":

18 1. Means an individual with a disability as defined in KRS 344.010 who,
19 with or without reasonable accommodation, can perform the essential
20 functions of the employment position that the individual holds or desires
21 unless an employer demonstrates that he or she is unable to reasonably
22 accommodate an employee's or prospective employee's disability
23 without undue hardship on the conduct of the employers' business; and

24 2. Shall be interpreted in a manner consistent with the Americans with
25 Disabilities Act Amendments Act of 2008, Pub. L. No. 110-325, as
26 amended; and^[]

27 (b) Consideration shall be given to the employer's judgment as to what functions

1 of a job are essential, and if an employer has prepared a written description
 2 before advertising or interviewing applicants for the job, this description shall
 3 be considered evidence of the essential functions of the job;

4 (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, "employer"
 5 means a person who has eight (8) or more employees within the
 6 Commonwealth^[state] in each of twenty (20) or more calendar weeks in the
 7 current or preceding calendar year and an agent of such a person; ~~except }~~

8 (b) For purposes of determining accommodations for an employee's own
 9 limitations related to her pregnancy, childbirth, or related medical conditions,
 10 "employer" means a person who has fifteen (15) or more employees within
 11 the Commonwealth^[state] in each of twenty (20) or more calendar weeks in
 12 the current or preceding calendar year and any agent of the person; and ~~and,~~
 13 ~~except }~~

14 (c) For purposes of determining discrimination based on disability, "employer":
 15 1. Means a person engaged in an industry affecting commerce who has
 16 fifteen (15) or more employees for each working day in each of twenty
 17 (20) or more calendar weeks in the current or preceding calendar year,
 18 and any agent of that person; and ~~except that, for two (2) years~~
 19 ~~following July 14, 1992, an employer means a person engaged in an~~
 20 ~~industry affecting commerce who has twenty five (25) or more~~
 21 ~~employees for each working day in each of twenty (20) or more calendar~~
 22 ~~weeks in the current or preceding year, and any agent of that person. For~~
 23 ~~the purposes of determining discrimination based on disability,~~
 24 ~~employer }~~

25 2. Shall not include:
 26 a.~~(a)~~ The United States, a corporation wholly owned by the
 27 government of the United States, or an Indian tribe; or

1 ~~b.[(b)]~~ A bona fide private membership club (other than a labor
2 organization) that is exempt from taxation under Section 501(c) of
3 the Internal Revenue Service Code of 1986;

4 (3) "Employment agency" means a person regularly undertaking with or without
5 compensation to procure employees for an employer or to procure for employees
6 opportunities to work for an employer and includes an agent of ~~the~~^[such] person;

7 (4) "Labor organization" means a labor organization and an agent of ~~a labor~~^[such an]
8 organization, and includes:

9 (a) An organization of any kind, an agency or employee representation
10 committee, group, association, or plan ~~[so engaged]~~ in which employees
11 participate and which exists for the purpose, in whole or in part, of dealing
12 with employers concerning grievances, labor disputes, wages, rates of pay,
13 hours, or other terms or conditions of employment; ~~[,]~~ and

14 (b) A conference, general committee, joint or system board, or joint council ~~[so~~
15 ~~engaged which is]~~ subordinate to a national or international labor
16 organization;

17 (5) (a) "Employee" means an individual employed by an employer, but does not
18 include an individual employed by his or her parents, spouse, or child, or an
19 individual employed to render services as a domestic in the home of the
20 employer; ~~[,]~~

21 (b) Notwithstanding any voluntary agreement entered into between the United
22 States Department of Labor and a franchisee, neither a franchisee nor a
23 franchisee's employee shall be deemed to be an employee of the franchisor for
24 any purpose under this chapter; ~~[,]~~

25 (c) Notwithstanding any voluntary agreement entered into between the United
26 States Department of Labor and a franchisor, neither a franchisor nor a
27 franchisor's employee shall be deemed to be an employee of the franchisee for

1 any purpose under this chapter; ~~and~~;

2 (d) For purposes of this subsection, "franchisee" and "franchisor" have the same
3 meanings as in 16 C.F.R. sec. 436.1;

4 (6) "Reasonable accommodation":

