

AN ACT relating to venue in civil actions that include the Commonwealth or its agencies.

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

➔Section 1. KRS 5.005 is amended to read as follows:

- (1) An action challenging the constitutionality of any legislative district created by this chapter shall be brought in the Franklin Circuit Court ***or in the Circuit Court of any county in which any part of a challenged district may be located***~~[, which shall have exclusive venue in all matters relating to redistricting].~~
- (2) The Secretary of State shall be named as a defendant in any action challenging the constitutionality of any legislative district created by this chapter.
- (3) The Legislative Research Commission may intervene as a matter of right in any action challenging the constitutionality of any legislative district created by this chapter.

➔Section 2. KRS 6.130 is amended to read as follows:

If a fine is imposed under KRS 6.080, it may be collected by action in any~~[the Franklin]~~ Circuit Court ***of competent jurisdiction*** by the Attorney General, in the name of the Commonwealth, and the proceedings shall be the same as in civil cases instituted by the Commonwealth for the collection of debt.

➔Section 3. KRS 6.666 is amended to read as follows:

- (1) The commission shall have jurisdiction over the administration of this code and enforcement of the civil penalties prescribed by this code.
- (2) The commission shall have jurisdiction over the disposition of complaints filed pursuant to KRS 6.686.
- (3) The commission may administer oaths; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony; and have the deposition of witnesses taken in the manner prescribed by the Kentucky Rules of Civil Procedure for taking depositions in civil actions. If a

person disobeys or refuses to comply with a subpoena, or if a witness refuses to testify to a matter regarding which he may be lawfully interrogated, the Franklin Circuit Court or the Circuit Court of any county where the witness may be found may, on application of the commission, compel the obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or a refusal to testify in Circuit Court. Each witness subpoenaed under this section shall receive for his attendance the fees and mileage provided for witnesses in Circuit Court, which shall be audited and paid upon the presentation of proper vouchers sworn to by the witness.

- (4) The commission may render advisory opinions in accordance with KRS 6.681.
- (5) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this code.
- (6) The commission shall prescribe and provide forms for reports, statements, notices, and other documents required by this code.
- (7) The commission shall determine whether the required statements and reports have been filed and, if filed, whether they conform with the requirements of this code. The commission shall promptly give notice to the filer to correct or explain any omission or deficiency.
- (8) Unless otherwise provided in this code, the commission shall make each report and statement filed under this code available for public inspection and copying during regular office hours at the expense of any person requesting copies of them and at a charge not to exceed actual cost, not including the cost of staff required.
- (9) The commission may preapprove leases or contracts pursuant to KRS 6.741.
- (10) The commission shall compile and maintain a current index organized alphabetically by name of legislative agent and name of employer of all reports and statements filed with the commission in order to facilitate public access to the reports and statements.

- (11) The commission shall preserve all filed statements and reports for at least two (2) years from the date of receipt.
- (12) The commission shall provide to the Legislative Research Commission and each member of the General Assembly a list of every legislative agent and employer registered with the commission, including the name of each entity he represents and the date of his registration. The list shall be furnished on or before the tenth day of every month. Changes in the lists shall be furnished on Friday of each week that the General Assembly is convened in regular or extraordinary session.
- (13) Upon the sine die adjournment of a regular session of the General Assembly, the commission shall provide to the Registry of Election Finance a list of each person who was registered as a legislative agent or employer at any point during the period in which the General Assembly was convened in regular session. Upon the convening, and within fifteen (15) days after the sine die adjournment of, any extraordinary session, the commission shall provide to the Registry of Election Finance a list of each person who was registered as a legislative agent or employer at any point during that period.
- (14) In order to carry out the provisions of this code, the commission may contract with any public or private agency or educational institution or any individual for research studies, the gathering of information, the printing and publication of its reports, consulting, or for any other purpose necessary to discharge the duties of the commission.
- (15) The commission may conduct research concerning governmental ethics and implement any public educational programs it considers necessary to give effect to this code.
- (16) No later than December 1 of each year, the commission shall report to the Legislative Research Commission on the commission's activities in the preceding fiscal year. The report shall include, but not be limited to, a summary of

commission determinations and advisory opinions. The report may contain recommendations on matters within the commission's jurisdiction.

