

1 AN ACT relating to the disposition of property.

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

3 ➔Section 1. KRS 391.010 is amended to read as follows:

4 When a person having right or title to any real estate or inheritance dies intestate as to
5 such estate, it shall descend in common to his or her kindred, male and female, in the
6 following order, except as otherwise provided in this chapter:

7 (1) (a) To his or her surviving spouse as follows:

8 1. If there is no surviving descendant of the decedent, the entirety;

9 2. If the decedent is survived by one (1) or more descendants, all of
10 whom are also descendants of the surviving spouse, the entirety;

11 3. If the decedent is survived by one (1) or more descendants who are not
12 lineal descendants of the surviving spouse, one-half (1/2); or

13 4. If the decedent is survived by one (1) or more descendants, all of
14 whom are also descendants of the surviving spouse, and the surviving
15 spouse has one (1) or more descendants who are not descendants of
16 the decedent, one-half (1/2); and

17 (b) Any interest in property not passing to his or her surviving spouse under
18 this subsection, or if there is no surviving spouse, as provided in subsections
19 (2) to (6) of this section.

20 (2) To his or her children and their descendants; if there are none, then

21 (3) To his or her father and mother, if both are living, one (1) moiety each; but if
22 the father is dead, the mother, if living, shall take the whole estate; if the mother is
23 dead, the whole estate shall pass to the father; if there is no father or mother, then

24 (4) To his or her brothers and sisters and their descendants; if there are none, then

25 (4) To the husband or wife of the intestate; if there are none surviving, then]

26 (5) (a) One (1) moiety of the estate shall pass to the paternal and the other to the
27 maternalkindred, in the following order:

1 (a) The grandfather and grandmother equally, if both are living; but if one is
2 dead, the entire moiety shall go to the survivor; if there is no grandfather or
3 grandmother, then
4 (b) To the uncles and aunts and their descendants; if there are none, then
5 (c) To the stepchildren of the decedent [great-grandfathers and great-
6 grandmothers, in the same manner prescribed for grandfather and
7 grandmother by subsection (a); if there are none, then
8 (d) To the brothers and sisters of the grandfathers and grandmothers and their
9 descendants; and so on in other cases without end, passing to the nearest lineal
10 ancestors and their descendants].
11 (6) If there is no [such] kindred [to one of the parents] as is described in subsection (5)
12 of this section, the whole shall vest in the state under KRS 393.020 [to go to the
13 kindred of the other. If there is neither paternal nor maternal kindred, the whole
14 shall go to the kindred of the husband or wife, as if he or she had survived the
15 intestate and died entitled to the estate].

16 ➔ Section 2. KRS 392.020 is amended to read as follows:

17 (1) (a) After the death of the husband or wife intestate, the survivor shall have, in
18 addition to his or her share under Section 1 of this Act, an estate [in fee of
19 one half (1/2) of the surplus real estate of which the other spouse or anyone
20 for the use of the other spouse, was seized of an estate in fee simple at the
21 time of death, and shall have an estate] for his or her life in one-third (1/3) of
22 any real estate of which the other spouse or anyone for the use of the other
23 spouse, was seized of an estate in fee simple during the coverture but not at
24 the time of death, unless the survivor's right to the [such] interest has been
25 barred, forfeited, or relinquished.
26 (b) The survivor shall also have an absolute estate in one-half (1/2) of the surplus
27 personalty left by the decedent. Unless the context otherwise requires, any

1 reference in the statutes of this state to "dower" or "curtesy" shall be deemed
2 to refer to the surviving spouse's interest created by this section.

3 **(2) Except as otherwise provided in subsection (4) of this section, surplus personality**
4 **includes personal property owned by the decedent at death that is:**

5 **(a) Payable pursuant to a:**

6 **1. Beneficiary designation;**

7 **2. Transfer on death designation; or**

8 **3. Payable on death designation, including retirement accounts whether**
9 **designated as an individual retirement account or otherwise; or**

10 **(b) Jointly owned with right of survivorship to another person.**

11 **(3) The surviving spouse's share of the decedent's surplus personality shall be**
12 **credited with any property described in subsection (2) of this section received by**
13 **the surviving spouse at the decedent's death, less the amount of payment made**
14 **for the decedent's funeral and burial expenses as confirmed by receipt of**
15 **payment, or by contract or other written document of obligation for payment.**

16 **(4) (a) Surplus personality shall not include the death benefit payable on any life**
17 **insurance policy insuring the life of the decedent;**

18 **(b) Life insurance proceeds payable to the surviving spouse shall be credited**
19 **against the surviving spouse's share of the decedent's surplus personality;**
20 **and**

21 **(c) Life insurance proceeds payable to a trust of which the surviving spouse is a**
22 **beneficiary shall be credited against the surviving spouse's share of the**
23 **decedent's surplus personality in an amount determined under subsection**
24 **(7) of this section.**

25 **(5) Surplus real estate and surplus personality include all property held by or payable**
26 **at the decedent's death:**

27 **(a) To a trust over which the decedent held at the time of death a power of**

1 revocation; and

2 (b) Over which the decedent held at the time of death a general power of
3 appointment as defined in KRS 390.020.

4 (6) Property of any kind transferred by the decedent to a person or trust, other than a
5 trust for the benefit of the surviving spouse, the decedent, or a qualified
6 charitable organization two (2) years or more prior to death, is not surplus
7 personalty and is not surplus real estate. Property of any kind transferred by the
8 decedent to a person or trust less than two (2) years prior to death is surplus
9 personalty or surplus real estate.

10 (7) Property of any kind transferred prior to the decedent's death and held at the
11 decedent's death by a trust created by the decedent and of which the surviving
12 spouse is a beneficiary shall be:

13 (a) Deemed surplus personalty or surplus real estate as applicable; and
14 (b) Credited against the surviving spouse's share of the decedent's surplus real
15 estate and surplus personalty, in an amount computed under 26 U.S.C. sec.
16 7520.

17 (8) The surviving spouse may bring an action against any person receiving property
18 that is part of the surplus real estate or surplus personalty as necessary to satisfy
19 the dower or curtesy claim of the surviving spouse with respect to that property.

20 ➔Section 3. KRS 394.300 is amended to read as follows:

21 (1) (a) Every will[or authenticated copy] admitted to probate[record] by any court
22 shall be recorded by the county clerk, and shall remain in the[this] office of
23 the county clerk[,] except:

24 1. During such time as it may be carried to another court under subpoena
25 duces tecum; or

26 2. As provided in paragraph (d) of this subsection.

27 (b) For any will recorded on or after January 1, 2027, the county clerk shall

1 return the will to the person designated in the order admitting the will to
2 probate no earlier than two (2) years after it has been recorded by the
3 county clerk.

4 (c) Any will recorded with the county clerk after January 1, 1978, and prior to
5 January 1, 2027, that remains in the office of the county clerk may be
6 destroyed or returned to either the person designated in the order admitting
7 the will to probate or the person appointed as the executor or executrix of
8 the decedent's estate no earlier than ten (10) years after the date of
9 recording.

10 (d) Upon receipt of any notice required under KRS 394.240, the county clerk
11 shall not return a will under paragraph (b) or (c) of this subsection until:
12 1. The adversarial proceeding is final and nonappealable; or
13 2. Authorized by a court of competent jurisdiction.

14 (e) Any attempted return of a will under paragraph (b) or (c) of this subsection
15 that is:
16 1. Returned to the county clerk as undeliverable; or
17 2. Precluded due to insufficient information regarding an address or to
18 whom the will should be returned;
19 may be destroyed.

20 (2) (a) A will probated in the court of one Kentucky county and recorded in the
21 office of the county clerk for that county may be recorded in the office of the
22 county clerk for other counties without the process of probate in the other
23 county.

24 (b) Production of an attested copy of the will together with an attested copy of the
25 order of probate shall be required by the county clerk of the other county
26 before recordation.

27 (c) The clerk shall make the same charge for recordation as is otherwise provided

1 for recording a will.

2 ➔Section 4. KRS 395.015 is amended to read as follows:

3 (1) Before being appointed as executor, administrator, curator, or administrator with
4 the will annexed, every person shall make and file in duplicate a written application
5 for appointment under oath, which shall include: ~~must state~~

6 (a) The names of the deceased's surviving spouse and all of his or her heirs-at-
7 law ~~or such~~ as are known, and the United States postal address and
8 electronic mail ~~their post office~~ address of each if known; ~~;~~

9 (b) The date of death; ~~and also a statement in general terms as to what the estate~~
10 ~~consists of and the probable value of the personal and real estate and also~~

11 (c) A statement of any indebtedness owing by the applicant to the deceased;

12 (d) If the decedent died testate, the name and address of the person to whom
13 any will admitted to probate and recorded with the county clerk is to be
14 returned under Section 3 of this Act; and

15 (e) An acknowledgment by the person seeking appointment as executor,
16 administrator, curator, or administrator with the will annexed in
17 substantially the following form:

18 "Upon appointment, I agree to faithfully execute the duties required by law,
19 and such additional duties ordered by the court, and that I am subject to
20 removal as a fiduciary if I fail to perform the required duties, and subject to
21 possible civil and criminal penalties for improper conversion of any
22 property I hold as a fiduciary."

23 (2) (a) If the decedent died testate, the decedent's will shall be presented to the
24 court prior to or at the time of any appointment.

25 (b) After the will is admitted to probate, the clerk of the court shall:

26 1. Collect the fee required by the county clerk under Section 58 of this
27 Act for the filing of a will and the tax required under Section 59 of this

1 Act; and

2 2. Deliver the following to the county clerk:

3 a. The will and a certified copy of the order admitting the will to
4 probate, which shall include the name and address of the person
5 to whom the will is to be returned as provided under Section 3 of
6 this Act; and

7 b. The filing fee and tax collected under subparagraph 1. of this
8 paragraph.

9 (3) (a) A written general financial disclosure statement of the property of the
10 decedent, to the extent known, shall be filed separately at the time of filing
11 the application for appointment.

12 (b) The general financial disclosure statement shall comply with the
13 requirements in subsection (4) of this section and shall include the
14 approximate value, determined in good faith, of all real and personal
15 property known by the applicant which may include:

16 1. Furniture and household goods;

17 2. Personal effects, including jewelry and collectibles;

18 3. Stocks, bonds, bank accounts, and retirement accounts that do not
19 constitute a nontestamentary transfer on death as provided in KRS
20 391.360;

21 4. Insurance policies if payable to the estate of the decedent;

22 5. Real property that is not held in joint ownership with another with
23 right of survivorship; and

24 6. Any other personal property accurately identified, including the
25 decedent's share in any partnership or ownership in any other entity.

26 (c) The general financial disclosure statement shall be confidential, placed
27 under seal when filed, and disclosed only:

- 1 1. To the personal representative;
- 2 2. To the personal representative's attorney;
- 3 3. To any beneficiary or heir at law;
- 4 4. As required under subsection (9) of this section and Section 13 of this
5 Act; or
- 6 5. By order of the court upon a showing of good cause that shall include
7 a creditor who has filed a verified statement of claim against the
8 estate.

9 (d) As used in paragraph (c) of this subsection, and in subsection (7) of Section
10 13 of this Act, a finding of good cause shall not:

- 11 1. Be based solely on the position of the decedent as a public official,
12 public figure, or other person who has drawn substantial public
13 attention due to the person's official acts, fame, notoriety, or celebrity;
14 or
- 15 2. Be made if the release of the protected information would constitute a
16 clearly unwarranted invasion or exploitation of personal privacy or
17 proprietary interests of a beneficiary of the estate or an heir at law
18 without substantial evidence of irreparable harm or material financial
19 loss if release of the requested information to the requesting party is
20 denied.

21 (4) The application for appointment and the general financial disclosure statement
22 shall be signed and dated by the person seeking the appointment and the
23 acknowledgment required under subsections (1) and (3) of this section may be
24 satisfied, with like force and effect, by a written and dated declaration under the
25 penalty of perjury, in substantially the following form:

26 "I declare under the penalties of perjury of the laws of the Commonwealth of
27 Kentucky, which may include a fine or imprisonment, that the foregoing is true

1 *and correct."*

2 (5) If The foregoing requirement in respect to names and addresses of heirs at law may
3 be omitted when the application *for appointment* is being made by the executor
4 named in the will, *the names and addresses of the heirs at law may be omitted*
5 unless requested by the court.

6 (6) The application of a nonresident shall include the designation of a resident of the
7 county where *probate or* administration is pending as his *or her* agent for the
8 service of process in any action against him *or her* as personal representative or
9 personally, provided that *the*~~sueh~~ personal action must have accrued in the
10 administration of the estate~~. A duplicate copy of said application shall be mailed by~~
11 ~~the clerk to the secretary of revenue of the State of Kentucky~~.

12 (7) (a) Except as provided in paragraph (b) of this subsection, the court shall set a
13 *time for hearing the application for appointment when:*

14 1. (2) In the case of intestacy, or where }An administrator with will
15 annexed or de bonis non is to be appointed *and there is*~~, if there be~~ } no
16 surviving spouse; *or*~~, or if such~~ }

17 2. The surviving spouse waives the right of appointment or is not qualified
18 to act and does not nominate a suitable administrator, and there is more
19 than one (1) resident heir-at-law entitled to appointment~~, the court shall~~
20 thereupon set a time for hearing such application~~.~~

21 (b) No hearing shall be required under paragraph (a)2. of this subsection if the
22 *surviving spouse and all of the known heirs at law have executed a waiver*
23 *of the right to a hearing.*

24 (c) Notice of *any*~~said~~ hearing *set under this subsection* shall be given to the
25 surviving spouse and all known heirs of the deceased residing in the state, or
26 elsewhere, in the manner provided in KRS 395.016.

27 (8) Upon receipt of the filings and presentation of the will as required under this

1 section, the court, in its discretion, shall determine if a hearing on the application
2 for the appointment of a fiduciary is required.

3 (9) The clerk of the court shall transmit a copy of the application and general
4 financial disclosure statement to the commissioner of the Department of
5 Revenue.

6 ➔Section 5. KRS 395.016 is amended to read as follows:

7 (1) (a) When a hearing is ordered by the court, notice of the hearing on[or] an
8 application for the appointment of a fiduciary, or petition for the probate of a
9 will, [an administrator, administrator with will annexed or guardian is required
10 , it] shall be given by mailing written notice of the time, place, and purpose of
11 the[such] hearing at least five (5) days before the[said] hearing.

12 (b) Proof of[such] notice shall be by:

13 1. Certified mail, return receipt requested; or[by]
14 2. The applicant's written and dated declaration in conformity with the
15 requirements of a declaration under subsection (4) of Section 4 of this
16 Act[affidavit] that notice of the hearing[the same] was mailed to each
17 of the parties[entitled thereto] in a sealed envelope, postage prepaid,
18 and the date when posted.[, which]

19 (c) Proof of notice shall be filed at the time of the hearing.

20 (2) If all parties entitled to notice are under no disability and waive notice in writing,
21 the court may hear the[such] application as if notice had been given. The waiver of
22 notice may be filed before or at the time of the hearing.

23 (3) A minor over fourteen (14) years of age may waive notice of the hearing if he or
24 she is present in person at the[time of] hearing. [of application for appointment of
25 his guardian; provided, however]

26 (4) In any estate where the gross amount involved is less than five thousand dollars
27 (\$5,000) the court, in its discretion, may dispense with the notice requirements of

1 this section[~~relating to notice~~].

2 ➔Section 6. KRS 395.020 is amended to read as follows:

3 (1) The person named in a will as executor shall not act as executor to any extent until:

4 (a) The will or an authenticated copy of the will is admitted to probate;[~~record~~,
5 ~~and~~]

6 (b) He or she has presented an executed surety bond when required under
7 Section 11 of this Act; and

8 (c) He or she has taken an oath in the court in which the record is made, or if no
9 hearing is required by the court for appointment, has filed with the court in
10 which the record is made the declaration executed under penalty of perjury
11 in accordance with Section 10 of this Act.

12 (2) The person named in a will as executor[He] may, however, provide for the burial
13 of the testator, pay the reasonable funeral expenses, and take care of and preserve
14 the estate.

15 ➔Section 7. KRS 395.050 is amended to read as follows:

16 (1) If no executor is appointed by the will, or if all the executors named in the will die,
17 refuse the executorship, or fail to provide surety[give] bond if required by the
18 court, the court may grant administration with the will annexed to the person who
19 would have been entitled to administration if there had been no will, but a[~~no~~] person
20 whose interests are antagonistic to the provisions of the will shall not be
21 eligible to appointment as administrator with the will annexed[~~whose interests are~~
22 ~~antagonistic to the provisions of the will~~]. Failure to provide surety[give] bond
23 when required by the court shall amount to refusal to act as executor.

24 (2) An administrator with the will annexed shall possess and exercise all power and
25 authority, have the same rights and interest, and be responsible in like manner as the
26 executors named in it.

27 ➔Section 8. KRS 395.080 is amended to read as follows:

1 If all the persons nominated as executors are under the age of eighteen (18) at the time of
2 probating the will, or those who are of age fail to qualify, administration with the will
3 annexed may be granted during ~~such~~ minority. ~~But~~ If a testator, by his or her will, so
4 directs, however, then the~~such~~ infant executor may qualify and, if required by the
5 court, give surety bond as an adult.

6 ➔ Section 9. KRS 395.105 is amended to read as follows:

7 (1) Every fiduciary, before entering upon the execution of the trust, shall receive letters
8 of appointment from the District Court having jurisdiction as~~now~~ fixed by law.

9 (2) The duties of a fiduciary shall be those~~such as are~~ required by law, and any~~such~~
10 additional duties~~not inconsistent therewith~~ as the court may order.

11 (3) The appointment of the personal representative shall be effective upon~~with~~ the
12 signing of an order by the judge, the presentation to the clerk of an executed
13 surety bond when required under Section 11 of this Act, and either the
14 administration of any oaths required in Section 10 of this Act, or the filing of the
15 declaration in Section 10 of this Act if no hearing is required.

16 ➔ Section 10. KRS 395.120 is amended to read as follows:

17 (1) If the court requires a hearing for the appointment of the fiduciary, each
18 executor, administrator~~and~~ curator, and administrator with the will annexed or
19 de bonis non shall take an oath before the court in which the application for
20 appointment is made to faithfully perform the duties of his or her office to the best
21 of his or her judgment.

22 (2) (a) The oaths required of the executor, administrator, curator, and
23 administrator with the will annexed or de bonis non may be satisfied by
24 execution of the following declaration:

25 "1. I, the undersigned, agree to faithfully perform the duties of the office
26 as required by law, including but not limited to:

27 a. Deposit all funds which come into my hands in a lawful

depository located within this Commonwealth and provide canceled checks as may be required to prove accounts;

b. Keep estate funds in separate estate accounts at all times during the administration of the estate;

c. *Invest all funds in a lawful manner;*

d. Make and file all required documents when due as required by law:

e. *File all tax documents as required by law;*

f. Maintain adequate insurance to reasonably protect any property that I may hold as a fiduciary; and

g. Obey all orders of the court;

12 2. I, the undersigned, understand I am subject to removal as the
13 fiduciary if I fail to perform the duties required of me under the laws
14 of this state and that I am subject to possible fines, and civil and
15 criminal penalties for improper conversion of the property that I hold
16 as fiduciary; and

3. If applicable, I, the undersigned, declare that my intestate, so far as I know or believe, died without leaving a will."

24 ➔ Section 11. KRS 395.130 is amended to read as follows:

25 (1) No bond shall be required of a personal representative appointed under this
26 chapter except as provided in subsection (2) of this section.

27 (2) *The court shall order a surety bond of a personal representative appointed under*

1 this chapter when the:

2 (a) Appointment is of a public administrator under Section 16 of this Act or a
3 curator under Section 19 of this Act; or

4 (b) Court, in its discretion, determines that a surety bond is required to
5 adequately protect all interests in the estate. In exercising its discretion
6 under this paragraph, the court may consider the:

7 1. Expression of intent of the testator under a will or trust; however,
8 notwithstanding any other law to the contrary, the court shall not be
9 bound by the expressed intent; and

10 2. Experience of the personal representative, including whether or not
11 the personal representative is acting as a fiduciary in any other matter.

12 (3) (a) Every fiduciary of whom surety bond is required under subsection (2) of this
13 section[, except as provided in KRS 286.3 220 and 386B.7 020,] shall
14 provide the surety bond as ordered by the court.[on his bond unless, on the
15 petition of any interested party, the court upon being satisfied that all interests
16 are adequately protected excuses the requirement of a surety, or unless, by the
17 terms of the will or trust, surety is not required. Subsequent to the
18 qualification of a fiduciary and]

19 (b) On motion of any interested party the court may:

20 1. Reduce or increase the amount of the surety bond;[release the surety,]
21 or

22 2. Permit the substitution of another surety bond with the same or different
23 sureties.

24 (4) If an executor does not give surety bond when required to do so, he or she shall not
25 be authorized to act as executor[permitted to qualify], and, if he or she has already
26 been appointed,[qualified, he] shall be removed.

27 (5)[(2)] Whenever any personal representative, guardian, conservator, or fiduciary

1 who is required by law to execute a surety bond for the faithful discharge of his or
2 her duties or fulfillment of his or her trust, procures as surety on his or her bond an
3 incorporated surety company authorized to do business in this state, the necessary
4 and reasonable cost incident to the surety bond shall be a lawful charge against the
5 estate in the hands of the fiduciary, as other expenses of administration, and in his
6 or her settlement the fiduciary shall be entitled to credit by the amount actually paid
7 by him or her for that purpose, subject to the approval of the court which has
8 approved the surety bond.

9 ➔ Section 12. KRS 395.140 is amended to read as follows:

10 (1) A fiduciary required to execute a surety bond shall deliver to the clerk of the
11 court of the county in which he or she is appointed a surety bond payable to and
12 with the Commonwealth, subscribed to by the principal and sureties in the
13 presence of a notary, in the amount, and with sufficient sureties, as may be
14 approved by the court in its order of appointment.

15 (2) The District Court shall not accept as surety, in any surety bond of a personal
16 representative, any master or other commissioner whose duty is to settle the
17 accounts of personal representatives, or any judge or clerk of a District Court or
18 practicing attorney of that court.

19 (3){(2)} The surety bond shall be filed[subscribed by the principal and sureties,
20 approved by the court, attested by the clerk of the court and carefully kept] by the
21 clerk in his or her office in a record maintained[book to be provided] for that
22 purpose.

23 ➔ Section 13. KRS 395.250 is amended to read as follows:

24 (1) (a) It shall be the duty of a personal representative of a decedent to file[return] an
25 inventory[in duplicate] no later than ninety (90) days[within two (2) months]
26 from the time of qualifying as personal representative.[such, to the clerk's
27 office of the court in which he qualified,]

1 **(b)** The inventory[original of which] shall be confidential except as provided in
2 subsection (2)(a) of this section, and shall be placed under seal when filed.
3 The clerk of the court shall transmit a copy of the inventory[recorded by the
4 clerk and the duplicate shall be mailed by the clerk] to the
5 commissioner[secretary] of the Department of Revenue.

