

**292.410 Exempt transactions -- Summary order denying or revoking exemption -- Appeal.**

- (1) Except as expressly provided, KRS 292.330 to 292.390 shall not apply to any of the following transactions:
  - (a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
  - (b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;
  - (c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
  - (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
  - (e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
  - (f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
  - (g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
  - (h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, 15 U.S.C. secs. 80a-1 et seq., pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
  - (i) The offer or sale of a security by the issuer of the security if all of the following conditions are met:
    1. The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute general solicitation within the meaning of this section:
      - a. Solicitation of indications of interest in accordance with the terms and conditions as the commissioner may adopt by rule; or
      - b. Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this section at least thirty

- (30) days after the withdrawal of an application by the issuer to register the same class of securities;
2. The issuer reasonably believes that each purchaser of the securities is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:
    - a. Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and
    - b. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities; and
  3. The transaction satisfies one (1) of the following conditions:
    - a. Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;
    - b. There are not more than fifteen (15) purchasers in Kentucky described in subdivision a. of this subparagraph, plus an unlimited number of purchasers who are "accredited investors" as defined by Rule 501 of the Securities Act of 1933, 17 C.F.R. sec. 230.501; or
    - c. The aggregate offering price of the securities, including securities sold outside of Kentucky, does not exceed one million dollars (\$1,000,000), the total number of purchasers who are not accredited investors, including purchasers outside of Kentucky, does not exceed thirty-five (35), and each purchaser either receives all of the material facts with respect to the decision to invest in the security;
  4. Persons receiving commissions, finders' fees, or other remuneration in connection with sales of securities in reliance on this subsection shall be registered as a broker-dealer or agent under this chapter unless exempt from registration;
  5. The commissioner may by rule deny the exemption provided in this subsection to a particular class of issuers or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter;
  6. The commissioner may, by order, increase the maximum number of purchasers or the maximum offering amount provided in paragraph 3.c. of this subsection upon request if the commissioner determines that any such increase is necessary or appropriate in the public interest or for the

protection of investors. Any request to increase either or both of the conditions shall be made in writing to the commissioner before any sale in reliance on the requested increase and shall be accompanied by the following:

- a. A statement of the amount of the increase in the maximum offering amount or in the number of purchasers being requested, and the issuer's reasons for requesting the increase;
  - b. A copy of any offering circular or other written materials being distributed to prospective purchasers;
  - c. A copy of the written representation and legend serving as the issuer's basis for reasonable belief of a purchaser's investment intent and awareness of restrictions on the transferability and resale of the security being acquired; and
  - d. A filing fee of two hundred fifty dollars (\$250);
- (j) Any offer or sale of a preorganization certificate or subscription, if:
1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
  2. The number of subscribers does not exceed twenty-five (25); and
  3. No payment is made by any subscriber;
- (k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration is paid or given directly or indirectly, except to a broker-dealer registered under this chapter, for soliciting any security holder in this state;
- (l) Any offer of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, 15 U.S.C. secs. 77a et seq., if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
- (m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (n) Any transaction incident to a right of conversion or a statutory or judicially-approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
- (o) Any transaction by a person who does not control, and is not controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;

2. The security is registered under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. sec. 78l, and the issuer files reports pursuant to Section 13 of that act, 15 U.S.C. sec. 78m; and
  3. Copies of such federal registration statements, reports, forms or exhibits as the commissioner may by rule or order require are filed with the commissioner;
- (p) Any transaction by a person who may control, or may be controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;
  2. The security is registered under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. sec. 78l, and the issuer files reports pursuant to Section 13 of that act, 15 U.S.C. sec. 78m;
  3. Copies of such federal registration statements, forms, reports, or exhibits as the commissioner may by rule or order require are filed with the commissioner; and
  4. Such sales by any such person comply with such rules as the commissioner may prescribe; or
- (q) Any transaction for which the commissioner by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.
- (2) The commissioner may by order deny or revoke the exemption specified in KRS 292.400(6), (9), or (12) or in this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law in accordance with KRS Chapter 13B.
- (3) The commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section where the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of conduct constituting a violation of this chapter or administrative regulation promulgated, or order issued pursuant to this chapter, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of conduct constituting a violation of this chapter, an administrative regulation promulgated pursuant to this chapter, or an order issued under this chapter. Any person aggrieved by an order of the commissioner under this section may file an application for an emergency hearing pursuant to KRS 13B.125. The commissioner shall comply with KRS 13B.125 when entering a summary order. The commissioner may modify, stay, extend, or vacate any summary order issued under this section.
- (4) An order issued under this section shall not operate retroactively. No person shall be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the

order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 869, effective July 15, 2010; and ch. 82, sec. 11, effective July 15, 2010. -- Amended 2002 Ky. Acts ch. 230, sec. 38, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 20, sec. 13, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 165, sec. 12, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 346, sec. 7, effective July 15, 1982. --- Amended 1980 Ky. Acts ch. 368, sec. 5, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 401, sec. 1, effective June 17, 1978. -- Amended 1972 Ky. Acts ch. 265, sec. 11. -- Created 1960 Ky. Acts ch. 110, sec. 11, effective January 1, 1961.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts chs. 24 and 82. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 82, which was last enacted by the General Assembly, prevails under KRS 446.250.

**Legislative Research Commission Note (7/15/2010).** References to the "executive director" of financial institutions in subsection (3) of this section, as amended by 2010 Ky. Acts ch. 82, sec. 11, have been changed in codification to the "commissioner" of financial institutions to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Orders 2009-535 and 2009-1086 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. These changes were made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 24, sec. 1938.