5 (a) Means making existing facilities used by employees readily accessible to and
6 usable by individuals with disabilities, job restructuring, part-time or modified
7 work schedules, reassignment to a vacant position, acquisition or modification
8 of equipment or devices, appropriate adjustment or modifications of
9 examinations, training materials or policies, the provision of qualified readers
10 or interpreters, and other similar accommodations for individuals with
11 disabilities; and

12 (b) For an employee's own limitations related to her pregnancy, childbirth, or
13 related medical conditions, may include more frequent or longer breaks, time
14 off to recover from childbirth, acquisition or modification of equipment,
15 appropriate seating, temporary transfer to a less strenuous or less hazardous
16 position, job restructuring, light duty, modified work schedule, and private
17 space that is not a bathroom for expressing breast milk;

18 (7) "Religion" means all aspects of religious observance and practice, as well as belief,
19 unless an employer demonstrates that he or she is unable to reasonably
20 accommodate to an employee's or prospective employee's religious observance or
21 practice without undue hardship on the conduct of the employer's business;

22 (8) (a) The terms "because of sex" and "on the basis of sex" include but are not
23 limited to because of or on the basis of pregnancy, childbirth, or related
24 medical conditions, and women affected by pregnancy, childbirth, or related
25 medical conditions shall be treated the same for all employment-related
26 purposes, including receipt of benefits under fringe benefit programs, as other
27 persons not so affected but similar in their ability or inability to work.

1 (b) "Related medical condition" includes but is not limited to lactation or the need
2 to express breast milk for a nursing child and has the same meaning as in the
3 Pregnancy Discrimination Act, 42 U.S.C. sec. 2000e(k), and shall be
4 construed as that term has been construed under that Act; and

5 (9) "Undue hardship," for purposes of disability discrimination or limitations due to
6 pregnancy, childbirth, or related medical conditions as described in KRS
7 344.040(1)(c), means an action requiring significant difficulty or expense, when
8 considered in light of the following factors:

9 (a) The nature and cost of the accommodation needed;

10 (b) The overall financial resources of the facility or facilities involved in the
11 provision of the reasonable accommodation; the number of persons employed
12 at the facility; the effect on expenses and resources; or the impact otherwise of
13 ~~the~~^{such} accommodation upon the operation of the facility;

14 (c) The overall financial resources of the covered entity; the overall size of the
15 business of a covered entity with respect to the number of its employees; and
16 the number, type, and location of its facilities;

17 (d) The type of operation or operations of the covered entity, including the
18 composition, structure, and functions of the workforce of such entity; the
19 geographic separateness, administrative, or fiscal relationship of the facility or
20 facilities in question to the covered entity; and

21 (e) In addition to paragraphs (a) to (d) of this subsection, for pregnancy,
22 childbirth, and related medical conditions, the following factors:

23 1. The duration of the requested accommodation; and

24 2. Whether similar accommodations are required by policy to be made,
25 have been made, or are being made for other employees ~~for~~^{due to} any
26 reason.

27 ➔Section 5. KRS 344.190 is amended to read as follows:

1 In the enforcement of this chapter, the commission ~~{on Human Rights}~~ shall have the
 2 following powers and duties:

- 3 (1) To maintain an office in the city of Louisville and other offices within the
 4 Commonwealth~~{state}~~ as may be deemed necessary;~~{-}~~
- 5 (2) To meet and exercise its powers at any place within the Commonwealth;~~{-}~~
- 6 (3) Within the limitations provided by law, to appoint an executive director, attorneys,
 7 hearing examiners, clerks, and other employees and agents as it may deem
 8 necessary. At the direction of the commission, attorneys appointed under this
 9 section may appear for and represent the commission in any court. The commission
 10 may, by written order, delegate the authority given by this subsection to its
 11 executive director, except as that authority relates to the appointment of its
 12 executive director;~~{-}~~
- 13 (4) To promote the creation of local commissions on human rights, to cooperate with
 14 state, local, and other agencies, both public and private, and individuals, and to
 15 obtain upon request and utilize the services of all governmental departments and
 16 agencies;~~{-}~~
- 17 (5) To cooperate with the ~~{United States}~~ Equal Employment Opportunity Commission,
 18 created by ~~{Section 705 of}~~ the Civil Rights Act of 1964, Pub. L. No. 88-352~~{(78~~
 19 ~~Stat. 241)}~~, ~~{in order to achieve the purposes of that act,}~~ and with other federal and
 20 local agencies in order to achieve the purposes of that act, and with other federal
 21 and local agencies in order to achieve the purposes of this chapter;~~{-}~~
- 22 (6) To accept gifts or bequests, grants, or other payments, public or private, to help
 23 finance its activities;~~{-}~~
- 24 (7) To accept reimbursement pursuant to Section 709(b) of the Civil Rights Act of
 25 1964, Pub. L. No. 88-352 ~~{(78 Stat. 241)}~~ for services rendered to assist the
 26 ~~{Federal}~~ Equal Employment Opportunity Commission;~~{-}~~
- 27 (8) To receive, initiate, investigate, **and** seek to conciliate~~{, hold hearings on, and pass~~