6 **(2) (a)** It shall be the duty of the personal representative of a decedent to furnish a
7 filed copy of the inventory required under subsection (1) of this section to
8 any person authorized under subsection (3)(c) of Section 4 of this Act who
9 has requested a copy, or to whom the court has ordered disclosure of assets
10 and liabilities.

11 **(b)** No person or entity authorized under subsection (3)(c) of Section 4 of this
12 Act or by the court to receive records under seal, including the inventory
13 filed under this section, shall copy, reproduce, or in any way release any
14 information contained in the records without specific authorization from
15 the court in which the personal representative qualified. Violation of this
16 paragraph shall be a basis for a finding of contempt of court.

17 **(3)** Copies from the record of the inventory or appraisement shall be prima facie
18 evidence for or against the personal[such] representative when required and
19 approved for release by the court for that purpose.

20 **(4)** If any property not included in the initial inventory comes to the knowledge of the
21 personal representative, or if the personal representative learns that the value or
22 description of any item listed in the initial inventory is erroneous or misleading,
23 the personal representative shall file an amended inventory with the court.

24 **(5) (a)** If the personal representative has cause to believe that any of the assets of
25 the estate are concealed or wrongfully withheld from the personal
26 representative, or that any person has in his or her possession or under his
27 or her control any records, books, documents, or related information

1 concerning withheld assets or the ownership of withheld assets, the personal
2 representative shall petition the court before which the estate action is
3 pending for an order compelling discovery of the required information.

4 (b) All parties named in the petition may be compelled to provide under oath
5 either by response to the petition or by personal testimony to the court, all
6 the facts known to them concerning the assets of the estate and any adverse
7 claims relating to the assets of the estate.

8 (c) If the court finds that any person has property or assets of the estate to
9 which there is no adverse claim, the court shall direct the property or asset
10 be delivered to the personal representative who shall account for the
11 property or asset in an amended inventory filed with the court no later than
12 twenty (20) days following entry of the court's order.

13 (6) Any settlement ordered or filed under this chapter shall be filed in compliance
14 with the confidentiality provisions in subsections (1) and (2) of this section.

15 (7) Additional documents containing information regarding the assets or value of the
16 decedent's estate shall not be ordered to be filed except upon motion with good
17 cause shown, and any document filed under this section shall be in compliance
18 with the confidentiality provisions in subsections (1) and (2) of this section.

19 (8) Failure to timely file any inventory when due shall be subject to the penalties in
20 Sections 14 and 30 of this Act.

21 ➔ Section 14. KRS 395.255 is amended to read as follows:

22 (1) It shall be the duty of the clerk of the court to report to the judge once each
23 month the names and addresses of all fiduciaries who failed to submit an
24 inventory or settlement due according to law during the previous calendar month.

25 (2) The judge shall notify the fiduciaries reported under subsection (1) of this section
26 of their failure to file an inventory or settlement and shall warn them of the
27 penalties provided by law.

1 (3) If a fiduciary neglects or refuses to file an inventory or settlement~~account~~ when
2 due according to law, or when ordered by the court, the court shall notify the
3 fiduciary of his or her delinquency and fix a date when the~~such~~ inventory or
4 settlement shall~~account must~~ be filed.~~Unless there is pending in the circuit court~~
5 a suit to settle the estate such neglect or refusal shall be grounds for removal by the
6 court.]

7 (4) (a) If the fiduciary fails to file the inventory or settlement by the extended date
8 ordered by the court~~such account within thirty days after the date fixed in~~
9 said notice], the court shall enter an order for the fiduciary to appear before
10 the court to show cause why he or she should not be found to have breached
11 his or her fiduciary duty and be:
12 1. Removed from service as a fiduciary;
13 2. Found in contempt of court;
14 3. Fined in accordance with Section 30 of this Act;
15 4. Denied any~~no~~ allowance~~shall be made~~ for his or her services; or
16 5. Be subject to any other penalty authorized by law for breach of a
17 fiduciary duty~~unless the court enters upon its minutes an order that~~
18 such delay was justified].

19 (b) Failure to appear at a show cause hearing under this subsection shall result
20 in automatic removal from service as a fiduciary.

21 (5) The time for filing an inventory or settlement under this section shall not be
22 extended by more than thirty (30) days following a hearing:

23 (a) Unless there is pending in Circuit Court a suit to settle the estate; or
24 (b) Upon good cause shown by the fiduciary.

25 ➔ Section 15. KRS 395.300 is amended to read as follows:

26 An administrator de bonis non or any other successor appointed in the place of a personal
27 representative who has resigned~~, or~~ has been removed~~, or~~ whose letters have been

1 revoked, ~~or who~~ has ceased to act, or has died, may maintain an action against the
2 former personal representative and the sureties on the administration **surety bond, if any,**
3 and against the predecessor's real and personal representatives, for all damages or debts
4 arising from the maladministration or omission of the predecessor.

5 ➔Section 16. KRS 395.380 is amended to read as follows:

6 (1) The District Court of each county shall appoint a discreet, **qualified**~~fit~~ person to
7 act as administrator of decedents' estates of which there is no personal
8 representative, and as guardian of orphans who have no guardian.

9 (2) **The public administrator or guardian appointed under this section:**~~He~~

10 (a) Shall serve at the discretion of the District Court;~~He~~

11 (b)~~(3)~~ ~~He~~ Shall be sworn and execute bond with good surety to the state for
12 the faithful discharge of his **or her** duties;~~He~~ and

13 (c) **Upon being duly sworn and executing surety bond**~~when so sworn with bond~~
14 ~~so executed~~, shall be accepted by the court in every estate in which the public
15 administrator is appointed without the necessity of additional surety.

16 ➔Section 17. KRS 395.390 is amended to read as follows:

17 (1) (a) The District Court of a county which has a public administrator and guardian
18 shall, after the expiration of sixty (60) days from the death of the decedent,
19 order the public administrator and guardian to administer the estate of the
20 decedent where:

21 1. The surviving spouse and heirs waive their right to be appointed;~~He~~ or if
22 2. The surviving spouse does not nominate a suitable administrator;~~He~~ or in
23 the event;

24 3. Any of the persons designated in KRS 395.040 are unable;~~He~~ or found to
25 be incapable of handling or managing the estate;~~He~~ or
26 4. ~~He~~ From any other cause there is no personal representative.

27 (b) If there is no public administrator and guardian, the court shall **use its**

1 discretion to appoint an administrator~~[order the sheriff]~~ to administer the
2 estate.

3 (2) (a) The District Court shall also confide to the public administrator and guardian
4 the care and control of the persons and estates of all minors when it appears
5 that a minor has no testamentary guardian and no one will apply for
6 appointment, or serve, as guardian.

7 (b) If there is no public administrator and guardian, the court shall use its
8 discretion to appoint a guardian to serve under this subsection.

9 ➔ Section 18. KRS 395.400 is amended to read as follows:

10 (1) The public administrator and guardian or person appointed under Section 17 of
11 this Act~~[sheriff]~~ shall, by~~[virtue of his office and the]~~ order of the court, be the
12 administrator or administrator de bonis non, or if there is a will, administrator with
13 the will annexed, and shall have all the rights and powers~~[and]~~ be subjected to the
14 same liabilities~~,~~ and be governed by the same laws prescribed for administrators
15 and guardians.~~[If the sheriff is acting, his powers, rights, duties and liabilities shall~~
16 ~~not expire with his office of sheriff.]~~

17 (2) The court may, however, at any time, set aside the order entrusting the estate to the
18 public administrator and guardian or person appointed under Section 17 of this
19 Act~~[sheriff]~~ and allow an executor or administrator to qualify.

20 ➔ Section 19. KRS 395.410 is amended to read as follows:

21 (1) During the contest about the probate of a will, or when the court for any valid cause
22 is delayed in granting letters testamentary or of administration, it may appoint a
23 curator to collect and preserve the estate of the decedent until probate of the will is
24 granted, or until the cause for which the order was made is removed.

25 (2) When any resident of this state or person owning property in this state has been
26 absent from his or her last known place of residence for a period of one (1) year
27 and is not known to have been living during that time, the District Court of any

1 county in which a personal representative could be appointed for that person's estate
2 if deceased, may appoint a curator to collect and preserve the estate of that absent
3 person.

4 (3) The court shall take a surety bond payable to and with the Commonwealth[with
5 ~~good surety~~] from the person appointed curator. The surety bond shall be
6 subscribed to by the principal and sureties in the presence of a notary or as may
7 be otherwise authorized by the court, for the full and faithful performance of the
8 trust confided in him or her.

9 (4) The surety bond shall be kept by the clerk of the court in his or her office in a
10 record to be maintained for that purpose.

11 ➔Section 20. KRS 395.455 is amended to read as follows:

12 (1) Where the exemption for[~~of~~] the surviving spouse or children, alone[~~s~~] or together
13 with preferred claims~~s~~ paid by either the surviving spouse or children or by the
14 surviving spouse where the surviving spouse's[~~a widow or by the widower where~~
15 ~~the wife's~~] estate is legally liable for payment, equals or exceeds the amount of
16 distributable[~~probatable~~] assets, the court may order that administration of the
17 estate be dispensed with and the[~~such~~] assets be transferred to the surviving spouse
18 or, if there is no surviving spouse, to the surviving children, or to a person
19 designated by the[~~such~~] surviving spouse[~~to receive all or part of such assets~~]. The
20 court may[~~so~~] order that administration of the estate be dispensed with in both
21 testate and intestate estates[~~and~~] without requiring the renunciation of a will[~~or the~~
22 ~~giving of bond~~].

23 (2) If the court is satisfied that no distributable[~~probatable~~] estate will pass through the
24 hands of the personal representative, it may order that no letters of administration
25 be issued and in the case of a testate estate, order that the will be probated only.

26 (3) The court may order that the administration of the estate be dispensed with and
27 the assets transferred in favor of a preferred creditor or other person where:

1 (a) A surviving spouse or, if there is no surviving spouse, the surviving children
2 have[has] waived[his or her right to] the exemption accorded by law in favor
3 of a person who has paid preferred claims in an amount equaling[equalling]
4 or exceeding the amount of distributable[probatable] assets or who is legally
5 entitled to[such] payment; or

6 (b) [where]There is no surviving spouse or surviving children, and
7 another[such] person has paid preferred claims[made such payment] or is
8 legally entitled to payment[thereto, the court may order that the
9 administration of the estate be dispensed with and such assets transferred to
10 such person. The court may so order without requiring the giving of bond].

11 (4) For purpose of this section, the exemption for[of] the surviving spouse and
12 children shall be the[is such] exemption[as has been] created by KRS 391.030,
13 and preferred claims shall be[are] those listed in KRS 396.095 and in the order
14 listed[thereof].

15 ➔Section 21. KRS 395.470 is amended to read as follows:

16 (1) Administration of the estate of a person dying testate or intestate may be dispensed
17 with by agreement if:

18 (a) There are no debts owing by the estate;

19 (b) All beneficiaries[persons beneficially] entitled to the personal estate have
20 agreed in writing, under penalty of perjury, that there shall be no further
21 administration, and if applicable, have designated a trustee with power to
22 collect claims and demands;

23 (c) Advertisement has occurred as required in subsection (7) of this section, as
24 evidenced by an acknowledgment under penalty of perjury;

25 (d) Provision has been made for the state inheritance tax and the federal estate
26 tax, if any; and

27 (e) [Either]There are no claims or demands due the estate, if no trustee has been

1 ~~designated by agreement~~ for the written agreement to dispense with
2 administration designates a trustee with power to collect claims and
3 demands].

4 (2) (a) The written agreement required~~[provided]~~ in subsection (1)(b) of this section
5 shall be acknowledged under penalty of perjury by the beneficiaries; and
6 (b) The agreements of all beneficiaries shall be~~[parties and]~~ filed in the District
7 Court together with the motion~~[of the parties]~~ for an order dispensing with
8 administration by agreement.

9 (3) An agreement prescribed in subsection (1)(b) of this section shall be effective if it
10 is executed by a person who had authority to contract on behalf of a beneficiary
11 when signed.

12 (4) A motion to dispense with administration by agreement may be filed at any time
13 after:

14 (a) Probate of the will, if any;
15 (b) Appointment of a personal representative; and
16 (c) Advertisement for creditors as required under this section.

17 (5) If the court is satisfied by the agreements~~[affidavit or otherwise]~~ that the conditions
18 prescribed in subsection (1) of this section exist, the court~~[it]~~ shall enter an order
19 dispensing with any further administration by agreement.

20 (6) If the motion and the agreements~~[written agreement]~~ of the beneficiaries
21 designate~~[designates]~~ a trustee to collect claims or demands, the order shall confirm
22 the designation, and the person~~[so]~~ designated as the trustee shall have the same
23 right to sue for and collect claims and demands as~~[that]~~ an administrator appointed
24 under this chapter~~[has]~~.

25 (3) The District Court shall be satisfied that provision has been made for the state
26 inheritance tax and the United States estate tax].

27 (7) (a)~~(4)~~ Prior to moving to dispense with administration by agreement, the

1 beneficiaries[persons applying for an order dispensing with administration]
2 shall advertise for creditors of the estate[intestate] to appear and present
3 any[their] claims to some person at the county seat. The person and place
4 shall be designated in the advertisement.

5 **(b)** The advertisement shall also give notice of when, where, and by whom the
6 order dispensing with administration by agreement will be applied for.

7 **(c)** The advertisement shall be posted at the courthouse door for six (6) weeks[,]
8 and published pursuant to KRS Chapter 424.[The order dispensing with
9 administration shall not be granted until the persons applying for the order file
10 in the District Court the affidavit of one (1) of them showing that
11 advertisement for creditors has been made.]

12 **(8)(5)** The court may order that the beneficiaries[persons] applying for the order
13 dispensing with administration by agreement[shall], before the order is entered,
14 execute a surety[give] bond[with surety] in the amount of the personal estate for
15 the benefit of any creditors who, within six (6) months from the order dispensing
16 with administration by agreement, appear and file their claims with the court clerk.
17 This surety bond shall be approved by the District Court and shall run to the state
18 for the benefit of those creditors and be conditioned to be void if none of them files
19 a[his] claim with the clerk within six (6) months from the date of the order
20 dispensing with administration by agreement.

21 ➔Section 22. KRS 395.605 is amended to read as follows:

22 (1) Upon the[sworn] application of any fiduciary, under penalty of perjury, that the
23 fiduciary is the sole beneficiary of any estate, the court may dispense with the
24 requirements of this chapter regarding[periodic or final] settlement of fiduciaries'
25 accounts[and may dispense with the requirements of a surety for the fiduciary] and
26 shall accept from the fiduciary an informal final settlement if:

27 **(a)** [The informal settlement shall be made, under oath, by the fiduciary and

1 shall state that]The estate was solvent;[that]

2 (b) All legal claims and debts have been paid, or if not paid, the manner in which

3 the claims and debts have been provided for;

4 (c) [that, for final settlement,]The requirements of the inheritance, estate, or

5 similar death statutes have been met and the tax paid, if due and payable;

6 (d) [that]All court costs have been paid;

7 (e) The name of the attorney(s), if any, representing the fiduciary, and the amount

8 of the attorney's fee have been provided;[,] and

9 (f) [that]The beneficiary has received his or her share[. An informal settlement

10 may be filed at any time after expiration of six (6) months from the fiduciary's

11 appointment. Upon the filing of the informal final settlement, the court may

12 enter an order discharging the fiduciary, and his or her surety, if any. When a

13 settlement is effected in the informal manner, no notice to any person shall be

14 required nor shall the court be compelled to inquire into detailed items of

15 income or disbursements].

16 (2) (a) Upon application of any fiduciary, under penalty of perjury,[If a proposed

17 periodic or final settlement of a fiduciary is] accompanied by[a] verified

18 waivers[waiver] executed by all of the beneficiaries of an estate,[and] none of

19 whom is[the beneficiaries is] under a disability, the court shall accept from the

20 fiduciary an informal final settlement which meets the requirements of

21 subsection (1) of this section.

22 (b) Any beneficiary[Said beneficiaries] may request an accounting of the assets

23 of the estate prior to execution of the waiver.

24 (c) A[No] verified waiver shall not be required[need be obtained] from a

25 nonresiduary legatee who has received and receipted for his or her legacy,

26 and the canceled check or signed receipt attached to the proposed settlement

27 shall be[being] sufficient evidence of satisfaction.[The court may require the

1 ~~fiduciary to execute bond with or without surety to insure the application of~~
2 ~~the estate assets to the debts of the decedent.]~~

3 (3) An informal final settlement may be filed at any time after expiration of six (6)
4 months from the date of the fiduciary's appointment.

5 (4) The court shall not require notice to any person or a hearing prior to approval
6 and confirmation of an informal final settlement.

7 (5) Upon approval and confirmation of the informal final settlement, the court may
8 enter an order discharging the fiduciary, and his or her surety, if any.

9 (6) In the event that one (1) or more of the beneficiaries of the estate is under a
10 disability, the court may allow the filing of an informal final settlement if the court
11 is of the opinion that the best interests of the person under the disability would be
12 served.

13 ➔ Section 23. KRS 395.610 is amended to read as follows:

14 (1) Two (2) years after appointment and annually thereafter, unless otherwise provided
15 by law, every fiduciary as defined in KRS 395.001, other than a guardian or
16 conservator of a mentally disabled person, shall render an account of the execution
17 of his or her trust and file it with[to] the court by which he or she was appointed[,
18 including in the account an itemized statement of receipts and disbursements
19 supported by vouchers accompanying the account and a statement of all
20 investments on hand and changes in investments since the filing of his last account.
21 The settlements, when approved and confirmed by the court, shall be recorded and
22 indexed by the clerk, and the original and the vouchers carefully kept by him in his
23 office].

24 (2) A periodic settlement shall be filed until all trust assets and investments have
25 been fully distributed and all debts, costs, fees, and taxes have been paid or
26 accounted for.

27 (3) A periodic settlement shall identify all assets and investments of the trust estate

1 on hand, including a beginning and current value, and shall account for all
2 receipts and disbursements occurring since the last inventory or settlement with
3 supporting documentation.

4 **(4) Notwithstanding subsection (1) of this section** [An account shall be rendered by a
5 fiduciary], at any other time upon order of the court either on[upon] its own
6 motion, or upon the motion[that] of any person interested in the trust, for good
7 cause shown, a fiduciary shall file a periodic settlement that meets the
8 requirements of subsection (3) of this section and as otherwise ordered by the
9 court.

10 **(5) In addition to the requirements of subsection (3) of this section, all final**
11 settlements shall include:

12 **(a) A complete accounting**[on affidavit. At the expiration of his trust, the
13 fiduciary shall fully account] for and distribution of[pay over] the trust estate
14 assets and investments, including whether the distribution was:

15 **1. In kind and if so to whom; or**
16 **2. Liquidated for cash for payment of debts, costs of administration, or**
17 **pecuniary legacies;**

18 **(b) A**[to the person or persons entitled thereto. Every such account shall] list of all
19 unpaid creditors whose claims have been allowed and all creditors whose
20 claims have been disallowed;

21 **(c) Fees and commissions paid to the fiduciary and his or her attorney; and**
22 **(d) Provision for state inheritance tax and federal estate tax, if any.**

23 **(6)** No settlement[account] of a fiduciary, except of corporate fiduciaries under the
24 supervision of state or federal banking authorities, shall be approved until there are
25 exhibited to the court, for its examination, the security or securities shown in the
26 account as being in the hands of the fiduciary, or the certificate of a bank having
27 possession thereof or in which they have been deposited for safekeeping, and a

1 certified bank statement showing the funds to the credit of the trust.

2 **(7) The clerk of the court shall record all settlements that are approved and**
3 **confirmed by the court.**

4 **(8)[(2)]** Guardians and conservators of mentally disabled persons may be required to
5 render accountings to the court under the provisions of this section. Guardians and
6 conservators of mentally disabled persons shall comply with the reporting
7 requirements of KRS Chapter 387.

8 ➔Section 24. KRS 395.617 is amended to read as follows:

9 (1) A fiduciary may, prior to filing a periodic or final settlement and prior to a
10 distribution of assets, file with the court a proposed **periodic or final** settlement
11 **within the time prescribed for filing settlements in Section 23 of this Act.**

12 (2) The proposed settlement shall be set for hearing, and **in addition to the** notice given
13 as **provided in Section 26 of this Act as** for any other settlement, **the fiduciary shall**
14 **notify all**~~[except that]~~ beneficiaries of the estate, other than nonresiduary legatees
15 who have received and receipted for their legacies, ~~[shall also receive notice from~~
16 ~~the fiduciary]~~ by certified mail, return receipt requested, at least twenty (20) days
17 prior to the hearing date.

18 (3) The proposed settlement shall **comply with the requirements for periodic and final**
19 **settlements in Section 23 of this Act, except the proposed settlement**~~[set forth all~~
20 ~~assets and disbursements previously made.]~~ shall **also** indicate **any** assets~~[on hand~~
21 ~~and]~~ anticipated to be received subsequent to **filings**~~[the date of]~~ the proposed
22 settlement and prior to the filing of the periodic or final settlement **and the**
23 **proposed distribution of all or a portion of the assets. Documentation supporting**
24 **receipts and past disbursements shall not be required to be filed with the proposed**
25 **settlement unless ordered by the court if exceptions are filed]**, and shall further
26 indicate the manner in which the remaining and anticipated assets are proposed to
27 be distributed. The proposal may set forth which assets are to be distributed in kind

1 and to whom and which assets may be liquidated for distribution of cash or for
2 payment of debts, costs of administration, or pecuniary legacies. The proposal may
3 also indicate claims proposed to be allowed or disallowed, in whole or in part, and
4 may also indicate fees and commissions proposed to be paid to the fiduciary and his
5 attorney. The inclusion of evidence and vouchers to accompany the proposal shall
6 not be necessary unless required by the court upon exceptions filed].

7 (4) At the hearing, if no exceptions are filed, the proposal, if made according to law,
8 shall be approved. If exceptions are filed, other evidence besides that reported may
9 be heard, and the court shall, upon the whole case, reject, confirm, alter, or amend
10 the proposal.

11 (5) Following the entry of an order approving, confirming, or amending the proposed
12 settlement[of approval or of an order of amendment], the fiduciary shall disburse
13 the assets in accordance with the order[therewith]. Following the distribution, the
14 fiduciary shall file a settlement accompanied by documentation[evidence and
15 vouchers] showing that distribution was effected in conformity with the[court]
16 order approving, confirming, or amending[. If it appears to the court that the
17 distribution was in conformity, the court shall confirm the settlement and, if the
18 settlement is final, discharge the fiduciary and his surety without further hearing or
19 notice to any person].