- (17) No later than July 1 of each odd-numbered year, beginning July 1, 1995, the commission shall submit a report to the Legislative Research Commission which shall contain recommendations for any statutory revisions it deems necessary.
- (18) All funds received by the commission from any source shall be placed in a trust and agency account for use by the commission in the administration and enforcement of the provisions of this code. Funds in the trust and agency account shall not lapse.

➔Section 4. KRS 6.691 is amended to read as follows:

- (1) The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall apply to all commission adjudicatory hearings. All testimony in a commission adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel and any other due process rights, privileges, and responsibilities of a witness appearing before the courts of the Commonwealth of Kentucky. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings. All witnesses shall be entitled to be represented by counsel.
- (2) Any person whose name is mentioned during adjudicatory proceedings of the commission and who may be adversely affected thereby may appear personally before the commission on the person's own behalf, with or without attorney, to give a statement in opposition to such adverse mention or file a written statement of that opposition for incorporation into the record of proceeding.
- (3) All adjudicatory proceedings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.
- (4) Within thirty (30) days after the end of an adjudicatory proceeding pursuant to the

provisions of this section, the commission shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty (30) days after completion of deliberations, the commission shall publish a written report of its findings and conclusions which shall be based on whether the person accused has complied with the statute as written.

- (5) No penalty provided for in this section shall be imposed except as the result of an adjudicatory proceeding held upon the filing of a complaint. Notwithstanding the administrative penalties provided for in KRS 6.797, 6.807, and 6.821, the commission, upon a finding pursuant to an adjudicatory proceeding that there has been clear and convincing proof of a violation of this code, may:
- (a) Issue an order requiring the violator to cease and desist the violation;
  - (b) Issue an order requiring the violator to file any report, statement, or other information as required by this code;
  - (c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the presiding officer of the house in which the alleged violator serves;
  - (d) In writing, recommend to the house in which the violator serves that the violator be sanctioned as recommended by the commission, which may include a recommendation for censure or expulsion;
  - (e) Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars (\$2,000); or
  - (f) Revoke the registration of any legislative agent or employer for a period not to exceed five (5) years. During the period of the revocation, the agent or employer or any other entity which constitutes nothing more than the legislative agent or employer operating under a different name or identity shall not be permitted to register as a legislative agent or employer.
- (6) The commission may refer to the Attorney General, county attorney, or

Commonwealth's attorney of the appropriate jurisdiction, for prosecution evidence of criminal violations of this code. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation.

- (7) Findings of fact or final determinations by the commission that a violation of this code has been committed, or any testimony related to the commission's findings of fact or final determinations, shall not be admissible in criminal proceedings in the courts of the Commonwealth of Kentucky. Evidence collected by the commission may be used in a criminal proceeding if otherwise relevant.
- (8) Any person found by the commission to have committed a violation of this code may appeal the action to the Franklin Circuit Court or the Circuit Court of the county where the person resides. The appeal shall be initiated within thirty (30) days after the date of the final action of the commission by filing a petition with the court against the commission. The commission shall transmit to the clerk of the court all evidence considered by the commission at the public hearing. The court shall hear the appeal upon the record as certified by the commission.

➔Section 5. KRS 6.920 is amended to read as follows:

- (1) The committee, while in the discharge of its official duties, shall have the following additional powers:
  - (a) To subpoena and examine witnesses; to require the appearance of any person and the production of any paper or document; to order the appearance of any person for the purpose of producing any paper or document; and to issue all process necessary to compel such appearance or production. When such process has been served, the committee may compel obedience thereto by the attachment of the person, papers or records subpoenaed;
  - (b) If any person fails or refuses to testify or furnish documentary evidence concerning any matter with respect to which the committee desires

information pertaining to the studies in which it is engaged, the Franklin Circuit Court *or the Circuit Court of any county where the witness or the evidence may be found*, on application of the committee, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or a refusal to testify therein;

- (c) To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee deems the administration of an oath necessary and advisable as provided by law; and
  - (d) To determine that a witness has perjured himself by testifying falsely before the committee, and to institute appropriate penal proceedings as provided by law.
- (2) Each witness who appears before the committee by its order, other than officer or employee of the state, shall be entitled to the fees and mileage provided for witnesses in civil cases in Circuit Courts, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the committee.