1 ~~upon~~ complaints alleging violations of this chapter; ~~[-]~~

2 **(9) To seek relief against unlawful practices in employment and public**
 3 **accommodations as provided in Section 6 of this Act;**

4 **(10) To exercise the powers conferred in KRS 344.600 to 344.680 with respect to**
 5 **unlawful practices in housing;**

6 **(11)**~~(9)~~ At any time after a complaint is filed, to require answers to interrogatories,
 7 compel the attendance of witnesses, examine witnesses under oath or affirmation in
 8 person or by deposition, and require the production of documents relevant to the
 9 complaint. The commission may make rules authorizing any member or individual
 10 designated to exercise these powers in the performance of official duties; ~~[-]~~

11 **(12)**~~(10)~~ To furnish technical assistance requested by persons subject to this chapter to
 12 further their compliance with this chapter or an order issued thereunder; ~~[-]~~

13 **(13)**~~(11)~~ To make studies appropriate to effectuate the purposes and policies of this
 14 chapter and to make the results thereof available to the public; ~~[-]~~

15 **(14)**~~(12)~~ To render annual written reports to the Governor and the **Legislative**
 16 **Research Commission for referral to the Interim Joint Committee on**
 17 **Judiciary**~~Legislature~~. The reports may contain recommendations of the
 18 commission for legislative or other action to effectuate the purposes and policies of
 19 this chapter; ~~[-]~~

20 **(15)**~~(13)~~ To create local or statewide advisory agencies that in its judgment will aid in
 21 effectuating the purpose of this chapter. The commission may empower these
 22 agencies;

23 (a) To study and report on problems of discrimination because of **familial status,**
 24 race, color, religion, ~~for~~ national origin, **sex, age forty (40) and over, or a**
 25 **person's status as a qualified individual with a disability;** ~~[-]~~

26 (b) To foster, through community effort or otherwise, goodwill among the groups
 27 and elements of the population of the **Commonwealth;** ~~state,~~ and

1 (c) To make recommendations to the commission for the development of policies
 2 and practices that will aid in carrying out the purposes of this chapter.
 3 Members of those agencies~~[such committees]~~ shall serve without pay but
 4 shall be reimbursed for expenses incurred in ~~[such]~~ service. The commission
 5 may make provision for technical and clerical assistance to the
 6 agencies~~;~~~~[committees.]~~

7 ~~(16)~~~~[(14)]~~ To ~~[adopt,]~~promulgate~~[, amend, and rescind]~~ administrative regulations in
 8 accordance with KRS Chapter 13A to effectuate the purposes and provisions of
 9 this chapter, including regulations requiring the posting of notices prepared or
 10 approved by the commission; and~~[.]~~

11 ~~(17)~~~~[(15)]~~ To purchase liability insurance for the protection of all members of the
 12 commission to protect them from liability arising in the course of pursuing their
 13 duties as members of the commission and for all full-time employees to protect
 14 them from liability arising in the course or scope of their employment. This
 15 insurance shall be purchased with money contained in the agency's~~[agency]~~
 16 appropriated budget.