20 (6) [(2)] An aggrieved party may, no later than thirty (30) days from the entry of the
21 order upon the proposed settlement, institute an adversary proceeding in Circuit
22 Court pursuant to KRS 24A.120(2).

23 ➔Section 25. KRS 395.620 is amended to read as follows:

24 (1) The District Judge shall review a periodic or final settlement filed by a fiduciary,
25 accompanied by documentation showing receipts, payments, and distribution.
26 (2) If the settlement is not submitted as provided in subsection (5) of Section 24 of
27 this Act and otherwise found by the court to be complete, the court shall direct the

1 clerk of the court to [make a written report of the settlement, showing each item of
2 debit and credit, and the general result, and return it, with all evidence heard and
3 vouchers filed, to the Circuit Clerk. The clerk shall note it of record, and indorse on
4 it the time of filing, and] set a date for a hearing on the settlement and give notice
5 as required in Section 26 of this Act [report].

6 (3)[(2)] If the settlement is found to be [A hearing on a settlement filed] in conformity
7 with an order approving, confirming, or amending a [approved] proposed
8 settlement made under KRS 395.617, the court shall confirm the settlement
9 without further hearing or notice to any person and, if the settlement is final,
10 discharge the fiduciary and his or her surety, if any [shall not be necessary].

11 ➤Section 26. KRS 395.625 is amended to read as follows:

12 (1) Except as provided in subsection (5) of this section, not less than ten (10) days
13 prior to the date of the settlement hearing under Section 25 of this Act, the clerk of
14 the court shall publish [cause] notice of the [filing of a] settlement [to be published]
15 pursuant to KRS Chapter 424.

16 (2) The notice required under subsection (1) of this section shall include the:

17 (a) [, stating the] Name of the fiduciary; [, the]
18 (b) Name of the trust; [, the]
19 (c) Nature of the account; and [the]
20 (d) Date of hearing, with a statement that exceptions shall [must] be filed before
21 the hearing. [that time; except that]

22 (3) (a) Notwithstanding the publication requirement under subsection (1) of this
23 section, with the court's approval the fiduciary may, in lieu of the [such]
24 publication, send a written notice of the hearing [thereof] to all unpaid
25 creditors and distributees; [, which]

26 (b) The notice shall be mailed at least ten (10) days before the [said] date of
27 hearing; and [.]

1 a new bond, or additional surety on the old bond[one], is required, and upon the
2 failure of the fiduciary to give the required bond or surety within a reasonable time
3 fixed by the court, the court shall remove the fiduciary[him].

4 ➔Section 29. KRS 395.645 is amended to read as follows:

5 When the court directs, settlements of the accounts of fiduciaries made before and
6 reported by any trial commissioner, and all settlements[reports] of estates or funds
7 received or disbursed, under order of the court, by its trial commissioner, after they have
8 been confirmed by the court, shall be filed in the court record with the documentation
9 showing receipts, payments, and distributions[recorded by the clerk of the court in a
10 book to be provided for that purpose. The vouchers accompanying the settlements or
11 reports shall not be recorded].

12 ➔Section 30. KRS 395.990 is amended to read as follows:

13 Any fiduciary failing, without good cause[therefor], to file his or her inventory or
14 account as required by notice given pursuant to KRS 395.255 shall be fined by the court,
15 for each day he or she neglects or refuses after the date fixed in the[said] notice, the sum
16 of one hundred[ten] dollars (\$100)[\$10], to be collected by rule or other process.

17 ➔Section 31. KRS 199.520 is amended to read as follows:

18 (1) (a) After hearing the case, the court shall enter a judgment of adoption[,] if it
19 finds that:

- 20 1. The facts stated in the petition were established;
- 21 2. [that] All legal requirements, including jurisdiction, relating to the
22 adoption have been complied with;
- 23 3. [that] The petitioners are of good moral character, of reputable standing
24 in the community and of ability to properly maintain and educate the
25 child; and
- 26 4. [that] The best interest of the child will be promoted by the adoption and
27 that the child is suitable for adoption.

1 (b) In the judgment, the name of the child shall be changed to conform with the
2 prayer of the petition. The judgment and all orders required to be entered and
3 recorded in the order book, including the caption, shall contain only the names
4 of the petitioners and the proposed adopted name of the child, without any
5 reference to its former name or the names of its birth parents.

6 (2) (a) Upon entry of the judgment of adoption, from and after the date of the filing
7 of the petition, the child shall be:
8 1. Deemed the child of petitioners; and
9 2. Except as provided in paragraph (b) of this subsection, [shall be
10 considered for purposes of inheritance and succession and] for all[
11 other] legal considerations, the natural child of the parents adopting it
12 the same as if born of their bodies.

13 (b) For purposes of inheritance and succession, the child shall only be deemed
14 the child of the petitioners if the child was adopted and resided in the
15 household of the petitioners prior to eighteen (18) years of age.

16 (c) Upon granting an adoption, all legal relationship between the adopted child
17 and the biological parents shall be terminated except the relationship of a
18 biological parent who is the spouse of an adoptive parent.

19 (3) The clerk of the court shall notify the cabinet of any action of the court with respect
20 to entering a judgment granting an adoption, the amendment of an adoption, or the
21 denial or dismissal of a petition for adoption.

22 (4) (a) The cabinet or other child-placing agency shall provide to the adoptive
23 parents and the Circuit Court, [health history and other nonidentifying
24 background information of biological parents and blood relatives of the
25 adopted person,] in writing, on a standardized form[.] provided by the cabinet,
26 the health history and other nonidentifying background information of
27 biological parents and blood relatives of the adopted person to the extent [if]

1 known, ~~shall be given by the cabinet or child placing agency which has the~~
2 ~~information to the adoptive parents and to the Circuit Court~~ not later than the
3 date of finalization of the adoption proceedings. This information shall
4 include the results of any tests for HIV or hepatitis A, B, and C; and
5 (b) The information provided for in paragraph (a) of this subsection, if known,
6 shall, upon the request in person or in writing of the adult adopted person, be
7 made available in writing to that person. The information shall not be made
8 available if it ~~is of a nature that~~ would ~~tend to~~ identify the biological
9 parents of the adopted person, except as provided in KRS 199.570 and
10 199.572.

11 ➔ SECTION 32. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
12 READ AS FOLLOWS:

13 As used in Sections 32 to 40 of this Act:

14 (1) "Electronic" means relating to technology having electrical, digital, magnetic,
15 wireless, optical, electromagnetic, or similar capabilities;

16 (2) "Electronic presence" means the relationship of two (2) or more individuals in
17 different locations communicating in real time to the same extent as if the
18 individuals were physically present in the same location;

19 (3) "Electronic will" means a will executed electronically in compliance with the
20 requirements of Section 35 of this Act;

21 (4) "Record" means information that is inscribed on a tangible medium or that is
22 stored in an electronic or other medium and is retrievable in perceivable form;

23 (5) "Sign" means, with present intent to authenticate or adopt a record:

24 (a) To execute or adopt a tangible symbol; or

25 (b) To affix to or logically associate with the record an electronic symbol or
26 process;

27 (6) "State" has the same meaning as in Section 118 of this Act; and

1 (7) "Will" has the same meaning as in Section 125 of this Act.

2 ➔ SECTION 33. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
3 READ AS FOLLOWS:

4 An electronic will is a will for all purposes of the law of this Commonwealth. The law
5 of this Commonwealth applicable to wills and principles of equity apply to an
6 electronic will, except as modified by Sections 32 to 40 of this Act.

7 ➔ SECTION 34. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
8 READ AS FOLLOWS:

9 A will executed electronically but not in compliance with Section 35 of this Act is an
10 electronic will if executed in compliance with the law of the jurisdiction where the
11 testator is:

12 (1) Physically located when the will is signed; or

13 (2) Domiciled or residing when the will is signed or when the testator dies.

14 ➔ SECTION 35. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) Subject to subsection (3) of Section 37 of this Act, an electronic will shall be:

17 (a) A record that is readable as text at the time of signing under paragraph (b)
18 of this subsection;

19 (b) Signed by:

20 1. The testator; or

21 2. Another individual in the testator's name, in the testator's physical
22 presence, and by the testator's direction; and

23 (c) Signed in the physical or electronic presence of the testator by at least two
24 (2) individuals, each of whom is a resident of this Commonwealth and
25 physically located in this Commonwealth at the time of signing and within a
26 reasonable time after witnessing:

27 1. The signing of the will under paragraph (b) of this subsection; or

1 2. *The testator's acknowledgment of the signing of the will under*
2 *paragraph (b) of this subsection or acknowledgment of the will.*

3 (2) *An electronic symbol of a testator or witness shall consist of an electronic image*
4 *of the testator's or witness's signature in his or her handwriting affixed to the*
5 *electronic will.*

6 (3) *A testator's intent that the record under subsection (1)(a) of this section be the*
7 *testator's electronic will may be established by extrinsic evidence.*

8 → SECTION 36. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) *An electronic will may revoke all or part of a previous will.*

11 (2) *All or part of an electronic will may be revoked by:*

12 (a) *A subsequent will that revokes all or part of the electronic will expressly or*
13 *by inconsistency; or*

14 (b) *A physical act, if it is established by clear and convincing evidence that the*
15 *testator, with the intent of revoking all or part of the will, performed the act*
16 *or directed another individual who performed the act in the testator's*
17 *physical presence.*

18 → SECTION 37. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) *An electronic will may be simultaneously executed, attested, and made self-*
21 *proving by acknowledgment of the testator and affidavits of witnesses.*

22 (2) *The acknowledgment and affidavits under subsection (1) of this section shall be:*

23 (a) *Made before a notary public authorized to administer oaths under the law*
24 *of the state in which execution occurs or, if fewer than two (2) attesting*
25 *witnesses are physically present in the same location as the testator at the*
26 *time of signing under subsection (1)(b) of Section 35 of this Act, before a*
27 *notary public authorized under KRS 423.455;*

1 **(b) Evidenced by the notary public's certificate under official seal affixed to or**
2 **logically associated with the electronic will; and**

3 **(c) In a form substantially similar to subsections (1) and (2) of KRS 394.225.**

4 **(3) A signature physically or electronically affixed to an affidavit that is affixed to or**
5 **logically associated with an electronic will under Sections 32 to 40 of this Act is**
6 **deemed a signature of the electronic will under subsection (1) of Section 35 of**
7 **this Act.**

8 ➔ SECTION 38. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
9 READ AS FOLLOWS:

10 **An individual may create a certified paper copy of an electronic will by affirming under**
11 **penalty of perjury that a paper copy of the electronic will is a complete, true, and**
12 **accurate copy of the electronic will. If the electronic will is made self-proving, the**
13 **certified paper copy of the will shall include the self-proving affidavits.**

14 ➔ SECTION 39. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
15 READ AS FOLLOWS:

16 **In applying and construing Sections 32 to 40 of this Act, consideration shall be given**
17 **to the need to promote uniformity of the law with respect to its subject matter among**
18 **states that enact it.**

19 ➔ SECTION 40. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
20 READ AS FOLLOWS:

21 **Sections 32 to 40 of this Act shall apply to the will of a decedent who dies on or after**
22 **the effective date of this Act.**

23 ➔ SECTION 41. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
24 READ AS FOLLOWS:

25 **As used in Sections 41 to 55 of this Act:**

26 **(1) "Electronic" has the same meaning as in Section 32 of this Act;**

27 **(2) "Electronic record" means a record created, generated, sent, communicated,**

1 received, or stored by electronic means;

2 (3) "Electronic signature" means an electronic symbol or process attached to or
3 logically associated with a record and executed or adopted by a person with the
4 intent to sign the record;

5 (4) "Information" includes data, text, images, codes, computer programs, software,
6 and databases;

7 (5) "Nontestamentary estate planning document" means a record relating to estate
8 planning that is readable as text at the time of signing and is not a will or
9 contained in a will. The term:

10 (a) Includes a record readable as text at the time of signing that creates,
11 exercises, modifies, releases, or revokes:

12 1. A trust instrument;

13 2. A trust power that under the terms of the trust requires a signed
14 record;

15 3. A certification of a trust under KRS 386B.10-120;

16 4. A power of attorney that is durable under KRS Chapter 457;

17 5. An agent's certification under KRS 457.430;

18 6. A power of appointment;

19 7. An advance directive or medical order for scope of treatment under
20 KRS 311.621 to 311.643;

21 8. A record directing disposition of an individual's body after death;

22 9. A nomination of a guardian for the signing individual;

23 10. A nomination of a guardian for a minor child or disabled adult child;

24 11. An advance directive for mental health treatment under KRS
25 202A.420 to 202A.432;

26 12. A community property survivorship agreement;

27 13. A disclaimer under KRS 394.035 or KRS 394.610 to 394.670; and

1 14. Any other record intended to carry out an individual's intent
2 regarding property or health care while incapacitated or on death; and
3 (b) Does not include a deed of real property or certificate of title for a motor
4 vehicle, watercraft, or aircraft;
5 (6) "Person" has the same meaning as in Section 118 of this Act;
6 (7) "Power of attorney" means a record that grants authority to an agent in place of
7 the principal, even if the term is not used in the record;
8 (8) "Record" has the same meaning as in Section 32 of this Act;
9 (9) "Security procedure" means a procedure to verify that an electronic signature,
10 record, or performance is that of a specific person or to detect a change or error
11 in an electronic record. The term includes a procedure that uses an algorithm,
12 code, identifying word or number, encryption, or callback or other
13 acknowledgment procedure;
14 (10) "Settlor" has the same meaning as in Section 118 of this Act;
15 (11) "Sign" has the same meaning as in Section 32 of this Act;
16 (12) "State" has the same meaning as in Section 118 of this Act;
17 (13) "Terms of a trust" has the same meaning as in Section 118 of this Act;
18 (14) "Trust instrument" has the same meaning as in Section 118 of this Act; and
19 (15) "Will" has the same meaning as in Section 125 of this Act.

20 ➔ SECTION 42. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
21 READ AS FOLLOWS:

22 Sections 41 to 55 of this Act shall be construed and applied to:

23 (1) Facilitate electronic estate planning documents and signatures consistent with
24 other law; and
25 (2) Be consistent with reasonable practices concerning electronic documents and
26 signatures and continued expansion of those practices.

27 ➔ SECTION 43. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Except as provided in subsection (2) of this section, Sections 41 to 55 of this Act
3 apply to an electronic nontestamentary estate planning document and an
4 electronic signature on a nontestamentary estate planning document.

5 (2) Sections 41 to 55 of this Act do not apply to a nontestamentary estate planning
6 document if the document precludes use of an electronic record or electronic
7 signature.

8 (3) Sections 41 to 55 of this Act do not affect the validity of an electronic record or
9 electronic signature that is valid under:

10 (a) The Uniform Electronic Transactions Act, KRS 369.101 to 369.120; or
11 (b) The Uniform Electronic Wills Act, Sections 32 to 40 of this Act.

12 ➔ SECTION 44. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
13 READ AS FOLLOWS:

14 The law of this Commonwealth and principles of equity applicable to a
15 nontestamentary estate planning document apply to an electronic nontestamentary
16 estate planning document except as modified by Sections 41 to 55 of this Act.

17 ➔ SECTION 45. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
18 READ AS FOLLOWS:

19 (1) Sections 41 to 55 of this Act do not require a nontestamentary estate planning
20 document or signature on a nontestamentary estate planning document to be
21 created, generated, sent, communicated, received, stored, or otherwise processed
22 or used by electronic means or in electronic form.

23 (2) A person is not required to have a nontestamentary estate planning document in
24 electronic form or signed electronically even if the person previously created or
25 signed a nontestamentary estate planning document by electronic means.

26 (3) A person may not waive the provisions of this section.

27 ➔ SECTION 46. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) A nontestamentary estate planning document or signature on a nontestamentary
3 estate planning document shall not be denied legal effect or enforceability solely
4 because it is in electronic form.

5 (2) If any other law of this Commonwealth requires a signature on a
6 nontestamentary estate planning document to be in writing, an electronic record
7 of the document satisfies the requirement.

8 (3) If other law of this Commonwealth requires a signature on a nontestamentary
9 estate planning document, an electronic signature satisfies the requirement.

10 ➔ SECTION 47. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

11 READ AS FOLLOWS:

12 (1) An electronic nontestamentary estate planning document or electronic signature
13 on an electronic nontestamentary estate planning document is attributable to a
14 person if it was the act of the person. The act of the person may be shown in any
15 manner, including by showing the efficacy of a security procedure applied to
16 determine the person to which the electronic record or electronic signature was
17 attributable.

18 (2) The effect of attribution to a person under subsection (1) of this section of a
19 document or signature is determined from the context and surrounding
20 circumstances at the time of its creation, execution, or adoption and as provided
21 by other law.

22 ➔ SECTION 48. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

23 READ AS FOLLOWS:

24 If other law of this Commonwealth requires a signature or record to be notarized,
25 acknowledged, verified, or made under oath, the requirement is satisfied with respect to
26 an electronic nontestamentary estate planning document if an individual authorized to
27 perform the notarization, acknowledgment, verification, or oath attaches or logically

1 associates the individual's electronic signature on the document together with all other
2 information required to be included under the other law.

3 ➔ SECTION 49. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) If any other law of this Commonwealth bases the validity of a nontestamentary
6 estate planning document on whether it is signed, witnessed, or attested by
7 another individual, the signature, witnessing, or attestation of that individual may
8 be electronic.

9 (2) If other law of this Commonwealth bases the validity of a nontestamentary estate
10 planning document on whether it is signed, witnessed, or attested by another
11 individual in the presence of the individual signing the document, the presence
12 requirement is satisfied if the individuals are in each other's electronic presence.

13 ➔ SECTION 50. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) Except as provided in subsection (2) of this section, if other law of this
16 Commonwealth requires an electronic nontestamentary estate planning
17 document to be retained, transmitted, copied, or filed, the requirement is satisfied
18 by retaining, transmitting, copying, or filing an electronic record that:

19 (a) Accurately reflects the information in the document after it was first
20 generated in final form as an electronic record or under Section 51 of this
21 Act; and

22 (b) Remains accessible to the extent required by the other law.

23 (2) A requirement under subsection (1) of this section to retain a record does not
24 apply to information the sole purpose of which is to enable the record to be sent,
25 communicated, or received.

26 (3) A person may satisfy subsection (1) of this section by using the services of
27 another person.

1 (4) If other law of this Commonwealth requires a nontestamentary estate planning
2 document to be presented or retained in its original form, or provides
3 consequences if a nontestamentary estate planning document is not presented or
4 retained in its original form, an electronic record retained in accordance with
5 subsection (1) of this section satisfies the other law.

6 (5) This section does not preclude a governmental agency from specifying
7 requirements for the retention of a record subject to the agency's jurisdiction in
8 addition to those in this section. In this subsection, "governmental agency"
9 means an executive, legislative, or judicial agency, department, board,
10 commission, authority, institution, or instrumentality of the federal government
11 or of a state or of a county, municipality, or other political subdivision of a state.

12 ➔ SECTION 51. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
13 READ AS FOLLOWS:

14 An individual may create a certified paper copy of an electronic nontestamentary estate
15 planning document by affirming under penalty of perjury that the paper copy is a
16 complete and accurate copy of the document.

17 ➔ SECTION 52. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
18 READ AS FOLLOWS:

19 Evidence relating to an electronic nontestamentary estate planning document or an
20 electronic signature on the document may not be excluded in a proceeding solely
21 because it is in electronic form.

22 ➔ SECTION 53. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
23 READ AS FOLLOWS:

24 In applying and construing Sections 41 to 55 of this Act, a court shall consider the
25 promotion of uniformity of the law among the jurisdictions that enact it.

26 ➔ SECTION 54. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
27 READ AS FOLLOWS:

1 Sections 41 to 55 of this Act modify, limit, or supersede the Electronic Signatures in
2 Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., as amended, but do
3 not modify, limit, or supersede 15 U.S.C. sec. 7001(c), or authorize electronic delivery
4 of any of the notices described in 15 U.S.C. sec. 7003(b).

5 ➔SECTION 55. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
6 READ AS FOLLOWS:

7 Sections 41 to 55 of this Act apply to an electronic nontestamentary estate planning
8 document created, signed, generated, sent, received, or stored before, on, or after the
9 effective date of this Act.