➔Section 6. KRS 7.110 is amended to read as follows:

- (1) The Commission, its co-chairmen or director, any other member of the General Assembly authorized by the director, or any employee authorized by the director, shall have access to all public records as provided in KRS 61.870 to 61.884, of every agency, division or department of state government, and of any agency or institution, public or private, which has been the recipient of public funds. The Commission, its co-chairmen or director, any other member of the General Assembly authorized by the director, or any employee authorized by the director, may utilize automated data processing procedures and equipment in the accession of public records, if such records exist in machine readable form. To effect the purposes of this section, the Commission shall promulgate such rules and

regulations relating to the accession of public records as are necessary. The Commission, its co-chairmen or director, any other member of the General Assembly authorized by the director, or any employee authorized by the director, may require information on oath of any person touching any matter which he is instructed to investigate, study or audit, and shall have the power to subpoena witnesses and records for such purpose, and otherwise compel the giving of evidence of any matter under study. If any person fails or refuses to testify or furnish documentary evidence concerning any matter with respect to which the Commission desires information pertaining to the studies in which it is engaged, the Franklin Circuit Court or the Circuit Court of any county where the witness or the evidence may be found, on application of the Commission, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or a refusal to testify therein. Every witness so subpoenaed under this section shall receive for his attendance the fee and mileage provided for witnesses in civil cases in Circuit Court, which shall be audited and paid upon the presentation of proper vouchers sworn to by the witness and approved by the Commission.

- (2) All state agencies and institutions shall cooperate with the Commission to effectuate the purposes of KRS 7.090 to 7.110 and shall submit copies of their annual or biennial reports to the Commission.
- (3) The Commission shall encourage and arrange conferences with officials of other states and of other units of government; carry forward the participation of this state as a member of the Council of State Governments, both regionally and nationally, and formulate proposals for cooperation between this state and other states. The Legislative Research Commission shall function as Kentucky's commission on interstate cooperation in carrying out the program of the Council of State Governments as it relates to Kentucky.

- (4) The Commission shall designate persons to represent Kentucky at the National Conference of Commissioners on Uniform State Laws. The Commission shall report the findings and recommendations of the national conference to the General Assembly. Any funds appropriated to the commissioners on uniform state laws shall be paid out on vouchers approved by the director of the Commission.
- (5) The Commission may establish such subcommittees and advisory citizens' committees as may be convenient or desired for the proper and efficient performance of its functions. Members of the General Assembly other than those who are members of the Commission designated to serve on subcommittees shall receive the same travel allowances and compensation for attending meetings as they do for attending meetings during a session of the General Assembly, except that each General Assembly member who is a chairman of a joint interim committee of the Legislative Research Commission shall be paid, in addition to such allowances and compensation, ten dollars (\$10) per day for each committee meeting that he chairs.
- (6) The Commission shall report its findings, either with or without recommendations, to the Governor of the Commonwealth, and to each member of the General Assembly at least thirty (30) days prior to the convening of each regular session of the General Assembly.

➔Section 7. KRS 7.119 is amended to read as follows:

- (1) Records in the custody of the Legislative Research Commission or the General Assembly shall be available for distribution to the public, or open for inspection by any person.
- (2) As used in subsection (1) of this section, "records" includes bills and amendments introduced in the Senate or House of Representatives, Senate and House Journals, Acts of the General Assembly, roll call votes, final reports of committees, Kentucky Administrative Regulations, documents showing salary and expenses paid to

members of the General Assembly and all employees of the legislative branch, contracts, receipts and work orders for repairs or renovations to legislative offices or facilities, items cataloged in the legislative library, the Legislative Record, and informational and educational materials offered by the public information office, including legislative videotapes and photographs, calendars, and meeting notices.