17 ➔Section 6. KRS 344.200 is amended to read as follows:

18 (1) (a) An individual claiming to be aggrieved by an unlawful practice other than a
 19 discriminatory housing practice, a member of the commission, or the Attorney
 20 General may file with the commission a written sworn complaint stating that
 21 an unlawful practice has been committed, setting forth the facts upon which
 22 the complaint is based, and setting forth facts sufficient to enable the
 23 commission to identify the ~~[persons charged (referred to as the]~~respondent~~[~~
 24 ~~in this section, KRS 344.210, 344.230, and 344.240)]~~. The commission shall
 25 make reasonable accommodations to assist persons with disabilities in filing a
 26 written sworn complaint. The commission staff or a person designated
 27 pursuant to its administrative regulations shall promptly investigate the

1 allegations of unlawful practice set forth in the complaint and shall within five
 2 (5) days furnish the respondent with a copy of the complaint. The complaint
 3 must be filed within one hundred eighty (180) days after the alleged unlawful
 4 practice occurs.

5 **(b) An individual claiming to be aggrieved by an unlawful practice other than a**
 6 **discriminatory housing practice may file a civil cause of action in Circuit**
 7 **Court pursuant to KRS 344.450 without first filing a complaint with the**
 8 **commission.**

9 (2) **(a)** The commission or an individual designated pursuant to its administrative
 10 regulations shall determine ~~[within thirty (30) days after the complaint has~~
 11 ~~been filed]~~ whether there is probable cause to believe the respondent has
 12 engaged in an unlawful practice **within thirty (30) days after either:**

13 **1. Receipt of the respondent's response to the complaint; or**

14 **2. The time for submission of the respondent's response has expired.**

15 **(b)** If it is determined that there is no probable cause to believe that the
 16 respondent has engaged in an unlawful practice:~~;~~

17 **1.** The commission shall:

18 **a.** Issue an order dismissing the complaint **without prejudice;** and~~;~~
 19 ~~shall]~~

20 **b.** Furnish a copy of the order to the complainant~~;~~ **and** the
 21 respondent; **and**~~;~~ the Attorney General, and any other public
 22 officers and persons that the commission deems proper]

23 **2. An individual claiming to be aggrieved by an unlawful practice other**
 24 **than a discriminatory housing practice may file a civil cause of action**
 25 **in Circuit Court pursuant to KRS 344.450 asserting a claim arising**
 26 **from the same facts or circumstances while the complaint is pending**
 27 **before the commission or after its dismissal by the commission.**

- 1 (3) Neither the filing of the complaint with the commission nor its investigation by or
2 pendency before the commission shall operate to toll or suspend the running of a
3 statute of limitations under KRS 413.115 or any other statute.~~[The complainant,~~
4 ~~within ten (10) days after receiving a copy of the order dismissing the complaint,~~
5 ~~may file with the commission an application for reconsideration of the order. Upon~~
6 ~~receiving a reconsideration application, the commission or an individual designated~~
7 ~~pursuant to administrative regulation shall make a new determination within ten~~
8 ~~(10) days whether there is probable cause to believe that the respondent has~~
9 ~~engaged in an unlawful practice. If it is determined that there is no probable cause~~
10 ~~to believe that the respondent has engaged in an unlawful practice, the commission~~
11 ~~shall issue an order dismissing the complaint and furnishing a copy of the order to~~
12 ~~the complainant, the respondent, the Attorney General, and any other public officers~~
13 ~~and persons that the commission deems proper.]~~
- 14 (4) (a) If the commission~~[staff]~~ determines~~[,]~~ after investigation~~[, or if the~~
15 ~~commission determines after the review provided for in subsection (3) of this~~
16 ~~section]~~ that there is probable cause to believe that the respondent has
17 engaged in an unlawful practice, the commission ~~[staff]~~ shall endeavor to
18 eliminate the alleged unlawful practice by conference, conciliation, and
19 persuasion.
- 20 (b) The terms of a conciliation agreement reached with a respondent may require
21 him or her to refrain from the commission of unlawful discriminatory
22 practices in the future and make any further provisions as may be agreed upon
23 between the commission or its staff and the respondent.
- 24 (c) If a conciliation agreement is entered into, the commission shall issue and
25 serve on the complainant an order stating its terms. A copy of the order shall
26 be delivered to the respondent~~[, the Attorney General, and any other public~~
27 ~~officers and persons that the commission deems proper].~~

1 (d) Except for the terms of the conciliation agreement, neither the commission
2 nor any officer or employee thereof shall make public, without the written
3 consent of the complainant and the respondent, information concerning efforts
4 in a particular case to eliminate an unlawful practice by conference,
5 conciliation, or persuasion whether or not there is a determination of probable
6 cause or a conciliation agreement.