10 ➔Section 56. KRS 140.070 is amended to read as follows:

11 The tax upon transfers of property as defined in the preceding sections of this chapter
12 shall be at the following rates:

13 (1) Class A. In case the transfer is to or for the benefit of a parent, stepparent,
14 surviving spouse, child by blood, stepchild, child adopted during infancy, child
15 adopted during adulthood who was reared by the decedent during infancy or a
16 grandchild who is the issue of a child by blood, the issue of a stepchild, the issue of
17 a child adopted during adulthood who was reared by the decedent during infancy,
18 the issue of a child adopted during infancy, brother, sister, or brother or sister of the
19 half blood, the tax shall be[.] subject to the provisions of KRS 140.080.[, shall be]:

20 — On its value not exceeding \$20,000 2%
21 — On its value exceeding \$20,000, but not exceeding \$30,000 3%
22 — On its value exceeding \$30,000, but not exceeding \$45,000 4%
23 — On its value exceeding \$45,000, but not exceeding \$60,000 5%
24 — On its value exceeding \$60,000, but not exceeding \$100,000 6%
25 — On its value exceeding \$100,000, but not exceeding \$200,000 7%
26 — On its value exceeding \$200,000, but not exceeding \$500,000 8%
27 — On its value exceeding \$500,000 10%]

1 (2) Class B. In case the transfer is to or for the benefit of a nephew, niece, or a nephew
2 or niece of the half blood, daughter-in-law, son-in-law, aunt or uncle, or a great-
3 grandchild who is the grandchild of a child by blood, of a stepchild or of a child
4 adopted during infancy, the tax shall be[,] subject to the provisions of KRS
5 140.080. [, shall be:
6

6 On its value not exceeding \$10,000 4%
7 On its value exceeding \$10,000, but not exceeding \$20,000 5%
8 On its value exceeding \$20,000, but not exceeding \$30,000 6%
9 On its value exceeding \$30,000, but not exceeding \$45,000 8%
10 On its value exceeding \$45,000, but not exceeding \$60,000 10%
11 On its value exceeding \$60,000, but not exceeding \$100,000 12%
12 On its value exceeding \$100,000, but not exceeding \$200,000 14%
13 On its value exceeding \$200,000 16%]

14 (3) Class C. In case the transfer is to or for the benefit of any educational, religious, or
15 other institutions, societies, or associations, or to any cities, towns, or public
16 institutions not exempted by KRS 140.060, or to any person not included in either
17 Class A or Class B, the tax, subject to the provisions of KRS 140.080 shall be:

18 On its value not exceeding \$10,000 6%
19 On its value exceeding \$10,000, but not exceeding \$20,000 8%
20 On its value exceeding \$20,000, but not exceeding \$30,000 10%
21 On its value exceeding \$30,000, but not exceeding \$45,000 12%
22 On its value exceeding \$45,000, but not exceeding \$60,000 14%
23 On its value exceeding \$60,000 16%

24 ➔Section 57. KRS 140.080 is amended to read as follows:

25 (1) The following exemptions chargeable against the lowest bracket or brackets of
26 inheritable interests shall be free from any tax under the preceding provisions of
27 this chapter:

1 (a) Surviving spouse, total inheritable interest. [Effective as to decedents dying
2 after August 1, 1985,] Notwithstanding anything in this chapter to the
3 contrary, if the decedent's personal representative (or trustee or transferee,
4 absent a personal representative) shall so elect, the spouse's inheritable
5 interest shall include the entire value of any trust or life estate which is in a
6 form that qualifies for the federal estate tax marital deductions under 26
7 U.S.C. sec. [section] 2056(b)(5) or [2056(b)](7) [of the Internal Revenue Code
8 of 1954], as amended through December 31, 1984, regardless of whether or
9 not the federal estate tax marital deduction is elected by the decedent's
10 personal representative. To be valid, the election referred to in the sentence
11 immediately preceding must be made in the form prescribed by the
12 Department of Revenue and must be filed on or before the due date of the tax
13 return, including [(plus) extensions,] or with the first tax return filed,
14 whichever last occurs;

15 (b) [Class A beneficiaries as defined in KRS 140.070, other than the surviving
16 spouse, of estates of decedents dying prior to July 1, 1995, as follows:
17 1. Infant child by blood or adoption, \$20,000;
18 2. Child by blood who has been declared mentally disabled by a court of
19 competent jurisdiction, \$20,000;
20 3. Child adopted during infancy who has been declared mentally disabled
21 by a court of competent jurisdiction, \$20,000; or a
22 4. Child adopted during adulthood who was reared by the decedent during
23 infancy and who has been declared mentally disabled by a court of
24 competent jurisdiction, \$20,000;
25 5. Parent, \$5,000;
26 6. Child by blood, \$5,000;
27 7. Stepchild, \$5,000;

- 1 8. ~~Child adopted during infancy, \$5,000;~~
- 2 9. ~~Child adopted during adulthood who was reared by the decedent during~~
- 3 ~~infancy, \$5,000; or a~~
- 4 10. ~~Grandchild who is the issue of a child by blood, the issue of a stepchild,~~
- 5 ~~the issue of a child adopted during infancy or the issue of a child~~
- 6 ~~adopted during adulthood who was reared by the decedent during~~
- 7 ~~infancy, \$5,000;~~
- 8 ~~(e)}~~ Class A beneficiaries as defined in KRS 140.070, ~~other than the surviving~~
- 9 ~~spouse, of estates of decedents dying on or after July 1, 1995, shall be as~~
- 10 ~~follows:~~
- 11 1. ~~For decedents dying between July 1, 1995, and June 30, 1996, the~~
- 12 ~~greater of the exemption established pursuant to paragraph (1)(b) of this~~
- 13 ~~section or one fourth (1/4) of each beneficiary's inheritable interest;~~
- 14 2. ~~For decedents dying between July 1, 1996, and June 30, 1997, the~~
- 15 ~~greater of the exemption established pursuant to paragraph (1)(b) of this~~
- 16 ~~section or one half (1/2) of each beneficiary's inheritable interest;~~
- 17 3. ~~For decedents dying between July 1, 1997, and June 30, 1998, the~~
- 18 ~~greater of the exemption established pursuant to paragraph (1)(b) of this~~
- 19 ~~section or three fourths (3/4) of each beneficiary's inheritable interest;~~
- 20 ~~and~~
- 21 4. ~~For each decedent dying after June 30, 1998,} each beneficiary's total~~
- 22 ~~inheritable interest;~~
- 23 ~~(c)(d)}~~ All ~~persons of~~ Class B **beneficiaries as defined in**~~, under~~ KRS
- 24 ~~140.070, as follows:[]~~
- 25 1. **For decedents dying prior to the effective date of this Act, \$1,000;{**
- 26 ~~and}~~
- 27 2. **For decedents dying on or after the effective date of this Act, each**

beneficiary's total inheritable interest; and

2 (d)(e) All ~~persons of~~ Class C beneficiaries as defined in, ~~under~~ KRS
3 140.070, \$500.

4 (2) If the decedent was not a resident of this state, the exemption shall be the same
5 proportion of the allowable exemption in the case of residents that the property
6 taxable by this state bears to the whole property transferred by the decedent.

7 ➔Section 58. KRS 64.012 is amended to read as follows:

8 (1) The county clerk shall receive for the following services the following fees:

9 (a) 1. Recording and indexing of a:

- a. Deed of trust or assignment for the benefit of creditors;
- b. Deed;
- c. Deed of assignment;
- d. File-stamped copy of documents set forth in KRS 14A.2-040(1) or (2) that have been filed first with the Secretary of State;
- e. Real estate option;
- f. Power of attorney;
- g. Revocation of power of attorney;
- h. Lease which is recordable by law;
- i. Deed of release of a mortgage or lien under KRS 382.360;
- j. United States lien;
- k. Release of a United States lien;
- l. Release of any recorded encumbrance other than state liens;
- m. Lis pendens notice concerning proceedings in bankruptcy;
- n. Lis pendens notice;
- o. Mechanic's and artisan's lien under KRS Chapter 376;
- p. Assumed name;
- q. Notice of lien issued by the Internal Revenue Service;

1 and

8	(b) For noting a security interest on a certificate of title pursuant to KRS Chapter 186A	\$12.00
9		
10	(c) For filing the release of collateral under a financing statement and noting same upon the face of the title pursuant to KRS Chapter 186 or 186A	\$5.00
11		
12	(d) Filing or recording state tax or other state liens	\$5.00
13		
14	(e) Filing release of a state tax or other state lien	\$5.00
15		
16	(f) Acknowledging or notarizing any deed, mortgage, power of attorney, or other written instrument required by law for recording and certifying same	\$5.00
17		
18	(g) Recording plats, maps, and surveys, not exceeding 24 inches by 36 inches, per page	\$40.00
19		
20	(h) Recording a bond, for each bond	\$10.00
21		
22	(i) Each bond required to be taken or prepared by the clerk	\$4.00
23		
24	(j) Copy of any bond when ordered	\$3.00
25		
26	(k) Administering an oath and certificate thereof	\$5.00
27		
28	(l) Issuing a license for which no other fee is fixed by law	\$8.00
29		
30	(m) Issuing a solicitor's license	\$15.00
31		
32	(n) Marriage license, indexing, recording, and issuing certificate thereof	\$26.50
33		
34	(o) Every order concerning the establishment, changing, closing, or	

1	discontinuing of roads, to be paid out of the county levy when	
2	the road is established, changed, closed, or discontinued, and by	
3	the applicant when it is not	\$3.00
4	(p) Registration of licenses for professional persons required to register	
5	with the county clerk	\$10.00
6	(q) Certified copy of any record	\$5.00
7	Plus fifty cents (\$.50) per page after three (3) pages	
8	(r) Filing certification required by KRS 65.070(2)(a)	\$5.00
9	(s) Filing notification and declaration and petition of candidates	
10	for Commonwealth's attorney.....	\$200.00
11	(t) Filing notification and declaration and petition of candidates for county	
12	and independent boards of education	\$20.00
13	(u) Filing notification and declaration and petition of candidates for	
14	boards of soil and water conservation districts	\$20.00
15	(v) Filing notification and declaration and petition of candidates for	
16	other office	\$50.00
17	(w) Filing declaration of intent to be a write-in candidate for office	\$50.00
18	(x) Filing petitions for elections, other than nominating petitions	\$50.00
19	(y) Notarizing any signature, per signature	\$2.00
20	(z) Filing bond for receiving bodies under KRS 311.310	\$10.00
21	(aa) Noting the assignment of a certificate of delinquency and recording	
22	and indexing the encumbrance under KRS 134.126 or 134.127	\$27.00
23	(ab) Filing a going-out-of-business permit under KRS 365.445	\$50.00
24	(ac) Filing a renewal of a going-out-of-business permit under KRS 365.445	\$50.00
25	(ad) Filing and processing a transient merchant permit under KRS 365.680	\$.25.00
26	(ae) Recording and indexing a real estate mortgage:	
27	1. For a mortgage that does not exceed thirty (30) pages.....	\$63.00

1 2. And, for a mortgage that exceeds thirty (30) pages, for each additional
2 page\$3.00

3 (af) Filing or recording a lien or release of lien by a consolidated local
4 government, urban-county government, unified local government, or city of
5 any class\$20.00

6 (2) The sixty-three dollar (\$63) fee imposed by subsection (1)(ae) of this section shall
7 be divided as follows:

8 (a) Fifty-seven dollars (\$57) shall be retained by the county clerk; and

9 (b) Six dollars (\$6) shall be paid to the affordable housing trust fund established
10 in KRS 198A.710 and shall be remitted by the county clerk within ten (10)
11 days following the end of the quarter in which the fee was received. Each
12 remittance to the affordable housing trust fund shall be accompanied by a
13 summary report on a form prescribed by the Kentucky Housing Corporation.

14 (3) (a) For services related to the permanent storage of records listed in paragraphs
15 (a), (g), (n), and (ae) of subsection (1) of this section, the clerk shall be
16 entitled to receive a reimbursement of ten dollars (\$10).

17 (b) In counties or a county containing an urban-county government, charter
18 county government, or unified local government:

19 1. This fee shall:

20 a. Not be paid annually to the fiscal court under KRS 64.152;

21 b. Not be paid to the Finance and Administration Cabinet under KRS
22 64.345;

23 c. Be accumulated and transferred to the fiscal court or the legislative
24 body of an urban-county government on a monthly basis within
25 ten (10) days following the end of the month;

26 d. Be maintained by the fiscal court or the legislative body of an
27 urban-county government in a separate bank account and

1 (c) In a county containing a consolidated local government:

2 1. The fee shall not:

3 a. Be paid to the Finance and Administration Cabinet under KRS

4 64.345; or

5 b. Lapse to the general fund of the consolidated local government.

6 2. The moneys accumulated from this fee shall be held in perpetuity by the

7 county clerk in a separate fund to be used exclusively for:

8 a. Equipment related to the permanent storage of and access to

9 records, including deed books, binders, shelves, microfilm

10 equipment, and fireproof equipment;

11 b. Hardware for the permanent storage of and access to records,

12 including computers, servers, and scanners;

13 c. Software for the permanent storage of and access to records,

14 including vendor services and consumer subscription fees;

15 d. Personnel costs for the permanent storage of and access to records,

16 including overtime costs for personnel involved in the digitization

17 of records; and

18 e. Cloud storage and cybersecurity services for the permanent storage

19 of and access to records.

20 3. No later than July 1 of each year, the county clerk shall submit a report

21 to the consolidated local government and the Legislative Research

22 Commission detailing the receipts, expenditures, and any amounts

23 remaining in the fund.

24 ➔Section 59. KRS 142.010 is amended to read as follows:

25 (1) The following taxes shall be paid:

26 (a) A tax of four dollars and fifty cents (\$4.50) on each marriage license;

27 (b) A tax of four dollars (\$4) on each power of attorney to convey real or personal

1 property;

2 (c) A tax of four dollars (\$4) on each mortgage, financing statement, or security
3 agreement and on each notation of a security interest on a certificate of title
4 under KRS 186A.190;

5 (d) A tax of four dollars (\$4) on each conveyance of real property; ~~and~~
6 (e) A tax of four dollars (\$4) on each lien or conveyance of coal, oil, gas, or other
7 mineral right or privilege; and

8 **(f) A tax of four dollars (\$4) on each recorded will.**

9 (2) **Except as provided in Section 4 of this Act,** the tax imposed by this section shall be
10 collected by each county clerk as a prerequisite to the issuance of a marriage license
11 or the original filing of an instrument subject to the tax. Subsequent assignment of
12 the original instrument shall not be cause for additional taxation under this section.
13 This section shall not be construed to require any tax upon a deed of release of a
14 lien retained in a deed or mortgage.

15 (3) Taxes imposed under this section shall be reported and paid to the Department of
16 Revenue by each county clerk within ten (10) days following the end of the
17 calendar month in which instruments subject to tax are filed or marriage licenses
18 issued. Each remittance shall be accompanied by a summary report on a form
19 prescribed by the department.

20 (4) Any county clerk who violates any of the provisions of this section shall be subject
21 to the uniform civil penalties imposed pursuant to KRS 131.180. In every case, any
22 tax not paid on or before the due date shall bear interest at the tax interest rate as
23 defined in KRS 131.010(6) from the date due until the date of payment.

24 (5) (a) One dollar (\$1) of the amount collected under each paragraph of subsection
25 (1) of this section shall be placed in an agency fund in the Department for
26 Libraries and Archives to be used exclusively for the purpose of preserving
27 and retaining public records by continuing the local records grant program

1 active in the Department for Libraries and Archives.

2 (b) Ninety percent (90%) of all funds allocated to the Department for Libraries
3 and Archives under paragraph (a) of this subsection for the local records grant
4 program shall be set aside for grants to county clerks and distributed annually,
5 except as provided in paragraph (c) of this subsection.

6 (c) If there are insufficient grant applications from county clerks for the
7 Department for Libraries and Archives to distribute ninety percent (90%) of
8 all funds allocated under paragraph (a) of this subsection, the Department for
9 Libraries and Archives may grant those funds to other agencies.

10 ➔Section 60. KRS 401.040 is amended to read as follows:

11 (1) **(a)** If the District Court, Family Court, or Circuit Court, as authorized by KRS
12 401.020, orders any person's name to be changed under this chapter, a copy of
13 the order shall be certified by the clerk of that court to the county clerk, for
14 record; ***and***

15 **(b) The clerk of the court shall collect the fee required under Section 58 of this**
16 **Act for the filing of a court-ordered name change under subsection (2) of**
17 **this section and forward the fee with the copy of the order to the county**
18 **clerk.**

19 (2) The county clerk shall keep an alphabetical index for each book of records,
20 referring to the page on which each person's name change appears, and giving the
21 name from and to which it is changed.

22 ➔SECTION 61. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
23 READ AS FOLLOWS:

24 *As used in Sections 61 to 71 of this Act, unless the context otherwise requires:*

25 (1) "Claim" means a right to payment, whether or not the right is reduced to
26 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,
27 disputed, undisputed, legal, equitable, secured, or unsecured;

1 (2) "Creditor" means, with respect to a transferor, a person who has a claim;

2 (3) "Debt" means liability on a claim;

3 (4) "Disposition":

4 (a) Means a transfer, conveyance, or assignment of property, including a
5 change in the legal ownership of property occurring upon the substitution
6 of one (1) trustee for another or the addition of one (1) or more new
7 trustees; and

8 (b) Includes the exercise of a power so as to cause a transfer of property to a
9 trustee or trustees, but shall not include the release or relinquishment of an
10 interest in property that, until the release or relinquishment, was the subject
11 of a qualified disposition;

12 (5) "Investment advisor" means a person given authority by the terms of a qualified
13 trust to direct, consent to, or disapprove a transferor's actual or proposed
14 investment decisions, distribution decisions, or other decisions of the transferor;

15 (6) "Investment decision" means the retention, purchase, sale, exchange, tender, or
16 other transaction affecting the ownership of or rights in investments;

17 (7) "Person" has the same meaning as in Section 118 of this Act;

18 (8) "Property" means anything that may be the subject of ownership, including real
19 property, personal property, and interests in real or personal property;

20 (9) "Qualified affidavit" means a sworn affidavit signed by the transferor before a
21 disposition of assets to a qualified trust that meets the requirements of Section 62
22 of this Act. In the event of a disposition by a transferor who is a trustee, the
23 affidavit shall be signed by the transferor who made the original disposition to the
24 trustee or a predecessor trustee in a form that meets the requirements of
25 paragraphs (b) and (c) of subsection (11) of this section and shall state facts as of
26 the time of the original disposition;

27 (10) "Qualified disposition" means a disposition by or from a transferor with or

1 without consideration to a qualified trust after the transferor executes a qualified
2 affidavit;

3 **(11) "Qualified trust"** means an instrument appointing a qualified trustee or qualified
4 trustees for property that is the subject of a disposition, which instrument:

5 (a) Expressly incorporates the law of this Commonwealth to govern the validity,
6 construction, and administration of the trust;

7 (b) Is irrevocable; and

8 (c) Provides that the interest of the transferor or other beneficiary in trust
9 property or income from trust property may not be transferred, assigned,
10 pledged, or mortgaged, whether voluntarily or involuntarily, before the
11 qualified trustee or qualified trustees actually distribute property or income
12 from the trust to the beneficiary;

13 **(12) "Qualified trustee"** means a person who:

14 (a) In the case of a natural person, is a resident of this Commonwealth, or in
15 all other cases, is authorized by the law of this Commonwealth to act as a
16 trustee and whose activities are subject to supervision by the Kentucky
17 Department of Financial Institutions, the Federal Deposit Insurance
18 Corporation, the Comptroller of the Currency, or any successor to those
19 entities;

20 (b) Maintains or arranges for custody in this Commonwealth of some or all of
21 the property that is the subject of the qualified disposition, maintains
22 records for the qualified trust on an exclusive or nonexclusive basis,
23 prepares or arranges for the preparation of required income tax returns for
24 the qualified trust, or otherwise materially participates in the administration
25 of the qualified trust; and

26 (c) Is not the transferor;

27 **(13) "Spouse or former spouse"** means only persons to whom the transferor was

1 legally married at or before the time the qualified disposition is made;

2 (14) "Transferor" means a person who, directly or indirectly, makes a disposition or
3 causes a disposition to be made in the person's capacity:

4 (a) As an owner of property;

5 (b) As a holder of a power of appointment that authorizes the holder to appoint
6 in favor of the holder, the holder's creditors, the holder's estate, or the
7 creditors of the holder's estate; or

8 (c) As a trustee; and

9 (15) "Trustee" means an original, additional, and successor trustee, and a cotrustee,
10 whether singular or plural, who is a fiduciary relative to any power or duty held
11 by that person that could otherwise be held by a trustee.

12 ➔ SECTION 62. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
13 READ AS FOLLOWS:

14 A qualified affidavit shall state that:

15 (1) The transferor has full right, title, and authority to transfer the assets to the trust;

16 (2) The transfer of the assets to the trust will not render the transferor insolvent;

17 (3) The transferor does not intend to defraud a creditor by transferring the assets to
18 the trust;

19 (4) The transferor does not have any pending or threatened court actions against the
20 transferor, except for those court actions identified by the transferor on an
21 attachment to the affidavit;

22 (5) The transferor is not involved in any administrative proceedings, except for those
23 administrative proceedings identified on an attachment to the affidavit;

24 (6) The transferor does not contemplate filing for relief under the federal bankruptcy
25 code; and

26 (7) The assets being transferred to the trust were not derived from unlawful activities.

27 ➔ SECTION 63. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Notwithstanding any law to the contrary, including KRS 386B.5-020(7)(a), no
3 action of any kind, including but not limited to an action to enforce a judgment
4 entered by a court or other body having adjudicative authority, shall be brought
5 at law or in equity for an attachment or other provisional remedy against property
6 that is the subject of a qualified disposition to a qualified trust or for the
7 avoidance of a qualified disposition to a qualified trust, unless:

8 (a) The action is brought pursuant to the Kentucky Uniform Voidable
9 Transactions Act, KRS 378A.005 to 378A.140; and

10 (b) The qualified disposition was made with actual intent to defraud a creditor
11 whose claim arose after a qualified disposition.

12 (2) (a) Notwithstanding KRS 378A.090, a creditor's claim under subsection (1) of
13 this section shall be extinguished:

14 1. If the person is a creditor when the qualified disposition to a qualified
15 trust is made, unless the action is commenced within the later of two
16 (2) years after the qualified disposition is made or six (6) months after
17 the person discovers or reasonably should have discovered the
18 qualified disposition; or

19 2. If the person becomes a creditor after a qualified disposition to a
20 qualified trust is made, unless the action is commenced within two (2)
21 years after the qualified disposition is made; and

22 (b) If paragraph (a) of this subsection applies:

23 1. A person shall be deemed to have discovered the existence of a
24 qualified disposition to a qualified trust at the time any public record
25 is made of any transfer of property relative to the qualified disposition,
26 including but not limited to the conveyance of real property that is
27 recorded in the office of the county clerk in which the property is

1 located, the filing of a financing statement under Article 9 of KRS
2 Chapter 355, or the equivalent recording or filing of either with the
3 appropriate person or official under the laws of a jurisdiction other
4 than this Commonwealth; and

5 2. No creditor shall bring an action with respect to property that is the
6 subject of a qualified disposition unless that creditor proves by clear
7 and convincing evidence that the settlor's transfer of the property was
8 made with intent to defraud that specific creditor.

9 (3) For purposes of Sections 61 to 71 of this Act, a qualified disposition that is made
10 by means of a disposition by a transferor who is a trustee shall be deemed to have
11 been made as of the time the property that is the subject of the qualified
12 disposition was originally transferred to the transferor acting in the capacity of
13 trustee, or any predecessor trustee, in a form that meets the requirements of
14 subsection (11)(a) and (c) of Section 61 of this Act.

15 (4) Notwithstanding any law to the contrary:

16 (a) A creditor, including a creditor whose claim arose before or after a
17 qualified disposition, or any other person shall have only the rights with
18 respect to a qualified disposition that are provided in this section and
19 Section 65 of this Act;

20 (b) Neither a creditor nor any other person shall have any claim or cause of
21 action against the trustee, an advisor of a qualified trust, or any person
22 involved in the counseling, drafting, preparation, execution, or funding of a
23 qualified trust; and

24 (c) For purposes of this subsection, counseling, drafting, preparation,
25 execution, or funding of a qualified trust includes the counseling, drafting,
26 preparation, execution, or funding of a limited partnership or limited
27 liability company if interests in the limited partnership or limited liability

(5) Notwithstanding any law to the contrary, no action of any kind, including but not limited to an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a qualified trust, or against any person involved in the counseling, drafting, preparation, execution, or funding of a qualified trust if, as of the date the action is brought, an action by a creditor with respect to the qualified trust would be barred under this section.