- (3) Requests for records or other documents in the custody of the Legislative Research Commission or the General Assembly shall be directed to the director of the Legislative Research Commission. Except for KRS 61.880(3), provisions of the Open Records Act, KRS 61.870 to 61.884, shall apply to a request for inspection or copies of documents or other items not set forth in subsection (2) of this section, and except that a request for a review under KRS 61.880 of any determination by the director shall be made to the Legislative Research Commission, which shall issue its decision within thirty (30) days. If the Legislative Research Commission does not issue its decision on a review of the director's determination within thirty (30) days of submission to it of the matter, the director's determination may be appealed to the Franklin Circuit Court or the Circuit Court where the person resides or where the commission has its principal office within sixty (60) days of its issuance. For purposes of this subsection, any reference to the Attorney General in KRS 61.880 and 61.882 shall be read as the Legislative Research Commission.

➔Section 8. KRS 7.320 is amended to read as follows:

- (1) The Legislative Research Commission or a subcommittee authorized by it shall study and examine expenditures of state agencies. To facilitate optimum effectiveness and economy in the performance of this function, the Legislative Research Commission or a committee or subcommittee authorized by it, shall employ electronic data processing equipment including computers and other necessary support equipment capable of providing read only access to the desired expenditure records. The Commission may organize and adopt rules for the

conduct of its business and do whatever else it considers necessary or advisable to carry out the purposes of KRS 7.310 to 7.380.

- (2) The Commission may adopt rules and prescribe procedures for the conduct of its affairs.
- (3) The Commission or any member thereof or any employee duly authorized by the Commission or the co-chairmen thereof may administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and have the deposition of witnesses taken in the manner prescribed by law for taking depositions in civil actions. If a person disobeys or refuses to comply with a subpoena, or if a witness refuses to testify to a matter regarding which he may be lawfully interrogated, the Franklin Circuit Court *or the Circuit Court of any county where the witness may be found* may on application of the Commission compel obedience by proceedings for contempt in the same manner as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. Each witness who appears before the Commission by its order, other than an officer or employee of the state, is entitled to the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witnesses and approved by the co-chairmen of the Commission.

➔Section 9. KRS 13A.337 is amended to read as follows:

- (1) The General Assembly finds that certain administrative regulations, as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient on or after July 15, 1988, and either expired prior to or upon adjournment of the 2001 General Assembly, or were scheduled to expire upon adjournment of the 2002 Regular Session of the General Assembly, under the provisions of KRS Chapter 13A as existing before the issuance of the Opinion and

Order of the Franklin Circuit Court in Patton v. Sherman et al., Civil Action No. 01-CI-00660, entered January 11, 2002.

- (2) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative regulations identified in subsection (1) of this section shall be null, void, and unenforceable, as follows:
  - (a) Those administrative regulations identified in subsection (1) of this section which expired prior to or upon adjournment of the 2001 Regular Session of the General Assembly under the provisions of KRS Chapter 13A existing before the issuance of the court order referenced in subsection (1) of this section shall be null, void, and unenforceable as of their recorded date of expiration, according to the records of the Legislative Research Commission. Administrative bodies and regulated persons and entities have relied on the assumption that these administrative regulations have previously expired; therefore, this subsection shall have the retroactive effect necessary to implement its provisions; and
  - (b) Those administrative regulations identified in subsection (1) of this section due to expire upon adjournment of the 2002 Regular Session of the General Assembly, under the provisions of KRS Chapter 13A existing before the issuance of the court order referenced in subsection (1) of this section, shall be null, void, and unenforceable on March 27, 2002.
- (3) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, an administrative body shall be prohibited from promulgating an administrative regulation that is identical to or substantially the same as any administrative regulation identified in subsection (1) of this section for a period beginning on January 11, 2002, and concluding upon adjournment of the 2003 Regular Session of the General Assembly. This subsection shall have the retroactive effect necessary to implement its provisions.