7 (5) At the expiration of one (1) year from the date of a conciliation agreement, and at
8 other times in its reasonable discretion, the commission staff may investigate
9 whether the terms of the agreement have been and are being complied with by the
10 respondent. Upon a finding that the terms of the agreement are not being complied
11 with by the respondent, the commission shall take whatever action it deems
12 appropriate to assure compliance.

13 (6) (a) At any time after a complaint is filed, the commission may file an action in
14 the Circuit Court in a county in which the subject of the complaint occurs, or
15 in a county in which a respondent resides or has his or her principal place of
16 business, seeking appropriate ~~temporary~~ relief against the respondent on
17 *behalf of a private party who has not previously filed a civil cause of action*
18 *for the same grievance*, ~~pending final determination of proceedings~~
19 ~~including an order or decree restraining him from doing or procuring any act~~
20 ~~tending to render ineffectual any order the commission may enter with respect~~
21 ~~to the complaint. The court shall have power to grant temporary relief or a~~
22 ~~restraining order as it deems just and proper]. An action filed under this~~
23 *paragraph shall be subject to the statute of limitations in KRS 413.115.*

24 *(b) The commission's filing of an action under paragraph (a) of this subsection*
25 *shall prevent the aggrieved private party from filing a civil cause of action*
26 *pursuant to KRS 344.450 arising from the same facts or circumstances. The*
27 *aggrieved private party may, however, intervene in the action filed by the*

1 commission.

2 (c) The court shall dismiss a civil action filed by the commission if the
3 aggrieved individual previously filed an action arising from the same set of
4 facts or circumstances pursuant to KRS 344.450. The commission may
5 intervene in the previously filed action provided the plaintiff consents in
6 writing to the intervention.

7 (d) In any civil action filed under this section, the commission:

8 1. Shall not be entitled to recover:

9 a. Its own litigation costs or attorney's fees; or

10 b. Monetary penalties; and

11 2. May request appropriate relief for the aggrieved private party on
12 whose behalf the action was filed, not to exceed the remedies in KRS
13 344.450.

14 (e) A jury shall decide all matters triable by jury at common law, including
15 without limitation questions of fact, questions of liability, and monetary
16 damages.

17 (7) Notwithstanding KRS 413.115, subsection (6) of this section, or any other law to
18 the contrary, a private party:

19 (a) Who claims to be aggrieved by a practice that is unlawful under this
20 chapter, other than a discriminatory housing practice;

21 (b) Who timely filed his or her complaint with the commission prior to the
22 effective date of this Act; and

23 (c) Whose written complaint remained pending before the commission on the
24 effective date of this Act;

25 may file a civil cause of action in Circuit Court pursuant to KRS 344.450 not
26 later than one (1) year after the effective date of this Act. The filing of such an
27 action shall be deemed timely and shall not be barred by a statute of limitations

1 that would otherwise apply.

2 (8) ~~{Nothing in }~~This section shall ***not*** apply to any discriminatory housing practice.

3 ➔Section 7. KRS 344.320 is amended to read as follows:

4 A local commission may be authorized to:

5 (1) ~~{Receive, initiate, investigate, hear, and determine charges}~~***Investigate complaints***
6 of violations of ordinances, orders, or resolutions forbidding discrimination adopted
7 by the city or county;~~{ }~~

8 (2) ~~{Compel the attendance of witnesses and the production of evidence before it by~~
9 ~~subpoena issued by the Circuit Court of the county wherein the local commission is~~
10 ~~authorized to act.~~

11 ~~(3) Issue remedial orders, after notice and hearing, requiring cessation of violations.~~

12 ~~(4) Issue such affirmative orders as in the judgment of the local commission will carry~~
13 ~~out the purposes of this chapter. Affirmative action ordered may include but is not~~
14 ~~limited to the remedies enumerated in subsection (3) of KRS 344.230.~~

15 ~~(5) Employ an executive director, attorneys, {hearing examiners, clerks }and other~~
16 ~~employees and agents; ***and***~~

17 ~~(3){(6)}~~ Accept grants, gifts, or bequests, public or private to help finance its activities.