9 **(6) In circumstances where more than one (1) qualified disposition is made by means**
10 ***of the same qualified trust:***

11 (a) *The making of a subsequent qualified disposition shall be disregarded in*
12 *determining whether a creditor's claim with respect to a prior qualified*
13 *disposition is extinguished as provided in subsection (2) of this section; and*
14 (b) *Any distribution to a beneficiary shall be deemed to have been made from*
15 *the latest qualified disposition.*

16 (7) (a) If, in any action brought against a qualified trust, a court takes any action
17 whereby the court declines to apply the law of this Commonwealth in
18 determining the effect of a spendthrift provision of the trust:

19 1. The trustee shall immediately, upon the court's action and without the
20 further order of any court, cease in all respects to be trustee and a
21 successor trustee shall succeed as trustee in accordance with the terms
22 of the trust; or

23 2. If the trust does not provide for a successor trustee and the trust would
24 otherwise be without a trustee, a court of this Commonwealth, upon
25 the application of any beneficiary of the trust, shall appoint a
26 successor trustee upon the terms and conditions it determines to be
27 consistent with the purposes of the trust and Sections 61 to 71 of this

1 Act.

2 (b) Upon the trustee's ceasing to be trustee, the trustee shall have no power or
3 authority other than to convey the trust property to the successor trustee
4 named in the trust in accordance with this subsection.

5 (8) A qualified trust shall be subject to this section whether or not the transferor
6 retains any or all of the powers and rights described in Section 70 of this Act or
7 serves as an investment advisor pursuant to Section 68 of this Act.

8 (9) (a) Notwithstanding subsection (1) or (2) of this section, the limitations on
9 actions by creditors in law or equity shall not apply, and such creditors'
10 claims shall not be extinguished, if the transferor is indebted on account of
11 an agreement, judgment, or order of a court for the payment of any of the
12 following:

13 1. Past due child support;
14 2. Past due temporary or permanent maintenance to a spouse or former
15 spouse; or
16 3. A written agreement, judgment, or order of a court for division of
17 marital property of a spouse or former spouse, but only to the extent of
18 the debt, legally mandated interest on the debt, and the reasonable cost
19 of collection of the debt.

20 (b) 1. A claim under this subsection shall be asserted against a trustee only:
21 a. Upon a final, nonappealable determination of a Kentucky court
22 or a fully domesticated, final, nonappealable order of a court of
23 another state as defined by Section 118 of this Act that the debt is
24 past due; and
25 b. After the court has determined that the claimant has made
26 reasonable attempts to collect the debt from any other sources of
27 the transferor or that such attempts would be futile.

1 2. Nothing in this paragraph shall be construed to prohibit the court
2 from making the findings required in subparagraph 1. of this
3 paragraph in the same proceeding and order.

4 (c) This subsection shall not apply to any claim for forced heirship, legitime, or
5 elective share.

6 → SECTION 64. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
7 READ AS FOLLOWS:

8 A transferor shall only have the powers and rights conferred by the qualified trust. The
9 powers and rights conferred by the qualified trust upon the transferor are personal
10 powers and rights that may not be exercised by a creditor or any other person, except
11 as expressly permitted by the trust. Except as permitted by Sections 68 and 70 of this
12 Act, the transferor shall have no rights or authority with respect to the corpus of the
13 qualified trust or the income from the trust, and any agreement or understanding
14 purporting to grant or permit the retention of any greater rights or authority shall be
15 void.

16 → SECTION 65. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
17 READ AS FOLLOWS:

18 (1) A qualified disposition to a qualified trust shall be avoided only to the extent
19 necessary to satisfy the transferor's debt to the creditor at whose instance the
20 disposition was avoided, together with costs, including attorneys' fees, that the
21 court may allow.

22 (2) In the event any qualified disposition is avoided as described in subsection (1) of
23 this section:

24 (a) If the court is satisfied that a qualified trustee has not acted in bad faith in
25 accepting or administering the property that is the subject of the qualified
26 disposition:

27 1. The qualified trustee shall have a first and paramount lien against the

1 property that is the subject of the qualified disposition in an amount
2 equal to the entire cost, including attorneys' fees, properly incurred by
3 the qualified trustee in defense of the action or proceedings to avoid
4 the qualified disposition;

5 2. The qualified disposition shall be avoided subject to the proper fees,
6 costs, preexisting rights, claims, and interests of the qualified trustee
7 and of any predecessor qualified trustee that has not acted in bad
8 faith; and

9 3. For purposes of this paragraph, it shall be presumed that the qualified
10 trustee did not act in bad faith merely by accepting the property; and

11 (b) 1. If the court is satisfied that a beneficiary of a qualified trust has not
12 acted in bad faith, the avoidance of the qualified disposition shall be
13 subject to the beneficiary's right to retain any distribution made upon
14 the exercise of a trust power or discretion vested in the qualified
15 trustee or qualified trustees of the qualified trust, which power or
16 discretion was properly exercised prior to the creditor's
17 commencement of an action to avoid a qualified disposition.

18 2. For purposes of this paragraph, it shall be presumed that the
19 beneficiary, including a beneficiary who is also a transferor of the
20 trust, did not act in bad faith merely by creating the trust or by
21 accepting a distribution made in accordance with the terms of the
22 trust.

23 (3) A disposition by a trustee that is not a qualified trustee to a trustee that is a
24 qualified trustee shall not be treated as other than a qualified disposition solely
25 because the trust instrument fails to meet the requirements of subsection (11)(a)
26 of Section 61 of this Act.

27 (4) In the case of a disposition to more than one (1) trustee, a disposition that is

1 otherwise a qualified disposition shall not be treated as other than a qualified
2 disposition solely because not all of the recipient trustees are qualified trustees.

3 ➔ SECTION 66. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
4 READ AS FOLLOWS:

5 A spendthrift provision as described in subsection (11)(c) of Section 61 of this Act shall
6 be deemed to be a restriction on the transfer of the transferor's beneficial interest in
7 the trust that is enforceable under applicable nonbankruptcy law within the meaning
8 of 11 U.S.C. sec. 541(c)(2) or any successor provision.

9 ➔ SECTION 67. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
10 READ AS FOLLOWS:

11 (1) For purposes of Sections 61 to 71 of this Act, none of the following shall be
12 considered a qualified trustee:

13 (a) The transferor or any other natural person who is a nonresident of this
14 Commonwealth; or

15 (b) An entity:

16 1. That is not authorized by the law of this Commonwealth to act as a
17 trustee; or

18 2. Whose activities are not subject to supervision as provided in
19 subsection (12)(a) of Section 61 of this Act.

20 (2) (a) Nothing in Sections 61 to 71 of this Act shall preclude a transferor from
21 appointing one (1) or more advisors, including but not limited to:

22 1. Advisors who have authority under the terms of the trust instrument to
23 remove and appoint qualified trustees or trust advisors;

24 2. Advisors who have authority under the terms of the trust instrument to
25 direct, consent to, or disapprove distributions from the trust; or

26 3. Investment advisors, whether or not the advisors would meet the
27 requirements of subsection (12) of Section 61 of this Act.

1 **(b) For purposes of this subsection, "advisor" includes a trust protector or any**
2 **other person who, in addition to a qualified trustee, holds one (1) or more**
3 **trust powers.**

4 → SECTION 68. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
5 READ AS FOLLOWS:

6 **A person may serve as an investment advisor notwithstanding that the person is the**
7 **transferor of the qualified disposition.**

8 → SECTION 69. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
9 READ AS FOLLOWS:

10 **In the event that a qualified trustee of a qualified trust ceases to meet the requirements**
11 **of subsection (12)(a) of Section 61 of this Act, and there remains no trustee that meets**
12 **the requirements, the qualified trustee shall be deemed to have resigned as of the time**
13 **of that cessation, and thereupon, the successor qualified trustee provided for in the**
14 **qualified trust shall become a qualified trustee of the qualified trust, or in the absence**
15 **of any successor qualified trustee provided for in the qualified trust, then a court of**
16 **this Commonwealth shall, upon application of any interested party, appoint a successor**
17 **qualified trustee.**

18 → SECTION 70. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
19 READ AS FOLLOWS:

20 **A qualified trust shall not be deemed revocable on account of its inclusion of one (1) or**
21 **more of the following:**

22 **(1) A transferor's power to veto a distribution from the trust;**
23 **(2) A power of appointment, other than a power to appoint to the transferor, the**
24 **transferor's creditors, the transferor's estate, or the creditors of the transferor's**
25 **estate, either exercisable by written instrument of the transferor during the**
26 **transferor's life or exercisable by will or other written instrument of the**
27 **transferor effective upon the transferor's death;**

- 1 (3) The transferor's potential or actual receipt of income, including rights to the
2 income retained in the trust;
- 3 (4) The transferor's potential or actual receipt of income or principal from a
4 charitable remainder unitrust or charitable remainder annuity trust as those
5 terms are defined in 26 U.S.C. sec. 664 or any successor provision;
- 6 (5) The transferor's receipt each year of an amount specified in the trust, the amount
7 not to exceed five percent (5%) of the initial value of the trust or its value
8 determined from time to time pursuant to the trust;
- 9 (6) The transferor's potential or actual receipt or use of principal if the potential or
10 actual receipt or use of principal would be the result of a qualified trustee's or
11 qualified trustees' acting:
 - 12 (a) In the qualified trustee's or trustees' discretion. For purposes of this
13 subsection, a qualified trustee is presumed to have discretion with respect to
14 the distribution of principal unless the discretion is expressly denied to the
15 trustee by the terms of the trust;
 - 16 (b) Pursuant to a standard that governs the distribution of principal and does
17 not confer upon the transferor a power to consume, invade, or appropriate
18 property for the benefit of the transferor, unless the power of the transferor
19 is limited by an ascertainable standard relating to the health, education,
20 support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A)
21 or 2514(c)(1), as amended; or
 - 22 (c) At the direction of an advisor described in Section 67 of this Act who is
23 acting:
 - 24 1. In the advisor's discretion; or
 - 25 2. Pursuant to a standard that governs the distribution of principal and
26 does not confer upon the transferor a power to consume, invade, or
27 appropriate property for the benefit of the transferor, unless the power

of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or 2514(c)(1), as amended;

4 (7) The transferor's right to remove a trustee or advisor and to appoint a new trustee
5 or advisor; provided, however, that the right shall not include the appointment of
6 a person who is a related or subordinate party with respect to the transferor
7 within the meaning of 26 U.S.C. sec. 672(c) or any successor provision;

8 (8) The transferor's potential or actual use of real property held under a qualified
9 personal residence trust within the meaning of the term as described in 26 U.S.C.
10 sec. 2702(c) or any successor provision;

(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly permits a distribution to the transferor as reimbursement for such taxes and if the distribution would be the result of a qualified trustee's or qualified trustees' acting:

17 (a) In the qualified trustee's or trustees' discretion or pursuant to a mandatory
18 *direction in the trust instrument; or*

19 **(b) At the direction of an advisor described in Section 67 of this Act who is**
20 **acting in that advisor's discretion;**

21 (10) The ability, whether pursuant to direction in the qualified trust or discretion of a
22 qualified trustee to pay, after the death of the transferor, all or any part of the
23 debts of the transferor outstanding at the time of the transferor's death, the
24 expenses of administering the transferor's estate, or any estate or inheritance tax
25 imposed on or with respect to the transferor's estate; or

26 (11) A qualified trustee's or qualified trustees' authority to make distributions to pay
27 taxes in lieu of or in addition to the power to make a distribution for taxes

1 pursuant to subsections (3), (6), (9), or (10) of this section by direct payment to
2 taxing authorities.

3 ➔SECTION 71. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
4 READ AS FOLLOWS:

5 Sections 61 to 71 of this Act shall apply to qualified dispositions to qualified trusts and
6 dispositions by transferors who are trustees made on or after the effective date of this
7 Act.

8 ➔SECTION 72. SUBCHAPTER 12 OF KRS CHAPTER 386B IS
9 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
10 FOLLOWS:

11 As used in this subchapter:

12 (1) "Breach of trust" includes a violation by a trust director or trustee of a duty
13 imposed on that director or trustee by the terms of the trust, the provisions of
14 Sections 72 to 88 of this Act, or other law of this Commonwealth pertaining to
15 trusts;

16 (2) "Directed trust" means a trust for which the terms of the trust grant a power of
17 direction;

18 (3) "Directed trustee" means a trustee that is subject to a trust director's power of
19 direction;

20 (4) "Person" has the same meaning as in Section 118 of this Act;

21 (5) "Power of direction" has the same meaning as in Section 118 of this Act;

22 (6) "Settlor" has the same meaning as in Section 118 of this Act;

23 (7) "State" has the same meaning as in Section 118 of this Act;

24 (8) "Terms of a trust" has the same meaning as in Section 118 of this Act;

25 (9) "Trust director" has the same meaning as in Section 118 of this Act; and

26 (10) "Trustee" has the same meaning as in Section 118 of this Act.

27 ➔SECTION 73. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER

1 386B IS CREATED TO READ AS FOLLOWS:

2 *Sections 72 to 88 of this Act apply to a trust, whenever created, that has its principal*
3 *place of administration in this Commonwealth, subject to the following rules:*

4 *(1) If the trust was created before the effective date of this Act, Sections 72 to 88 of*
5 *this Act apply only to a decision or action occurring on or after the effective date*
6 *of this Act; and*

7 *(2) If the principal place of administration of the trust is changed to this*
8 *Commonwealth on or after the effective date of this Act, Sections 72 to 88 of this*
9 *Act apply only to a decision or action occurring on or after the date of the*
10 *change.*

11 ➔ SECTION 74. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:

13 *The common law and principles of equity supplement the provisions of Sections 72 to*
14 *88 of this Act, except to the extent modified by Sections 72 to 88 of this Act or another*
15 *statute of this Commonwealth.*

16 ➔ SECTION 75. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
17 386B IS CREATED TO READ AS FOLLOWS:

18 *(1) As used in this section, "power of appointment" means a power that enables a*
19 *person acting in a nonfiduciary capacity to designate a recipient of an ownership*
20 *interest in or another power of appointment over trust property.*

21 *(2) The provisions of Sections 72 to 88 of this Act shall not apply to a:*

22 *(a) Power of appointment;*

23 *(b) Power to appoint or remove a trustee or trust director;*

24 *(c) Power of a settlor over a trust to the extent the settlor has a power to revoke*
25 *the trust;*

26 *(d) Power of a beneficiary over a trust to the extent the exercise or nonexercise*
27 *of the power affects the beneficial interest of:*

1 1. The beneficiary; or

2 2. Another beneficiary represented by the beneficiary under KRS
3 386B.3-010 to 386B.3-050 with respect to the exercise or nonexercise
4 of the power; or

5 (e) Power over a trust if:

6 1. The terms of the trust provide that the power is held in a nonfiduciary
7 capacity; and

8 2. The power must be held in a nonfiduciary capacity to achieve the
9 settlor's tax objectives under the United States Internal Revenue Code
10 of 1986, as amended, and regulations issued thereunder, as amended.

11 (3) Unless the terms of a trust provide otherwise, a power granted to a person to
12 designate a recipient of an ownership interest in or power of appointment over
13 trust property which is exercisable while the person is not serving as a trustee is a
14 power of appointment and not a power of direction.

15 ➔ SECTION 76. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
16 386B IS CREATED TO READ AS FOLLOWS:

17 (1) Subject to Section 77 of this Act, the terms of a trust may grant a power of
18 direction to a trust director.

19 (2) Unless the terms of a trust provide otherwise:

20 (a) A trust director may exercise any further power appropriate to the exercise
21 or nonexercise of power of direction granted to the director under
22 subsection (1) of this section; and

23 (b) Trust directors with joint powers shall act by majority decision.

24 ➔ SECTION 77. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
25 386B IS CREATED TO READ AS FOLLOWS:

26 A trust director is subject to the same rules as a trustee in a like position and under
27 similar circumstances in the exercise or nonexercise of a power of direction or further

1 power under subsection (2)(a) of Section 76 of this Act regarding:

2 (1) A payback provision in the terms of a trust necessary to comply with the
3 reimbursement requirements of Medicaid law in Section 1917 of the Social
4 Security Act, 42 U.S.C. sec. 1396p(d)(4)(A), as amended, and regulations issued
5 thereunder, as amended; and

6 (2) A charitable interest in the trust, including notice regarding the interest to the
7 Attorney General.

8 ➔ SECTION 78. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:

10 (1) Subject to subsection (2) of this section, with respect to a power of direction or
11 further power under subsection (2)(a) of Section 76 of this Act:

12 (a) A trust director has the same fiduciary duty and liability in the exercise or
13 nonexercise of the power:

14 1. If the power is held individually, as a sole trustee in a like position and
15 under similar circumstances; or

16 2. If the power is held jointly with a trustee or another trust director, as a
17 cotrustee in like position and under similar circumstances; and

18 (b) The terms of the trust may vary the director's duty or liability to the same
19 extent the terms of the trust could vary the duty or liability of a trustee in a
20 like position and under similar circumstances.

21 (2) Unless the terms of a trust provide otherwise, if a trust director is licensed,
22 certified, or otherwise authorized or permitted by law other than the provisions of
23 Sections 72 to 88 of this Act to provide health care in the ordinary course of the
24 director's business or practice of a profession, to the extent the director acts in
25 that capacity, the director shall have no duty or liability under Sections 72 to 88
26 of this Act.

27 (3) The terms of a trust may impose a duty or liability on a trust director in addition

1 *to the duties and liabilities under this section.*

2 ➔ SECTION 79. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
3 386B IS CREATED TO READ AS FOLLOWS:

4 *(1) Subject to subsection (2) of this section, a directed trustee shall take reasonable*
5 *action to comply with a trust director's exercise or nonexercise of a power of*
6 *direction or further power under subsection (2)(a) of Section 76 of this Act, and*
7 *the trustee is not liable for the action.*

8 *(2) A directed trustee shall not comply with a trust director's exercise or nonexercise*
9 *of a power of direction or further power under Section 76 of this Act to the extent*
10 *that by complying, the trustee would engage in willful misconduct.*

11 *(3) An exercise of a power of direction under which a trust director may release a*
12 *trustee or another trust director from liability for breach of trust is not effective*
13 *if:*

14 *(a) The breach involved the trustee's or other director's willful misconduct;*
15 *(b) The release was induced by improper conduct of the trustee or other*
16 *director in procuring the release; or*
17 *(c) At the time of the release, the director did not know the material facts*
18 *relating to the breach.*

19 *(4) A directed trustee that has reasonable doubt about its duty under this section may*
20 *petition a court with jurisdiction under Subchapter 2 of KRS Chapter 386B for*
21 *instructions.*

22 *(5) The terms of a trust may impose a duty or liability on a directed trustee in*
23 *addition to the duties and liabilities under this section.*

24 ➔ SECTION 80. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
25 386B IS CREATED TO READ AS FOLLOWS:

26 *(1) Subject to Section 81 of this Act, a trustee shall provide information to a trust*
27 *director to the extent the information is reasonably related to both:*

- 1 (a) *The powers or duties of the trustee; and*
- 2 (b) *The powers or duties of the director.*
- 3 (2) *Subject to Section 81 of this Act, a trust director shall provide information to a*
4 *trustee or another trust director to the extent the information is reasonably*
5 *related to both:*
 - 6 (a) *The powers or duties of the director; and*
 - 7 (b) *The powers or duties of the trustee or other director.*
- 8 (3) *A trustee that acts in reliance on information provided by a trust director is not*
9 *liable for breach of trust to the extent the breach resulted from the reliance,*
10 *unless by so acting the trust director engages in willful misconduct.*
- 11 (4) *A trust director that acts in reliance on information provided by a trustee or*
12 *another trust director is not liable for a breach of trust to the extent the breach*
13 *resulted from the reliance, unless by so acting the trust director engages in willful*
14 *misconduct.*

15 ➔ SECTION 81. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
16 386B IS CREATED TO READ AS FOLLOWS:

- 17 (1) *Unless the terms of a trust provide otherwise:*
 - 18 (a) *The trustee shall not have a duty to:*
 - 19 1. *Monitor a trust director; or*
 - 20 2. *Inform or give advice to a settlor, beneficiary, trustee, or trust director*
21 *concerning an instance in which the trustee might have acted*
22 *differently than the director; and*
 - 23 (b) *By taking an action described in paragraph (a) of this subsection, a trustee*
24 *does not assume the duty excluded by paragraph (a) of this subsection.*
- 25 (2) *Unless the terms of a trust provide otherwise:*
 - 26 (a) *The trust director shall not have a duty to:*
 - 27 1. *Monitor a trustee or another trust director; or*

1 2. Inform or give advice to a settlor, beneficiary, trustee, or another trust
2 director concerning an instance in which the director might have
3 acted differently than a trustee or another director; and
4 (b) By taking an action described in paragraph (a) of this subsection, a trust
5 director does not assume the duty excluded by paragraph (a) of this
6 subsection.

7 ➔ SECTION 82. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:

9 The terms of a trust may relieve a cotrustee from duty and liability with respect to
10 another cotrustee's exercise or nonexercise of a power of the other cotrustee to the
11 same extent that in a directed trust a directed trustee is relieved from duty and liability
12 with respect to a trust director's power under Sections 79, 80, and 81 of this Act.

13 ➔ SECTION 83. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
14 386B IS CREATED TO READ AS FOLLOWS:

15 (1) An action against a trust director for breach of trust shall be commenced within
16 the same limitation period as under KRS 386B.10-050 for an action for breach of
17 trust against a trustee in a like position and under similar circumstances.
18 (2) A report or accounting has the same effect on the limitation period for an action
19 against a trust director for breach of trust that the report or accounting would
20 have under KRS 386B.10-050 in an action for breach of trust against a trustee in
21 a like position and under similar circumstances.

22 ➔ SECTION 84. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
23 386B IS CREATED TO READ AS FOLLOWS:

24 In an action against a trust director for breach of trust, the director may assert the
25 same defenses a trustee in a like position and under similar circumstances could assert
26 in an action for breach of trust against the trustee.

27 ➔ SECTION 85. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER

1 386B IS CREATED TO READ AS FOLLOWS:

2 (1) By accepting appointment as a trust director of a trust subject to the provisions of
3 Sections 72 to 88 of this Act, the director submits to personal jurisdiction of the
4 courts of this Commonwealth regarding any matter related to a power or duty of
5 the director.

6 (2) This section shall not preclude other methods of obtaining jurisdiction over a
7 trust director.

8 ➔ SECTION 86. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:

10 Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a
11 trust director regarding the following matters:

12 (1) Acceptance under KRS 386B.7-010;
13 (2) Giving of bond to secure performance under KRS 386B.7-020;
14 (3) Reasonable compensation under KRS 386B.7-080;
15 (4) Resignation under KRS 386B.7-050;
16 (5) Removal under KRS 386B.7-060; and
17 (6) Vacancy and appointment of successor under KRS 386B.7-040.

18 ➔ SECTION 87. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:

20 In applying and construing Sections 77 to 88 of this Act, consideration shall be given
21 to the need to promote uniformity of the law with respect to its subject matter among
22 states that enact it.

23 ➔ SECTION 88. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
24 386B IS CREATED TO READ AS FOLLOWS:

25 The provisions of Sections 72 to 88 of this Act modify, limit, or supersede the
26 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et
27 seq., but do not modify, limit, or supersede 15 U.S.C. sec. 7001(c) or authorize

1 electronic delivery of any of the notices described in 15 U.S.C. sec. 7003(b).

2 ➔ SECTION 89. SUBCHAPTER 13 OF KRS CHAPTER 386B IS
3 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
4 FOLLOWS:

5 As used in this subchapter:

6 (1) "Appointive property" means the property or property interest subject to a power
7 of appointment;

8 (2) "Ascertainable standard" means the same as in Section 118 of this Act;

9 (3) "Authorized fiduciary" means:

10 (a) A trustee or other fiduciary, other than a settlor, that has discretion to
11 distribute or direct a trustee to distribute part or all of the principal of the
12 first trust to one (1) or more current beneficiaries;

13 (b) A special fiduciary appointed under Section 96 of this Act; or

14 (c) A special needs fiduciary under Section 100 of this Act;

15 (4) "Beneficiary" means a person that:

16 (a) Has a present or future, vested or contingent, beneficial interest in a trust;

17 (b) Holds a power of appointment over trust property; or

18 (c) Is an identified charitable organization that will or may receive distributions
19 under the terms of the trust;

20 (5) "Charitable interest" means an interest in a trust which:

21 (a) Is held by an identified charitable organization and makes the organization
22 a qualified beneficiary;

23 (b) Benefits only charitable organizations and, if the interest were held by an
24 identified charitable organization, would make the organization a qualified
25 beneficiary; or

26 (c) Is held solely for charitable purposes and, if the interest were held by an
27 identified charitable organization, would make the organization a qualified

1 **beneficiary;**

2 (6) "Charitable organization" means:

3 (a) A person, other than an individual, organized and operated exclusively for
4 charitable purposes; or

5 (b) A government or governmental subdivision, agency, or instrumentality, to
6 *the extent it holds funds exclusively for a charitable purpose;*

7 (7) "Charitable purpose" means the relief of poverty, the advancement of education
8 or religion, the promotion of health, a municipal or other governmental purpose,
9 or another purpose the achievement of which is beneficial to the community;

10 (8) "Court" means a court in this Commonwealth having jurisdiction in matters
11 relating to trusts under Subchapter 2 of this chapter;

12 (9) ***"Current beneficiary":***

13 (a) Means a beneficiary that on the date of the beneficiary's qualification is
14 determined is a distributee or permissible distributee of trust income or
15 principal; and

16 (b) Includes the holder of a presently exercisable general power of appointment
17 but does not include a person that is a beneficiary only because the person
18 holds any other power of appointment;

19 (10) "Decanting power" or "the decanting power" means the power of an authorized
20 fiduciary under Sections 72 to 88 of this Act to distribute property of a first trust
21 to one (1) or more second trusts or to modify the terms of the first trust;

22 (11) "Expanded distributive discretion" means a discretionary power of distribution
23 that is not limited to an ascertainable standard or a reasonably definite standard;

24 (12) "First trust" means a trust over which an authorized fiduciary may exercise the
25 *decanting power;*

26 (13) "First-trust instrument" means the trust instrument for a first trust;

27 (14) "General power of appointment" means a power of appointment exercisable in

1 *favor of a powerholder, the powerholder's estate, a creditor of the powerholder,*
2 *or a creditor of the powerholder's estate;*

3 **(15) "Jurisdiction"** *has the same meaning as in Section 118 of this Act;*

4 **(16) "Person"** *has the same meaning as in Section 118 of this Act;*

5 **(17) "Power of appointment":**

6 *(a) Means a power that enables a powerholder acting in a nonfiduciary*
7 *capacity to designate a recipient of an ownership interest in or another*
8 *power of appointment over the appointive property; and*

9 *(b) Does not include a power of attorney;*

10 **(18) "Powerholder"** *means a person in which a donor creates a power of*
11 *appointment;*

12 **(19) "Presently exercisable power of appointment"** *means a power of appointment*
13 *exercisable by the powerholder at the relevant time and:*

14 *(a) Includes a power of appointment exercisable only after the occurrence of a*
15 *specified event, the satisfaction of an ascertainable standard, or the passage*
16 *of a specified time only after:*

17 *1. The occurrence of the specified event;*

18 *2. The satisfaction of the ascertainable standard; or*

19 *3. The passage of the specified time; and*

20 *(b) Does not include a power exercisable only at the powerholder's death;*

21 **(20) "Qualified beneficiary"** *has the same meaning as in Section 118 of this Act;*

22 **(21) "Reasonably definite standard"** *means a clearly measurable standard under*
23 *which a holder of a power of distribution is legally accountable within the*
24 *meaning of 26 U.S.C. sec. 674(b)(5)(A), as amended, and any applicable*
25 *regulations;*

26 **(22) "Record"** *has the same meaning as in Section 32 of this Act;*

27 **(23) "Second-trust instrument"** *means the trust instrument for a second trust;*

1 (24) "Settlor," except as otherwise provided in Section 112 of this Act, has the same
2 meaning as in Section 118 of this Act;
3 (25) "Sign" has the same meaning as in Section 32 of this Act;
4 (26) "State" has the same meaning as in Section 118 of this Act;
5 (27) "Terms of the trust" has the same meaning as in Section 118 of this Act; and
6 (28) "Trust instrument" has the same meaning as in Section 118 of this Act.

7 ➔ SECTION 90. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:

9 (1) Except as otherwise provided in subsections (2) and (3) of this section, the
10 provisions of Sections 89 to 116 of this Act shall apply to an express trust that is
11 irrevocable or revocable by the settlor only with the consent of the trustee or a
12 person holding an adverse interest.

13 (2) Sections 89 to 116 of this Act shall not apply to a trust held solely for charitable
14 purposes.

15 (3) Subject to Section 102 of this Act, a trust instrument may restrict or prohibit
16 exercise of the decanting power.

17 (4) Sections 89 to 116 of this Act do not limit the power of a trustee, powerholder, or
18 other person to distribute or appoint property in further trust or to modify a trust
19 under the trust instrument, statutes of this Commonwealth other than the
20 provisions of Sections 89 to 116 of this Act, common law, a court order, or a
21 nonjudicial settlement agreement.

22 (5) Sections 89 to 116 of this Act do not affect the ability of a settlor to provide in a
23 trust instrument for the distribution of the trust property or appointment in
24 further trust of the trust property or for modification of the trust instrument.

25 ➔ SECTION 91. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
26 386B IS CREATED TO READ AS FOLLOWS:

27 (1) In exercising the decanting power, an authorized fiduciary shall act in

1 accordance with its fiduciary duties, including the duty to act in accordance with
2 the purposes of the first trust.

3 (2) Sections 89 to 116 of this Act do not create or imply a duty to exercise the
4 decanting power or to inform the beneficiaries about the applicability of Sections
5 89 to 116 of this Act.

6 (3) Except as otherwise provided in a first-trust instrument, for purposes of Sections
7 72 to 88 of this Act and KRS 386B.8-010 and 386B.8-020, the terms of the first
8 trust are deemed to include the decanting power.

9 ➔ SECTION 92. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
10 386B IS CREATED TO READ AS FOLLOWS:

11 Sections 89 to 116 of this Act shall apply to a trust created before, on, or after the
12 effective date of this Act which:

13 (1) Has its principal place of administration in this Commonwealth, including a trust
14 whose principal place of administration has been changed to this
15 Commonwealth; or

16 (2) Provides by its trust instrument that it is governed by the law of this
17 Commonwealth or is governed by the law of this Commonwealth for the purpose
18 of:

19 (a) Administration, including administration of a trust whose governing law for
20 purposes of administration has been changed to the law of this
21 Commonwealth;

22 (b) Construction of the terms of the trust; or

23 (c) Determining the meaning or effect of terms of the trust.

24 ➔ SECTION 93. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
25 386B IS CREATED TO READ AS FOLLOWS:

26 A trustee or other person that reasonably relies on the validity of a distribution of part
27 or all of the property of a trust to another trust, or a modification of a trust, under

1 Sections 89 to 116 of this Act, statutes of this Commonwealth other than Sections 89 to
2 116 of this Act, or the law of another jurisdiction is not liable to any person for any
3 action or failure to act as a result of the reliance.

4 ➔ SECTION 94. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
5 386B IS CREATED TO READ AS FOLLOWS:

6 (1) A notice period in this section begins on the day notice is given under subsection
7 (3) of this section and ends fifty-nine (59) days after the day notice is given.

8 (2) Except as otherwise provided in Sections 89 to 116 of this Act, an authorized
9 fiduciary may exercise the decanting power without the consent of any person
10 and without court approval.

11 (3) Except as otherwise provided in subsection (6) of this section, an authorized
12 fiduciary shall give notice in a record of the intended exercise of the decanting
13 power not less than sixty (60) days before the exercise to:

14 (a) Each settlor of the first trust, if living or then in existence;
15 (b) Each qualified beneficiary of the first trust;
16 (c) Each holder of a presently exercisable power of appointment over any part
17 or all of the first trust;
18 (d) Each person that currently has the right to remove or replace the authorized
19 fiduciary;
20 (e) Each other fiduciary of the first trust;
21 (f) Each fiduciary of the second trust; and
22 (g) The Attorney General, if subsection (2) of Section 101 of this Act applies.

23 (4) An authorized fiduciary is not required to give notice under subsection (3) of this
24 section to a person that is not known to the fiduciary or is known to the fiduciary
25 but cannot be located by the fiduciary after reasonable diligence.

26 (5) A notice under subsection (3) of this section shall:
27 (a) Specify the manner in which the authorized fiduciary intends to exercise the

1 decanting power;

2 (b) Specify the proposed effective date for exercise of the power; and

3 (c) Include a copy of:

4 1. The first-trust instrument; or

5 2. All second-trust instruments.

6 (6) The decanting power may be exercised before the expiration of the notice period
7 under subsection (1) of this section if all persons entitled to receive notice waive
8 the period in a signed record.

9 (7) The receipt of notice, waiver of the notice period, or expiration of the notice
10 period does not affect the right of a person to file an application under Section 96
11 of this Act asserting that:

12 (a) An attempted exercise of the decanting power is ineffective because it did
13 not comply with the provisions of Sections 89 to 116 of this Act or was an
14 abuse of discretion or breach of fiduciary duty; or

15 (b) Section 109 of this Act applies to the exercise of the decanting power.

16 (8) An exercise of the decanting power is not ineffective because of the failure to give
17 notice to one (1) or more persons under subsection (3) of this section if the
18 authorized fiduciary acted with reasonable care to comply with subsection (3) of
19 this section.

20 ➔ SECTION 95. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
21 386B IS CREATED TO READ AS FOLLOWS:

22 (1) Notice to a person with authority to represent and bind another person under a
23 first-trust instrument or the provisions of this chapter has the same effect as
24 notice given directly to the person represented.

25 (2) Consent of or waiver by a person with authority to represent and bind another
26 person under a first-trust instrument or the provisions of this chapter is binding
27 on the person represented unless the person represented objects to the

1 representation before the consent or waiver otherwise would become effective.

2 (3) A person with authority to represent and bind another person under a first-trust
3 instrument or the provisions of this chapter may file an application under Section
4 96 of this Act on behalf of the person represented.

5 (4) A settlor may not bind or represent a beneficiary under Sections 89 to 116 of this
6 Act.

7 ➔ SECTION 96. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:

9 (1) On application of an authorized fiduciary, a person entitled to notice under
10 subsection (3) of Section 94 of this Act, a beneficiary, or with respect to a
11 charitable interest, the Attorney General or other person that has standing to
12 enforce the charitable interest, the court may:

13 (a) Provide instructions to the authorized fiduciary regarding whether a
14 proposed exercise of the decanting power is permitted under Sections 89 to
15 116 of this Act and consistent with the fiduciary duties of the authorized
16 fiduciary;

17 (b) Appoint a special fiduciary and authorize the special fiduciary to determine
18 whether the decanting power should be exercised under Sections 89 to 116
19 of this Act and to exercise the decanting power;

20 (c) Approve an exercise of the decanting power;

21 (d) Determine that a proposed or attempted exercise of the decanting power is
22 ineffective because:

23 1. After applying Section 109 of this Act, the proposed or attempted
24 exercise does not or did not comply with the provisions of Sections 89
25 to 116 of this Act; or

26 2. The proposed or attempted exercise would be or was an abuse of
27 fiduciary's discretion or a breach of fiduciary duty;

1 (e) Determine the extent to which Section 109 of this Act applies to a prior
2 exercise of the decanting power;
3 (f) Provide instructions to the trustee regarding the application of Section 109
4 of this Act to a prior exercise of the decanting power; or
5 (g) Order other relief to carry out the purposes of Sections 89 to 116 of this Act.
6 (2) On application of an authorized fiduciary, the court may approve:
7 (a) An increase in the fiduciary's compensation under Section 103 of this Act;
8 or
9 (b) A modification under Section 105 of this Act of a provision granting a
10 person the right to remove or replace the fiduciary.

11 ➔ SECTION 97. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:

13 An exercise of the decanting power shall be made in a record signed by an authorized
14 fiduciary. The signed record shall, directly or by reference to the notice required by
15 Section 94 of this Act, identify the first trust and the second trust or trusts and state the
16 property of the first trust being distributed to each second trust and the property, if any,
17 that remains in the first trust.

18 ➔ SECTION 98. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:

20 (1) As used in this section:

21 (a) "Noncontingent right" means a right that is not subject to the exercise of
22 discretion or the occurrence of a specified event that is not certain to occur.
23 The term does not include a right held by a beneficiary if any person has
24 discretion to distribute property subject to the right to any person other than
25 the beneficiary or the beneficiary's estate;
26 (b) "Presumptive remainder beneficiary" means a qualified beneficiary other
27 than a current beneficiary;

1 (c) "Successor beneficiary" means a beneficiary that is not a qualified
2 beneficiary on the date the beneficiary's qualification is determined. The
3 term does not include a person that is a beneficiary only because the person
4 holds a nongeneral power of appointment; and

5 (d) "Vested interest" means:

6 1. A right to a mandatory distribution that is a noncontingent right as of
7 the date of the exercise of the decanting power;

8 2. A current and noncontingent right, annually or more frequently, to a
9 mandatory distribution of income, a specified dollar amount, or a
10 percentage of value of some or all of the trust property;

11 3. A current and noncontingent right, annually or more frequently, to
12 withdraw income, a specified dollar amount, or a percentage of value
13 of some or all of the trust property;

14 4. A presently exercisable general power of appointment; or

15 5. A right to receive an ascertainable part of the trust property on the
16 trust's termination which is not subject to the exercise of discretion or
17 to the occurrence of a specified event that is not certain to occur.

18 (2) Subject to subsection (3) of this section and Section 101 of this Act, an authorized
19 fiduciary that has expanded distributive discretion over the principal of a first
20 trust for the benefit of one (1) or more current beneficiaries may exercise the
21 decanting power over the principal of the first trust.

22 (3) Subject to Section 100 of this Act, in an exercise of the decanting power under
23 this section, a second trust shall not:

24 (a) Include as a current beneficiary a person that is not a current beneficiary of
25 the first trust, except as otherwise provided in subsection (4) of this section;

26 (b) Include as a presumptive remainder beneficiary or successor beneficiary a
27 person that is not a current beneficiary, presumptive remainder beneficiary,

1 or successor beneficiary of the first trust, except as otherwise provided in
2 subsection (4) of this section; or

3 (c) Reduce or eliminate a vested interest.

4 (4) Subject to subsection (3)(c) of this section and Section 101 of this Act, in an
5 exercise of the decanting power under this section, a second trust may be a trust
6 created or administered under the law of any jurisdiction and may:

7 (a) Retain a power of appointment granted in the first trust;

8 (b) Omit a power of appointment granted in the first trust, other than a
9 presently exercisable general power of appointment;

10 (c) Create or modify a power of appointment if the powerholder is a current
11 beneficiary of the first trust and the authorized fiduciary has expanded
12 distributive discretion to distribute principal to the beneficiary; and

13 (d) Create or modify a power of appointment if the powerholder is a
14 presumptive remainder beneficiary or successor beneficiary of the first
15 trust, but the exercise of the power may take effect only after the
16 powerholder becomes, or would have become if then living, a current
17 beneficiary.

18 (5) A power of appointment described in paragraphs (a) to (d) of subsection (4) of
19 this section may be general or nongeneral. The class of permissible appointees in
20 favor of which the power may be exercised may be broader than or different from
21 the beneficiaries of the first trust.

22 (6) If an authorized fiduciary has expanded distributive discretion over part but not
23 all of the principal of a first trust, the fiduciary may exercise the decanting power
24 under this section over that part of the principal over which the authorized
25 fiduciary has expanded distributive discretion.

26 ➔ SECTION 99. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
27 386B IS CREATED TO READ AS FOLLOWS:

1 (1) As used in this section, "limited distributive discretion" means a discretionary
2 power of distribution that is limited to an ascertainable standard or a reasonably
3 definite standard.

4 (2) An authorized fiduciary that has limited distributive discretion over the principal
5 of the first trust for the benefit of one (1) or more current beneficiaries may
6 exercise the decanting power over the principal of the first trust.

7 (3) Under this section and subject to Section 101 of this Act, a second trust may be
8 created or administered under the law of any jurisdiction. Under this section, the
9 second trusts, in the aggregate, shall grant each beneficiary of the first trust
10 beneficial interests which are substantially similar to the beneficial interests of
11 the beneficiary of the first trust.

12 (4) A power to make a distribution under a second trust for the benefit of a
13 beneficiary who is an individual is substantially similar to a power under the first
14 trust to make a distribution directly to the beneficiary. A distribution is for the
15 benefit of a beneficiary if:

16 (a) The distribution is applied for the benefit of the beneficiary;
17 (b) The beneficiary is under a legal disability or the trustee reasonably believes
18 the beneficiary is incapacitated, and the distribution is made as permitted
19 under this chapter; or

20 (c) The distribution is made as permitted under the terms of the first-trust
21 instrument and the second-trust instrument for the benefit of the
22 beneficiary.

23 (5) If an authorized fiduciary has limited distributive discretion over part but not all
24 of the principal of a first trust, the fiduciary may exercise the decanting power
25 under this section over that part of the principal over which the authorized
26 fiduciary has limited distributive discretion.

27 ➔SECTION 100. A NEW SECTION OF SUBCHAPTER 13 OF KRS

1 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

2 **(1) As used in this section:**

3 **(a) "Beneficiary with a disability" means a beneficiary of a first trust who the**
4 **special needs fiduciary believes may qualify for governmental benefits based**
5 **on disability, whether or not the beneficiary currently receives those benefits**
6 **or is an individual who has been adjudicated incompetent;**

7 **(b) "Governmental benefits" means financial aid or services from a state,**
8 **federal, or other public agency;**

9 **(c) "Special needs fiduciary" means, with respect to a trust that has a**
10 **beneficiary with a disability:**

11 **1. A trustee or other fiduciary, other than a settlor, that has discretion to**
12 **distribute part or all of the principal of a first trust to one (1) or more**
13 **current beneficiaries;**

14 **2. If no trustee or fiduciary has discretion under subparagraph 1. of this**
15 **paragraph, a trustee or other fiduciary, other than a settlor, that has**
16 **discretion to distribute part or all of the income of the first trust to one**
17 **(1) or more current beneficiaries; or**

18 **3. If no trustee or beneficiary has discretion under subparagraphs 1. and**
19 **2. of this paragraph, a trustee or other fiduciary, other than a settlor,**
20 **that is required to distribute part or all of the income or principal of**
21 **the first trust to one (1) or more current beneficiaries; and**

22 **(d) "Special needs trust" means a trust that the trustee believes would not be**
23 **considered a resource for purposes of determining whether a beneficiary**
24 **with a disability is eligible for governmental benefits.**

25 **(2) A special needs fiduciary may exercise the decanting power in Section 98 of this**
26 **Act over the principal of the first trust as if the fiduciary had authority to**
27 **distribute principal to a beneficiary with a disability subject to expanded**

1 *distributive discretion if:*

2 *(a) A second trust is a special needs trust that benefits the beneficiary with a*
3 *disability; and*

4 *(b) The special needs fiduciary determines that exercise of the decanting power*
5 *will further the purposes of the first trust.*

6 *(3) In an exercise of the decanting power under this section, the following rules*
7 *apply:*

8 *(a) Notwithstanding subsection (3)(b) of Section 98 of this Act, the interest in*
9 *the second trust of a beneficiary with a disability may:*

10 *1. Be a pooled trust as defined by Medicaid law for the benefit of the*
11 *beneficiary with a disability under 42 U.S.C. sec. 1396p(d)(4)(A), as*
12 *amended; or*

13 *2. Contain payback provisions complying with reimbursement*
14 *requirements of Medicaid law under 42 U.S.C. sec. 1396p(d)(4)(A), as*
15 *amended;*

16 *(b) Subsection (3)(c) of Section 98 of this Act shall not apply to the interests of*
17 *the beneficiary with a disability; and*

18 *(c) Except as affected by any change to the interests of the beneficiary with a*
19 *disability, the second trust, or if there are two (2) or more second trusts, the*
20 *second trusts in the aggregate, shall grant each other beneficiary of the first*
21 *trust beneficial interests in the second trust which are substantially similar*
22 *to the beneficiary's beneficial interests in the first trust.*

23 ➔ SECTION 101. A NEW SECTION OF SUBCHAPTER 13 OF KRS
24 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

25 *(1) As used in this section:*

26 *(a) "Determinable charitable interest" means a charitable interest that is a*
27 *right to a mandatory distribution currently, periodically, on the occurrence*

1 of a specified event, or after the passage of a specified time and which is
2 unconditional or will be held solely for charitable purposes; and

3 **(b)** "Unconditional" means not subject to the occurrence of a specified event
4 that is not certain to occur, other than a requirement in a trust instrument
5 that a charitable organization be in existence or qualify under a particular
6 provision of the United States Internal Revenue Code of 1986, as amended,
7 on the date of the distribution, if the charitable organization meets the
8 requirement on the date of determination.

9 **(2)** If a first trust contains a determinable charitable interest, the Attorney General
10 has the rights of a qualified beneficiary and may represent and bind the
11 charitable interest.

12 **(3)** If a first trust contains a charitable interest, the second trust or trusts shall not:

13 **(a)** Diminish the charitable interest;
14 **(b)** Diminish the interest of an identified charitable organization that holds the
15 charitable interest;

16 **(c)** Alter any charitable purpose stated in the first-trust instrument; or

17 **(d)** Alter any condition or restriction related to the charitable interest.

18 **(4)** If there are two (2) or more second trusts, the second trusts shall be treated as one
19 (1) trust for purposes of determining whether the exercise of the decanting power
20 diminishes the charitable interest or diminishes the interest of an identified
21 charitable organization for purposes of subsection (3) of this section.