18 ➔Section 8. KRS 344.635 is amended to read as follows:

19 (1) When a discriminatory housing charge is filed under KRS 344.625, a complainant,
20 a respondent, or the aggrieved person on whose behalf the complaint is filed~~{ }~~
21 may:

22 (a) Elect to have the claims asserted in that charge decided in a civil action under
23 KRS 344.670~~{ }~~ in lieu of an administrative hearing before the commission
24 under KRS 344.640; ***and***

25 (b) ***Demand a trial by jury if the civil action is elected.***

26 ~~(2){(1)}~~ The election shall be made not later than twenty (20) days after the receipt by
27 the electing person of service under KRS 344.630~~{ , from the commission or, in the~~

1 ~~ease of the commission, not later than twenty (20) days after service to the~~
2 ~~respondent and complainant].~~

3 ~~(3)~~~~(2)~~ The person making the election shall give written notice of the election~~[doing~~
4 ~~so]~~ to the commission~~[and to all other complainants and respondents to whom the~~
5 ~~charge relates].~~

6 ➔Section 9. KRS 344.660 is amended to read as follows:

7 (1) In a civil action under KRS 344.650, if the Circuit Court finds that a discriminatory
8 housing practice has occurred or is about to occur, the Circuit Court may award to
9 the plaintiff actual and punitive damages, and subject to subsection (3) of this
10 section, may grant other~~[as]~~ relief~~[,]~~ as the court deems appropriate, including:

11 (a) The issuance of any:

12 1. Permanent or temporary injunction;~~[,]~~

13 2. Restraining order;~~[, or]~~

14 3. Other order, including an order enjoining the defendant from engaging
15 in the discriminatory practice; or

16 (b) Ordering affirmative action as appropriate.

17 (2) In a civil action under KRS ~~[344.240,]~~344.650~~[,]~~ or 344.665, the court~~[,]~~ in its
18 discretion~~[,]~~ may award the prevailing complainant~~[,]~~ a reasonable
19 attorney's~~[attorneys']~~ fee and costs. The court~~[,]~~ in its discretion~~[,]~~ may award the
20 prevailing respondent a reasonable attorney's~~[attorneys']~~ fee and costs if the
21 respondent establishes that the complaint upon which the action was based was
22 brought in bad faith. Whether a party has committed bad faith shall be determined
23 in accordance with Rule 11 of the Kentucky Rules of Civil Procedure. The
24 Commonwealth~~[state]~~ shall not be liable in any event for fees and costs.

25 (3) ~~[However, no]~~Relief provided under this section shall not affect~~[effect]~~ any
26 contract, sale, encumbrance, or lease;

27 (a) Consummated before the granting of that relief;~~[,]~~ and

1 **(b)** Involving a bona fide purchaser, encumbrancer, or tenant;~~[,]~~
 2 without actual notice of ***either*** the filing of the complaint of a discriminatory
 3 housing practice complaint with the commission or the filing of a civil action.

4 ➔Section 10. KRS 344.675 is amended to read as follows:

5 (1) In any administrative proceeding brought under KRS 344.640 or 344.645 or any
 6 court proceeding arising therefrom, ~~[including actions described in KRS 344.240 or~~
 7 ~~any civil action,]~~the commission or the court, as the case may be, upon application
 8 of either party~~[,]~~ and in its discretion, may:

9 (a) Appoint an attorney for the person; or

10 (b) Award a reasonable ***attorney's***~~[attorneys]~~ fee and costs to the prevailing party
 11 to the same extent allowed in KRS 344.660, or both. The
 12 ***Commonwealth***~~[state]~~ shall not be liable in any event for fees and costs.

13 (2) The ***Commonwealth***~~[state]~~ through the commission's attorney or the Attorney
 14 General shall maintain any civil action on behalf of the complainant or aggrieved
 15 party.

16 (3) Where the parties to an alleged discriminatory housing practice have elected an
 17 administrative determination rather than a civil adjudication, the commission staff
 18 attorney shall represent the complainant or aggrieved party before the commission.

19 ➔Section 11. The following KRS sections are repealed:

20 344.210 Notice of complaint -- Hearing procedures.

21 344.230 Orders of commission -- Nature of affirmative action.

22 344.240 Scope of and procedure for judicial review --Hearing -- Appeal.

23 344.270 Commission or court not to take jurisdiction over claim for unlawful practice
 24 while claim pending before the other body -- Final determination exclusive.

25 344.340 Enforcement of local commission orders.