22 **(5)** If a first trust contains a determinable charitable interest, the second trust or
23 trusts that include a charitable interest pursuant to subsection (3) of this section
24 shall be administered under the law of this Commonwealth unless:

25 **(a)** The Attorney General, after having received notice under Section 94 of this
26 Act, fails to object in a signed record delivered to the authorized fiduciary
27 within the notice period;

1 **(b) The Attorney General consents in a signed record to the second trust or**
2 **trusts being administered under the law of another jurisdiction; or**
3 **(c) The court approves the exercise of the decanting power.**
4 **(6) Sections 89 to 116 of this Act do not limit the powers and duties of the Attorney**
5 **General under the law of this Commonwealth other than the provisions of**
6 **Sections 89 to 116 of this Act.**

7 → SECTION 102. A NEW SECTION OF SUBCHAPTER 13 OF KRS
8 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

9 **(1) An authorized fiduciary may not exercise the decanting power to the extent the**
10 **first-trust instrument expressly prohibits the exercise of:**
11 **(a) The decanting power; or**
12 **(b) A power granted by state law to the fiduciary to distribute part or all of the**
13 **principal of the trust to another trust or to modify the trust.**

14 **(2) Exercise of the decanting power is subject to any restriction in the first-trust**
15 **instrument that expressly applies to the exercise of:**
16 **(a) The decanting power; or**
17 **(b) A power granted by state law to a fiduciary to distribute part or all of the**
18 **principal of the trust to another trust or to modify the trust.**

19 **(3) A general prohibition of the amendment or revocation of a first trust, a**
20 **spendthrift clause, or a clause restraining the voluntary or involuntary transfer of**
21 **a beneficiary's interest does not preclude exercise of the decanting power.**

22 **(4) Subject to subsections (1) and (2) of this section, an authorized fiduciary may**
23 **exercise the decanting power under Sections 89 to 116 of this Act even if the first-**
24 **trust instrument permits the authorized fiduciary or another person to modify the**
25 **first-trust instrument or to distribute part or all of the principal of the first trust to**
26 **another trust.**

27 **(5) If a first-trust instrument contains an express prohibition described in subsection**

1 *(1) of this section or an express restriction described in subsection (2) of this*
2 *section, the provision shall be included in the second-trust instrument.*

3 ➔ SECTION 103. A NEW SECTION OF SUBCHAPTER 13 OF KRS
4 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

5 *(1) If a first-trust instrument specifies an authorized fiduciary's compensation, the*
6 *fiduciary may not exercise the decanting power to increase the fiduciary's*
7 *compensation above the specified compensation unless:*

8 *(a) All qualified beneficiaries of the second trust consent to the increase in a*
9 *signed record; or*
10 *(b) The increase is approved by the court.*

11 *(2) If a first-trust instrument does not specify an authorized fiduciary's*
12 *compensation, the fiduciary may not exercise the decanting power to increase the*
13 *fiduciary's compensation above the compensation permitted by this chapter*
14 *unless:*

15 *(a) All qualified beneficiaries of the second trust consent to the increase in a*
16 *signed record; or*
17 *(b) The increase is approved by the court.*

18 *(3) A change in an authorized fiduciary's compensation which is incidental to other*
19 *changes made by the exercise of the decanting power is not an increase in the*
20 *fiduciary's compensation for purposes of subsections (1) and (2) of this section.*

21 ➔ SECTION 104. A NEW SECTION OF SUBCHAPTER 13 OF KRS
22 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

23 *(1) Except as otherwise provided in this section, a second-trust instrument may not*
24 *relieve an authorized fiduciary from liability for breach of trust to a greater*
25 *extent than the first-trust instrument.*

26 *(2) A second-trust instrument may provide for indemnification of an authorized*
27 *fiduciary of the first trust or another person acting in a fiduciary capacity under*

1 *the first trust for any liability or claim that would have been payable from the first*
2 *trust if the decanting power had not been exercised.*

3 *(3) A second-trust instrument may not reduce fiduciary liability in the aggregate.*
4 *(4) Subject to subsection (3) of this section, a second-trust instrument may divide and*
5 *reallocate fiduciary powers among the fiduciaries, including one (1) or more*
6 *trustees, distribution advisors, investment advisors, trust protectors, or other*
7 *persons, and relieve a fiduciary from liability for an act or failure to act of*
8 *another fiduciary as permitted by law of this Commonwealth other than Sections*
9 *89 to 116 of this Act.*

10 ➔ SECTION 105. A NEW SECTION OF SUBCHAPTER 13 OF KRS
11 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

12 *An authorized fiduciary may not exercise the decanting power to modify a provision in*
13 *a first-trust instrument granting another person power to remove or replace the*
14 *fiduciary unless:*

15 *(1) The person holding the power consents to the modification in a signed record and*
16 *the modification applies only to that person;*
17 *(2) The person holding the power and the qualified beneficiaries of the second trust*
18 *consent to the modification in a signed record and the modification grants a*
19 *substantially similar power to another person; or*
20 *(3) The court approves the modification and the modification grants a substantially*
21 *similar power to another person.*

22 ➔ SECTION 106. A NEW SECTION OF SUBCHAPTER 13 OF KRS
23 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

24 *(1) As used in this section:*

25 *(a) "Grantor trust" means a trust as to which a settlor of a first trust is*
26 *considered the owner under 26 U.S.C. secs. 671 to 677, as amended, or 26*
27 *U.S.C. sec. 679, as amended;*

1 (b) "Internal Revenue Code" means the United States Internal Revenue Code
2 of 1986, as amended;
3 (c) "Nongrantor trust" means a trust that is not a grantor trust; and
4 (d) "Qualified benefits property" means property subject to the minimum
5 distribution requirements of 26 U.S.C. sec. 401(a)(9), as amended, and any
6 applicable regulations, or to any similar requirements that refer to 26
7 U.S.C. sec. 401(a)(9) or the regulations.

8 (2) An exercise of the decanting power is subject to the following limitations:

9 (a) If a first trust contains property that qualified, or would have qualified but
10 for provisions of Sections 89 to 116 of this Act other than this section, for a
11 marital deduction for purposes of the gift or estate tax under the Internal
12 Revenue Code or a state gift, estate, or inheritance tax, the second-trust
13 instrument shall not include or omit any term that, if included in or omitted
14 from the trust instrument for the trust to which the property was
15 transferred, would have prevented the transfer from qualifying for the
16 deduction, or would have reduced the amount of the deduction, under the
17 same provisions of the Internal Revenue Code or state law under which the
18 transfer qualified;

19 (b) If the first trust contains property that qualified, or would have qualified but
20 for provisions of Sections 89 to 116 of this Act other than this section, for a
21 charitable deduction for purposes of the income, gift, or estate tax under the
22 Internal Revenue Code or a state income, gift, estate, or inheritance tax, the
23 second-trust instrument shall not include or omit any term that, if included
24 from or omitted from the trust instrument for the trust to which the property
25 was transferred, would have prevented the transfer from qualifying for the
26 deduction, or would have reduced the amount of the deduction, under the
27 same provisions of the Internal Revenue Code or state law under which the

1 transfer qualified;

2 (c) If the first trust contains property that qualified, or would have qualified but
3 for provisions of Sections 89 to 116 of this Act other than this section, for
4 the exclusion from the gift tax described in:

5 1. 26 U.S.C. sec. 2503(b), as amended, the second-trust instrument shall
6 not include or omit a term that, if included in or omitted from the trust
7 instrument for the trust to which the property was transferred, would
8 have prevented the transfer from qualifying under 26 U.S.C. sec.
9 2503(b), as amended; or

10 2. 26 U.S.C. sec. 2503(c), as amended, the second-trust instrument shall
11 not include or omit a term that, if included in or omitted from the trust
12 instrument for the trust to which the property was transferred, would
13 have prevented the transfer from qualifying under 26 U.S.C. sec.
14 2503(c), as amended;

15 (d) If the property of the first trust includes shares of stock in an S corporation
16 as defined in 26 U.S.C. sec. 1361, as amended, and the first trust is, or but
17 for provisions of Sections 89 to 116 of this Act other than this section would
18 be, a permitted shareholder under any provision of 26 U.S.C. sec. 1361, as
19 amended, an authorized fiduciary may exercise the power with respect to
20 part of all the S corporation stock only if any second trust receiving the
21 stock is a permitted shareholder under 26 U.S.C. sec. 1361(c)(2), as
22 amended. If the property of the first trust includes shares of stock in an S
23 corporation and the first trust is, or but for provisions of Sections 89 to 116
24 of this Act other than this section would be, a qualified subchapter S trust
25 within the meaning of 26 U.S.C. sec. 1361(d), as amended, the second-trust
26 instrument shall not include or omit a term that prevents the second trust
27 from qualifying as a qualified subchapter S trust;

1 (e) If the first trust contains property that qualified, or would have qualified but
2 for provisions of Sections 89 to 116 of this Act other than this section, for a
3 zero inclusion ratio for purposes of the generation-skipping transfer tax
4 under 26 U.S.C. sec. 2642(c), as amended, the second-trust instrument shall
5 not include or omit a term that, if included in or omitted from the first-trust
6 instrument, would have prevented the transfer to the first trust from
7 qualifying for a zero inclusion ratio under 26 U.S.C. sec. 2642(c), as
8 amended;

9 (f) If the first trust is directly or indirectly the beneficiary of qualified benefits
10 property, the second-trust instrument shall not include or omit any term
11 that, if included in or omitted from the first-trust instrument, would have
12 increased the minimum distributions required with respect to the qualified
13 benefits property under 26 U.S.C. sec. 401(a)(9), as amended, and any
14 applicable regulations, or any similar requirements that refer to 26 U.S.C.
15 sec. 401(a)(9), as amended, or the regulations. If an attempted exercise of
16 the decanting power violates the preceding sentence, the trustee is deemed to
17 have held the qualified benefits property and any reinvested distributions of
18 the property as a separate share from the date of the exercise of the power,
19 and Section 109 of this Act applies to the separate share;

20 (g) If the first trust qualifies as a grantor trust because of the application of 26
21 U.S.C. sec. 672(f)(2)(A), as amended, the second trust shall not include or
22 omit a term that, if included in or omitted from the first-trust instrument,
23 would have prevented the first trust from qualifying under 26 U.S.C. sec.
24 672(f)(2)(A), as amended;

25 (h) As used in this paragraph, "tax benefit" means a federal or state tax
26 deduction, exemption, exclusion, or other benefit not otherwise listed in this
27 section, except for a benefit arising from being a grantor trust. Subject to

1 paragraph (i) of this subsection, a second-trust instrument shall not include
2 or omit a term that, if included in or omitted from the first-trust instrument,
3 would have prevented qualification for a tax benefit if:

- 4 1. The first-trust instrument expressly indicates an intent to qualify for
5 the benefit or the first-trust instrument clearly is designed to enable
6 the first trust to qualify for the benefit; and
- 7 2. The transfer of property held by the first trust or the first trust
8 qualified, or but for the provisions of Sections 89 to 116 of this Act
9 other than this section, would have qualified for the tax benefit;

10 (i) Subject to paragraph (d) of this subsection:

- 11 1. Except as otherwise provided in paragraph (g) of this subsection, the
12 second trust may be a nongrantor trust, even if the first trust is a
13 grantor trust; and
- 14 2. Except as otherwise provided in paragraph (j) of this subsection, the
15 second trust may be a grantor trust, even if the first trust is a
16 nongrantor trust; and

17 (j) An authorized fiduciary may not exercise the decanting power if a settlor
18 objects in a signed record delivered to the fiduciary within the notice period
19 and:

- 20 1. The first trust and a second trust are both grantor trusts, in whole or
21 in part, the first trust grants the settlor or another person the power to
22 cause the first trust to cease to be a grantor trust, and the second trust
23 does not grant an equivalent power to the settlor or other person; or
- 24 2. The first trust is a nongrantor trust and a second trust is a grantor
25 trust, in whole or in part, with respect to the settlor, unless:
 - 26 a. The settlor has the power at all times to cause the second trust to
27 cease to be a grantor trust; or

1 b. The first-trust instrument contains a provision granting the
2 settlor or another person a power that would cause the first trust
3 to cease to be a grantor trust and the second-trust instrument
4 contains the same provision.

5 ➔ SECTION 107. A NEW SECTION OF SUBCHAPTER 13 OF KRS
6 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

7 (1) Subject to subsection (2) of this section, a second trust may have a duration that
8 is the same as or different from the duration of the first trust.

9 (2) To the extent that property of a second trust is attributable to property of the first
10 trust, the property of the second trust is subject to any rules governing maximum
11 perpetuity, accumulation, or suspension of the power of alienation which apply to
12 the property of the first trust.

13 ➔ SECTION 108. A NEW SECTION OF SUBCHAPTER 13 OF KRS
14 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

15 An authorized fiduciary may exercise the decanting power whether or not under the
16 first trust's discretionary distribution standard the fiduciary would have made or could
17 have been compelled to make a discretionary distribution of principal at the time of the
18 exercise.

19 ➔ SECTION 109. A NEW SECTION OF SUBCHAPTER 13 OF KRS
20 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

21 (1) If exercise of the decanting power would be effective under Sections 89 to 116 of
22 this Act except that the second-trust instrument in part does not comply with the
23 provisions of Sections 89 to 116 of this Act, the exercise of the power is effective
24 and the following rules shall apply with respect to the principal of the second
25 trust attributable to the exercise of the power:

26 (a) A provision in the second-trust instrument which is not permitted under
27 Sections 89 to 116 of this Act is void to the extent necessary to comply with

1 Sections 89 to 116 of this Act; and

2 (b) A provision required by Sections 89 to 116 of this Act to be in the second-
3 trust instrument which is not contained in the instrument is deemed to be
4 included in the instrument to the extent necessary to comply with Sections
5 89 to 116 of this Act.

6 (2) If a trustee or other fiduciary of a second trust determines that subsection (1) of
7 this section applies to a prior exercise of the decanting power, the fiduciary shall
8 take corrective action consistent with the fiduciary's duties.

9 →SECTION 110. A NEW SECTION OF SUBCHAPTER 13 OF KRS
10 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

11 (1) As used in this section:

12 (a) "Animal trust" means a trust or an interest in a trust created to provide for
13 the care of one (1) or more animals; and

14 (b) "Protector" means a person appointed in an animal trust to enforce the
15 trust on behalf of the animal or, if no such person is appointed in the trust,
16 a person appointed by the court for that purpose.

17 (2) The decanting power may be exercised over an animal trust that has a protector
18 to the extent the trust could be decanted under Sections 89 to 116 of this Act if
19 each animal that benefits from the trust were an individual, if the protector
20 consents in a signed record to the exercise of the power.

21 (3) A protector for an animal has the rights under Sections 89 to 116 of this Act of a
22 qualified beneficiary.

23 (4) Notwithstanding any other provision of Sections 89 to 116 of this Act, if a first
24 trust is an animal trust, in an exercise of the decanting power, the second trust
25 shall provide that trust property may be applied only to its intended purpose for
26 the period the first trust benefitted the animal.

27 →SECTION 111. A NEW SECTION OF SUBCHAPTER 13 OF KRS

1 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

2 *A reference in KRS Chapter 386B to a trust instrument or terms of the trust includes a*
3 *second-trust instrument and the terms of the second trust.*

4 ➔SECTION 112. A NEW SECTION OF SUBCHAPTER 13 OF KRS
5 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

6 *(1) For purposes of law of this Commonwealth other than Sections 89 to 116 of this*
7 *Act and subject to subsection (2) of this section, a settlor of a first trust is deemed*
8 *to be the settlor of the second trust with respect to the portion of the principal of*
9 *the first trust subject to the exercise of the decanting power.*

10 *(2) In determining settlor intent with respect to a second trust, the intent of a settlor*
11 *of the first trust, a settlor of the second trust, and the authorized fiduciary may be*
12 *considered.*

13 ➔SECTION 113. A NEW SECTION OF SUBCHAPTER 13 OF KRS
14 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

15 *(1) Except as otherwise provided in subsection (3) of this section, if exercise of the*
16 *decanting power was intended to distribute all the principal of the first trust to*
17 *one (1) or more second trusts, later-discovered property belonging to the first*
18 *trust and property paid to or acquired by the first trust after the exercise of the*
19 *power is part of the trust estate of the second trust or trusts.*

20 *(2) Except as otherwise provided in subsection (3) of this section, if exercise of the*
21 *decanting power was intended to distribute less than all the principal of the first*
22 *trust to one (1) or more second trusts, later-discovered property belonging to the*
23 *first trust or property paid to or acquired by the first trust after exercise of the*
24 *power remains part of the trust estate of the first trust.*

25 *(3) An authorized fiduciary may provide in an exercise of the decanting power or by*
26 *the terms of a second trust for disposition of later-discovered property belonging*
27 *to the first trust or property paid to or acquired by the first trust after exercise of*

1 *the power.*

2 ➔ SECTION 114. A NEW SECTION OF SUBCHAPTER 13 OF KRS
3 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

4 *A debt, liability, or other obligation enforceable against property of a first trust is*
5 *enforceable to the same extent against the property when held by the second trust after*
6 *exercise of the decanting power.*

7 ➔ SECTION 115. A NEW SECTION OF SUBCHAPTER 13 OF KRS
8 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

9 *In applying and construing Sections 89 to 116 of this Act, consideration shall be given*
10 *to the need to promote uniformity of the law with respect to its subject matter among*
11 *states that enact it.*

12 ➔ SECTION 116. A NEW SECTION OF SUBCHAPTER 13 OF KRS
13 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

14 *The provisions of Sections 89 to 116 of this Act modify, limit, or supersede the*
15 *Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et*
16 *seq., but do not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec.*
17 *7001(c), or authorize electronic delivery of any of the notices described in Section*
18 *103(b) of that Act, 15 U.S.C. sec. 7003(b).*

19 ➔ Section 117. KRS 386.010 is amended to read as follows:

20 As used in KRS 386.010 to 386.170~~[386.175]~~, unless the context requires otherwise:

21 (1) "Fiduciary" means any trustee, guardian, executor, administrator, conservator or
22 other individual or corporation holding funds or otherwise acting in a fiduciary
23 capacity.

24 (2) "Principal" means any person to whom a fiduciary, as such, owes an obligation.

25 ➔ Section 118. KRS 386B.1-010 is amended to read as follows:

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

27 (1) "Action" with respect to an act of a trustee, includes a failure to act;

1 (2) "Ascertainable standard" means a standard relating to an individual's health,
2 education, support, or maintenance within the meaning of 26 U.S.C. sec.
3 2041(b)(1)(A) or 26 U.S.C. sec. 2514(c)(1), as amended;

4 (3) "Beneficiary" means a person that:

5 (a) Has a present or future beneficial interest in a trust, vested or contingent; or
6 (b) In a capacity other than that of trustee, holds a power of appointment over
7 trust property;

8 (4) "Charitable trust" means a trust, or part of a trust, established for a charitable
9 purpose as described in KRS 386B.4-050(1);

10 (5) "Conservator" means a person appointed by the court to administer the estate of a
11 minor or adult individual;

12 (6) "Environmental law" means a federal, state, or local law, rule, regulation, or
13 ordinance relating to protection of the environment;

14 (7) "Guardian" means a person appointed by the court, a parent, or a spouse to make
15 decisions regarding the support, care, education, health, and welfare of a minor or
16 adult individual. The term shall not include a guardian ad litem;

17 (8) "Interests of the beneficiaries" means the beneficial interests provided in the terms
18 of the trust;

19 (9) "Jurisdiction," with respect to a geographic area, includes a state or country;

20 (10) "Person" means any individual or entity as defined in KRS 446.010;

21 **(11) "Power of direction":**

22 **(a) Means a power over a trust granted to a person by the terms of the trust to**
23 **the extent the power is exercisable while the person is not serving as a**
24 **trustee;**

25 **(b) Includes a power over the investment, management, or distribution of trust**
26 **property or other matters of trust administration; and**

27 **(c) Excludes the powers described in subsection (2) of Section 75 of this Act;**

3 (a) Exercisable by a trustee and limited by an ascertainable standard; or
4 (b) Exercisable by another person only on the consent of the trustee or a person
5 holding an adverse interest;

6 **(13)¶(12)** "Property" means anything that may be the subject of ownership, whether
7 legal or equitable, or any interest therein;

8 **(14)** "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
9 qualification is determined:

10 (a) Is a distributee or permissible distributee of trust income or principal;

11 (b) Would be a distributee or permissible distributee of trust income or principal

12 if the interests of the distributees described in paragraph (a) of this subsection

13 ended on that date without causing the trust to end; or

14 (c) Would be a distributee or permissible distributee of trust income or principal

15 if the trust ended on that date;

18 (16){(15)} "Settlor" means a person, including a testator, who creates or contributes
19 property to a trust. If more than one (1) person creates or contributes property to a
20 trust, each person is a settlor of the part of the trust property attributable to that
21 person's contribution except to the extent another person has the power to revoke or
22 withdraw that part;

23 (17)~~(16)~~ "Spendthrift provision" means a term of a trust which restrains both voluntary
24 and involuntary transfer of a beneficiary's interest;

25 (18)~~(17)~~ "State" means a state of the United States, the District of Columbia, Puerto
26 Rico, the United States Virgin Islands, or any territory or insular possession subject
27 to the jurisdiction of the United States. The term includes an Indian tribe or band

1 recognized by federal law or formally acknowledged by a state;

2 (19) [(18)] "Terms of a trust" means:

1. Expressed in the trust instrument; or[as may be]
2. Established by other evidence that would be admissible in a judicial proceeding; or

1. A trustee or trust director in accordance with applicable law;
2. A court order; or
3. A nonjudicial settlement agreement under KRS 386B.1-090;

16 (b) "Trust" does not include a resulting or constructive trust, a business trust
17 which provides for certificates to be issued to the beneficiary, an investment
18 trust, a voting trust, a security instrument, a trust established by the judgment
19 of a court, a liquidation trust, or a trust for the primary purpose of paying
20 dividends, interests, interest coupons, salaries, wages, pensions or profits, or
21 employee benefits of any kind, an instrument in which a person is nominee or
22 escrowee for another, a trust established in deposits in any financial
23 institution, or other trust the nature of which does not admit of general trust
24 administration:

25 (21) "Trust director" means a person that is granted power of direction by the terms
26 of a trust to the extent the power is exercisable while the person is not serving as
27 a trustee. The person is a trust director whether or not the terms of the trust refer

1 *to the person as a trust director and whether or not the person is a beneficiary or*
2 *settlor of the trust;*

3 (22)~~(20)~~ "Trust instrument" means an instrument signed by the settlor that contains
4 terms of the trust, including any amendments thereto; and

5 (23)~~(21)~~ "Trustee" includes an original, additional, and successor trustee, and a
6 cotrustee.

7 ➔Section 119. KRS 386B.1-030 is amended to read as follows:

8 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
9 duties and powers of a trustee, relations among trustees, and the rights and interests
10 of a beneficiary.

11 (2) The terms of a trust prevail over any provision of this chapter, except:

12 (a) The requirements for creating a trust;

13 (b) *Subject to Sections 79, 81, and 82 of this Act,* the duty of a trustee to act in
14 good faith and in the interests of the beneficiaries;

15 (c) The requirement that a trust and its terms be for the benefit of its
16 beneficiaries, and that the trust have a purpose that is lawful, not contrary to
17 public policy, and possible to achieve;

18 (d) The power of the court to change or terminate a trust under Subchapter 4 of
19 this chapter;

20 (e) The effect of a spendthrift provision and the rights of certain creditors and
21 assignees to reach a trust as provided in Subchapter 5 of this chapter;

22 (f) The power of the court under KRS 386B.7-020 to require, dispense with, or
23 modify or terminate a bond;

24 (g) The power of the court under KRS 386B.7-080(2) to adjust a trustee's
25 compensation as specified in the terms of the trust which is unreasonably low
26 or high;

27 (h) The duty to notify and report under KRS 386B.8-130(2);

➔ Section 120. KRS 386B.1-060 is amended to read as follows:

10 (1) Without precluding other means for establishing a connection with the designated
11 jurisdiction, terms of a trust designating the principal place of administration are
12 valid and controlling if:

13 (a) A trustee's principal place of business is located in or a trustee is a resident of
14 the designated jurisdiction; ~~or~~

15 (b) *A trust director's principal place of business is located in or a trust director*
16 *is a resident of the designated jurisdiction; or*

17 (c) ~~(b)~~ All or part of the administration occurs in the designated jurisdiction.

18 (2) A trustee is under a continuing duty to administer the trust at a place appropriate to
19 its purposes, its administration, and the interests of the beneficiaries.

20 (3) Without precluding the right of the court to order, approve, or disapprove a transfer,
21 the trustee, in furtherance of the duty prescribed by subsection (2) of this section,
22 may transfer the trust's principal place of administration to another state or to a
23 jurisdiction outside of the United States.

24 (4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's
25 principal place of administration not less than sixty (60) days before initiating the
26 transfer. The notice of proposed transfer shall include:

27 (a) The name of the jurisdiction to which the principal place of administration is

1 to be transferred;

2 (b) The address and telephone number at the new location at which the trustee

3 can be contacted;

4 (c) An explanation of the reasons for the proposed transfer;

5 (d) The date on which the proposed transfer is anticipated to occur; and

6 (e) The date, not less than sixty (60) days after the giving of the notice, by which

7 the qualified beneficiary shall notify the trustee of an objection to the

8 proposed transfer.

9 (5) The authority of a trustee under this section to transfer a trust's principal place of

10 administration ends if a qualified beneficiary notifies the trustee of an objection to

11 the proposed transfer on or before the date specified in the notice.

12 (6) In connection with a transfer of the trust's principal place of administration, the

13 trustee may transfer some or all of the trust property to a successor trustee

14 designated in the terms of the trust or appointed under KRS 386B.7-040.

15 (7) The District Court shall have exclusive jurisdiction over matters under this section.

16 ➔Section 121. KRS 386B.3-010 is amended to read as follows:

17 (1) Notice to a person who may represent and bind another person under this

18 subchapter has the same effect as if notice were given directly to the other person.

19 (2) The consent of a person who may represent and bind another person under this

20 subchapter is binding on the person represented unless the person represented

21 objects to the representation before the consent would otherwise have become

22 effective.

23 (3) Except as otherwise provided under KRS 386B.4-110 and 386B.6-020, a person

24 who under this subchapter may represent a settlor who lacks capacity, may receive

25 notice and give a binding consent on the settlor's behalf.

26 (4) A settlor may not represent and bind a beneficiary under this subchapter with

27 respect to the termination or modification of a trust under KRS 386B.4-110(1).

1 (5) Provisions of this subchapter shall also be applicable to Sections 89 to 116 of this
2 Act~~KRS 386.175~~ regarding a trustee's power to appoint principal and income in
3 favor of a trustee of a second trust and KRS 386.454 regarding a trustee's power to
4 adjust between principal and income and conversion to unitrust.

5 ➔Section 122. KRS 386B.6-030 is amended to read as follows:

6 (1) While a trust is revocable:

7 (a) And, in the reasonable belief of the trustee, the settlor has capacity to revoke
8 the trust, rights of the beneficiaries are subject to the control of, and the duties
9 of the trustee are owed exclusively to, the settlor; and

10 (b) *The trustee may follow a direction of the settlor that is contrary to the terms*
11 *of the trust.*

12 (2) During the period the power may be exercised, the holder of a power of withdrawal
13 has the rights of a settlor of a revocable trust under this section to the extent of the
14 property subject to the power.

15 ➔Section 123. KRS 386B.7-030 is amended to read as follows:

16 (1) Cotrustees who are unable to reach a unanimous decision may act by majority
17 decision.

18 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the
19 trust.

20 (3) *Subject to Section 82 of this Act,* a cotrustee shall participate in the performance of
21 a trustee's function unless the cotrustee is unavailable to perform the function
22 because of absence, illness, disqualification under other law, or other temporary
23 incapacity or the cotrustee has properly delegated the performance of the function
24 to another trustee.

25 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
26 disqualification under other law, or other temporary incapacity, and prompt action
27 is necessary to achieve the purposes of the trust or to avoid injury to the trust

1 property, the remaining cotrustee or a majority of the remaining cotrustees may act
2 for the trust.

3 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor
4 reasonably expected the trustees to perform jointly. Unless a delegation was
5 irrevocable, a trustee may revoke a delegation previously made.

6 (6) Except as otherwise provided in subsection (7) of this section, a trustee who does
7 not join in an action of another trustee is not liable for the action.

8 (7) **Subject to Section 82 of this Act**, each trustee shall exercise reasonable care to:

9 (a) Prevent a cotrustee from committing a breach of trust; and

10 (b) Compel a cotrustee to redress a breach of trust.

11 (8) A dissenting trustee who joins in an action at the direction of the majority of the
12 trustees and who notified any cotrustee of the dissent at or before the time of the
13 action is not liable for the action unless the action is a breach of trust.

14 ➔Section 124. KRS 386B.8-180 is amended to read as follows:

15 (1) (a) When a trust terminates pursuant to the terms of the trust, the trustee may
16 follow the requirements for distribution upon termination as provided in KRS
17 386B.8-170 or, if proceeding under this section, within a reasonable amount
18 of time after such termination, the trustee shall provide to the qualified
19 beneficiaries a statement showing the fair market value of the net assets to be
20 distributed, a trust accounting for the prior five (5) years and an estimate for
21 any items reasonably anticipated but not yet received or disbursed, the amount
22 of any fees, including trustee fees, remaining to be paid, and notice that the
23 trust is terminating. The trustee may also provide such statement and notice to
24 any other person whom the trustee reasonably believes may have an interest in
25 the trust.

26 (b) If, after receiving the notice and trust information described in paragraph (a)
27 of this subsection, a qualified beneficiary objects to an action or omission

1 disclosed, he or she shall provide written notice of the objection to the trustee
2 within forty-five (45) days of the notice having been sent by the trustee. If no
3 written objection is provided within the forty-five (45) day time period, the
4 information provided pursuant to paragraph (a) of this subsection shall be
5 considered approved by the recipient and the trustee shall, within a reasonable
6 period of time following the expiration of such period, distribute the assets as
7 provided in the trust. If the trustee receives a written objection within the
8 applicable forty-five (45) day time period, the trustee may:

- 9 1. Submit the written objection to the District Court for resolution and
10 charge the expense of commencing such a proceeding to the trust; or
- 11 2. Resolve the objection with the qualified beneficiary, whether by
12 nonjudicial settlement agreement or otherwise. Any agreement entered
13 into pursuant to this paragraph may include a release, an indemnity
14 clause, or both on the part of the beneficiary against the trustee relating
15 to the trust. If the parties agree to a nonjudicial settlement agreement,
16 any related expenses shall be charged to the trust.

17 Upon a resolution of an objection pursuant to subparagraph 1. or 2. of this
18 paragraph, within a reasonable period of time thereafter the trustee shall
19 distribute the remaining trust assets as provided in the trust.

- 20 (c) The trustee may rely upon the written statement of a person receiving notice
21 that such person does not object.
- 22 (2) (a) When a trustee is removed or resigns pursuant to the terms of the trust, the
23 trustee may follow the requirements for distribution upon termination as
24 provided in KRS 386B.8-170 or, if proceeding under this section, the trustee,
25 within a reasonable time after such removal or resignation, shall provide to
26 the successor trustee a statement showing the net assets to be distributed, a
27 trust accounting for the prior five (5) years, an estimate for any items

1 reasonably anticipated but not yet received or disbursed, the amount of any
2 fees, including trustee fees, remaining to be paid, and notice that the trustee
3 has resigned or been removed. The trustee may also provide such statement
4 and notice to any other person whom trustee reasonably believes may have an
5 interest in the trust.

6 (b) Any person provided notice and trust information as described in paragraph
7 (a) of this subsection who objects to an action or omission disclosed shall
8 provide written notice of the objection to the trustee within forty-five (45)
9 days of the notice having been sent by the trustee. If no written objection is
10 provided within the forty-five (45) day time period, the information provided
11 pursuant to paragraph (a) of this subsection will be considered approved, and
12 the trustee shall, within a reasonable period following the expiration of such
13 forty-five (45) day period, distribute the assets to the successor trustee. If the
14 trustee receives a written objection within the applicable forty-five (45) day
15 time period, the trustee may:

- 16 1. Submit the written objection to the District Court for resolution and
17 charge the expense of commencing such a proceeding to the trust; or
- 18 2. Resolve the objection with the opposing party, whether by nonjudicial
19 settlement agreement or otherwise. Any agreement entered into pursuant
20 to this paragraph may include a release, an indemnity clause, or both on
21 the part of the opposing party against the trustee relating to the trust. If
22 the parties agree to a nonjudicial settlement agreement, any related
23 expenses shall be charged to the trust.

24 Upon a resolution of any objection raised by an opposing party pursuant to
25 subparagraph 1. or 2. of this paragraph, within a reasonable period of time
26 thereafter the trustee shall distribute the remaining trust assets as provided in
27 the trust.

1 (c) The trustee may rely upon the written statement of a person receiving notice
2 that such person does not object.

3 (3) When a trustee distributes assets of the trust pursuant to subsection (1) or (2) of this
4 section, the limitations in KRS 386B.6-040 and 386B.10-050 are waived by each
5 person who received notice and either consented or failed to object pursuant to this
6 section, and any such person is barred from bringing a claim against the trustee for
7 breach of trust or challenging the validity of the trust, to the same extent and with
8 the same preclusive effect as if the court had entered a final order approving the
9 trustee's final account.

10 (4) Notice provided under subsection (1) or (2) of this section shall clearly warn of the
11 impending bar of claims against a trustee under KRS 386B.6-040 and 386B.10-050
12 that will result if an objection is not timely made.

13 (5) No trustee shall request that any beneficiary indemnify the trustee against loss
14 in exchange for the trustee forgoing a request to the court to approve its accounts at
15 the time the trust terminates or at the time the trustee is removed or resigns, except
16 as agreed upon by the parties pursuant to paragraph (b)1. or 2. of subsections (1)
17 and (2) of this section.

18 (6) **For purposes of this section, a termination of a trust under KRS 389B.4-140 shall**
19 **be considered a termination pursuant to the trust terms.**

20 (7) The District Court shall have exclusive jurisdiction over matters under this section.

21 ➔ Section 125. KRS 394.010 is amended to read as follows:

22 As used in this chapter, unless the context requires otherwise, "will":

23 (1) Means a last will or testament, codicil, appointment by will, writing in the nature of
24 a will in exercise of a power, and any other testamentary disposition; **and**

25 (2) **Includes a codicil and any testamentary instrument that merely appoints an**
26 **executor, revokes or revises another will, nominates a guardian, or expressly**
27 **excludes or limits the right of an individual or class to succeed to property of the**

1 decedent passing by intestate succession.

2 ➔ SECTION 126. A NEW SECTION OF KRS CHAPTER 186A IS CREATED
3 TO READ AS FOLLOWS:

4 (1) As used in this section:

5 (a) "Beneficiary" means a person designated to receive title to a vehicle upon
6 the death of the preceding owner or joint owners;

7 (b) "Beneficiary designation form" means a form that contains the intention of
8 a present owner or joint owners of a vehicle to transfer ownership of the
9 vehicle to one (1) named beneficiary upon the death of the owner or last
10 surviving joint owner of the vehicle;

11 (c) "Joint owner" means:

12 1. An individual who owns a vehicle with one (1) or more other
13 individuals as joint tenants with rights of survivorship; and

14 2. "Joint owner" does not include an individual who owns a vehicle with
15 one (1) or more other individuals as tenants in common;

16 (d) "Owner" means an individual who owns a vehicle; and

17 (e) "Vehicle" includes any motor vehicle, motorcycle, motor home, trailer, or
18 other item for which a certificate of title is issued by the cabinet.

19 (2) The cabinet shall provide a beneficiary designation form that allows the owner or
20 joint owners of a vehicle to provide for the transfer of the vehicle's title to one (1)
21 named beneficiary upon the death of the owner or upon the death of all joint
22 owners of the vehicle. The form shall include but not be limited to fields for the
23 following information:

24 (a) The manufacturer, model, year, and vehicle identification number of the
25 vehicle;

26 (b) The name of the owner or every joint owner of the vehicle;

27 (c) The words "transfer on death to," or the abbreviation "TOD," followed by

1 *the name of the beneficiary; and*

2 *(d) The signature of the owner of the vehicle or of each joint owner of the*
3 *vehicle.*

4 *(3) The cabinet shall make beneficiary forms available:*

5 *(a) In each county clerk's office; and*

6 *(b) On the cabinet's public website.*

7 *(4) Upon the death of the owner, or the last surviving joint owner, of a vehicle for*
8 *which a beneficiary designation form has been properly executed under*
9 *subsection (2) of this section, the beneficiary shall present the form to the county*
10 *clerk and request a new title of ownership of the vehicle in the beneficiary's*
11 *name. The form shall be accompanied by:*

12 *(a) A death certificate of the owner or last surviving joint owner of the vehicle;*

13 *(b) Proof of payment of ad valorem taxes on the vehicle for the current year. If*
14 *the taxes have not been paid, the beneficiary may elect to pay the taxes to*
15 *facilitate the transfer; and*

16 *(c) The fee for the certificate of title transfer.*

17 *(5) Upon presentation of a properly executed beneficiary designation form and*
18 *accompanying documents as required under subsection (4) of this section, the*
19 *county clerk, subject to any security interest in the vehicle, shall issue a new*
20 *certificate of title to the beneficiary.*

21 *(6) During the lifetime of the owner of the vehicle for which a beneficiary*
22 *designation form has been properly executed or before the death of the last*
23 *surviving joint owner of the vehicle:*

24 *(a) The signature or consent of the beneficiary shall not be required for any*
25 *transaction relating to the vehicle; and*

26 *(b) The owner or surviving joint owners of the vehicle may revoke the*
27 *beneficiary designation form or change the beneficiary on the beneficiary*

1 *designation form at any time by:*

2 *1. Selling the vehicle with proper transfer and delivery of the certificate*
3 *of title to another person; or*

4 *2. Properly executing a subsequent beneficiary designation form that*
5 *designates a new beneficiary.*

6 *(7) Upon the death of the owner or the last surviving joint owner of a vehicle for*
7 *which a beneficiary designation form has been properly executed, the interest of*
8 *the beneficiary in the vehicle shall be subject to any contract of sale, assignment,*
9 *or ownership or security interest to which the owner or joint owners of the vehicle*
10 *were subject during their lifetime.*

11 *(8) Except as provided in subsection (6)(b) of this section, the designation of a*
12 *beneficiary in a beneficiary designation form shall not be changed or revoked by*
13 *will or by other instrument.*

14 *(9) The transfer on death of a vehicle under this section shall be a nontestamentary*
15 *transfer and shall not be subject to any tax under KRS 138.460.*

16 ➔Section 127. KRS 138.470 is amended to read as follows:

17 There is expressly exempted from the tax imposed by KRS 138.460:

18 (1) (a) Motor vehicles titled or registered to the United States, or to the
19 Commonwealth of Kentucky or any of its political subdivisions; and

20 (b) The gross rental or lease charges for the rental or lease of a motor vehicle paid
21 by the United States, or the Commonwealth of Kentucky or any of its political
22 subdivisions;

23 (2) Motor vehicles titled or registered to institutions of purely public charity and
24 institutions of education not used or employed for gain by any person or
25 corporation;

26 (3) Motor vehicles which have been previously titled in Kentucky on or after July 1,
27 2005, or previously registered and titled in any state or by the federal government

1 when being sold or transferred to licensed motor vehicle dealers for resale. The
2 motor vehicles shall not be leased, rented, or loaned to any person and shall be held
3 for resale only;

4 (4) Motor vehicles sold by or transferred from dealers registered and licensed in
5 compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to
6 members of the Armed Forces on duty in this Commonwealth under orders from
7 the United States government;

8 (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity
9 for nine (9) persons or less, owned by nonresident owners and used primarily in
10 interstate commerce and based in a state other than Kentucky which are required to
11 be registered in Kentucky by reason of operational requirements or fleet proration
12 agreements and are registered pursuant to KRS 186.145;

13 (6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered
14 in Kentucky, transferred between husband and wife, parent and child, stepparent
15 and stepchild, or grandparent and grandchild;

16 (7) Motor vehicles transferred when a business changes its name and no other
17 transaction has taken place or an individual changes his or her name;

18 (8) Motor vehicles transferred to a corporation from a proprietorship or limited liability
19 company, to a limited liability company from a corporation or proprietorship, or
20 from a corporation or limited liability company to a proprietorship, within six (6)
21 months from the time that the business is incorporated, organized, or dissolved, if
22 the transferor and the transferee are the same business entity except for a change in
23 legal form;

24 (9) Motor vehicles transferred by will, court order, or under the statutes covering
25 descent and distribution of property, if the vehicles were titled in Kentucky on or
26 after July 1, 2005, or previously registered in Kentucky;

27 (10) Motor vehicles transferred between a subsidiary corporation and its parent

1 corporation if there is no consideration, or nominal consideration, or in sole
2 consideration of the cancellation or surrender of stock;

3 (11) Motor vehicles transferred between a limited liability company and any of its
4 members, if there is no consideration, or nominal consideration, or in sole
5 consideration of the cancellation or surrender of stock;

6 (12) The interest of a partner in a motor vehicle when other interests are transferred to
7 him or her;

8 (13) Motor vehicles repossessed by a secured party who has a security interest in effect
9 at the time of repossession and a repossession affidavit as required by KRS
10 186.045(6). The repossession shall hold the vehicle for resale only and not for
11 personal use, unless he or she has previously paid the motor vehicle usage tax on
12 the vehicle;

13 (14) Motor vehicles transferred to an insurance company to settle a claim. These
14 vehicles shall be junked or held for resale only;

15 (15) Motor carriers operating under a charter bus certificate issued by the Transportation
16 Cabinet under KRS Chapter 281;

17 (16) (a) 1. Motor vehicles registered under KRS 186.050 that have a declared gross
18 vehicle weight with any towed unit of forty-four thousand and one
19 (44,001) pounds or greater; and
20 2. Farm trucks registered under KRS 186.050(4) that have a declared gross
21 vehicle weight with any towed unit of forty-four thousand and one
22 (44,001) pounds or greater.

23 (b) To be eligible for the exemption established in paragraph (a) of this
24 subsection, motor vehicles shall be registered at the appropriate range for the
25 declared gross weight of the vehicle established in KRS 186.050(3)(b) and
26 shall be prohibited from registering at a higher weight range. If a motor
27 vehicle is initially registered in one (1) declared gross weight range and

1 subsequently is registered at a declared gross weight range lower than forty-
2 four thousand and one (44,001) pounds, the person registering the vehicle
3 shall be required to pay the county clerk the usage tax due on the vehicle
4 unless the person can provide written proof to the clerk that the tax has been
5 previously paid;

6 (17) Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a
7 beneficiary of the trust, if a direct transfer from the grantor of the trust to all
8 individual beneficiaries of the trust would have qualified for an exemption from the
9 tax pursuant to subsection (6) or (9) of this section;

10 (18) Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is
11 a natural person and is treated as the owner of any portion of the trust for federal
12 income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679;

13 (19) Motor vehicles transferred from a trustee of a trust to another person if:
14 (a) The grantor of the trust is a natural person and is treated as the owner of any
15 portion of the trust for federal income tax purposes under the provisions of 26
16 U.S.C. secs. 671 to 679; and
17 (b) A direct transfer from the grantor of the trust to the person would have
18 qualified for an exemption from the tax pursuant to subsection (6) or (9) of
19 this section; ~~and~~
20 (20) Motor vehicles under a manufacturer's statement of origin in possession of a
21 licensed new motor vehicle dealer that are titled and transferred to a licensed used
22 motor vehicle dealer and held for sale; and
23 (21) Motor vehicles transferred under Section 126 of this Act.
24 ➔Section 128. KRS 395.160 is amended to read as follows:
25 (1) If a personal representative moves out of the state and fails to designate a process
26 agent as required by KRS 395.015~~(1)~~, becomes insane or otherwise incapable to
27 discharge the trust, goes bankrupt or insolvent or is in failing circumstances, the

1 District Court shall remove him or her, and the other personal representative, if
2 there is another, shall discharge the trust. If he or she resides in the county of his or
3 her appointment or in an adjoining county, and is not insane, he or she shall have
4 ten (10) days' notice before the order of removal is made. If he or she is insane, the
5 notice shall be given to his or her committee, if he or her has one, and if there is no
6 committee, the court may appoint one.

7 (2) The district court may remove a personal representative for failing to give
8 additional security when required under KRS 62.060 and appoint another.

9 (3) The court shall require a personal representative who is removed to settle his
10 accounts, and deliver over the decedent's estate to the person appointed in his stead.

11 ➔Section 129. Sections 32 to 40 of this Act may be cited as the Uniform
12 Electronic Wills Act.

13 ➔Section 130. Sections 41 to 55 of this Act may be cited as the Uniform
14 Electronic Estate Planning Documents Act.

15 ➔Section 131. Sections 61 to 71 of this Act may be cited as the Kentucky
16 Qualified Dispositions in Trust Act.

17 ➔Section 132. Sections 72 to 88 of this Act may be cited as the Uniform Directed
18 Trust Act.

19 ➔Section 133. Sections 89 to 116 of this Act may be cited as the Uniform Trust
20 Decanting Act.

21 ➔Section 134. The following KRS sections are repealed:

22 395.635 Certification of list of fiduciaries delinquent in accounting -- Notice -- Fees.

23 386B.8-080 Powers to direct.

24 386.175 Trustee's power to appoint principal or income in favor of trustee of second
25 trust -- Terms of second trust -- Special fiduciary -- Notice -- Judicial
26 proceedings.