- (4) The Legislative Research Commission may file an action in any~~[the Franklin]~~ Circuit Court where the Commission or the promulgating agency has its principal offices for judicial review to determine if any administrative regulation is lawfully promulgated in accordance with the laws and Constitution of the Commonwealth of Kentucky.

➔Section 10. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
- (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
  - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
  - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
  - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other

- unit of local government operating strictly in a local jurisdictional capacity;
- (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
  - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
  - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
  - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
  - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
- (a) Finance and Administration Cabinet
    - 1. Higher Education Assistance Authority
      - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
      - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
    - 2. Department of Revenue
      - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
      - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
  - (b) Cabinet for Health and Family Services
    - 1. Office of Health Policy

- a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
    - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
  2. Department for Community Based Services
    - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
  3. Department for Income Support
    - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
- (c) Justice and Public Safety Cabinet
1. Department of Kentucky State Police
    - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
  2. Department of Corrections
    - a. Parole Board hearings conducted under authority of KRS Chapter 439
    - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
    - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
  3. Department of Juvenile Justice
    - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) Energy and Environment Cabinet
1. Department for Natural Resources
    - a. Surface mining hearings conducted under authority of KRS

## Chapter 350

2. Department for Environmental Protection
  - a. Wild River hearings conducted under authority of KRS Chapter 146
  - b. Water resources hearings conducted under authority of KRS Chapter 151
  - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
  - d. Environmental protection hearings conducted under authority of KRS Chapter 224
  - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
3. Public Service Commission
  - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- (e) Labor Cabinet
  1. Department of Workers' Claims
    - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
  2. Kentucky Occupational Safety and Health Review Commission
    - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- (f) Public Protection Cabinet
  1. Board of Claims
    - a. Liability hearings conducted under authority of KRS Chapter 44
- (g) Education and Workforce Development Cabinet
  1. Unemployment Insurance hearings conducted under authority of KRS

## Chapter 341

## (h) Secretary of State

## 1. Registry of Election Finance

## a. Campaign finance hearings conducted under authority of KRS

## Chapter 121

## (i) State universities and colleges

## 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164

## 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164

## 3. Campus residency hearings conducted under authority of KRS Chapter 164

## 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99

## 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.

## (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:

## (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;

## (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or

- (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in ~~any~~the Franklin Circuit Court **where the agency or the Attorney General has its principal office** within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.
- ➔Section 11. KRS 14A.1-050 is amended to read as follows:
- (1) If an entity or foreign entity fails or refuses to answer truthfully and fully within the time prescribed to any interrogatories propounded by the Secretary of State, the Secretary of State may with respect to that entity initiate its administrative dissolution or, with respect to a foreign entity qualified to transact business in Kentucky, revoke its certificate of authority.
- (2) Each person who fails or refuses within the time prescribed to truthfully and fully answer interrogatories propounded to an entity or a foreign entity shall be guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).

- (3) Further, an action may be initiated in *any Circuit Court of competent jurisdiction* ~~[Franklin Circuit Court]~~ by the Secretary of State or the Attorney General against any domestic or foreign entity in furtherance of KRS 14A.1-040(1).

➔Section 12. KRS 14A.2-110 is amended to read as follows:

- (1) If the Secretary of State refuses to file a document delivered for filing, the entity, foreign entity, or other person making the delivery for filing may appeal the refusal to *any Circuit Court of competent jurisdiction* ~~[the Franklin Circuit Court]~~. The appeal shall be commenced by petitioning the court to compel filing the document and by attaching to the petition the document as delivered for filing and the Secretary of State's explanation of the refusal to file.
- (2) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings.

➔Section 13. KRS 14A.7-040 is amended to read as follows:

- (1) If the Secretary of State denies an entity's application for reinstatement the Secretary of State shall notify the entity and provide the reason or reasons for denial, which notification may be accomplished electronically.
- (2) The entity may appeal the denial of reinstatement to *any* ~~[the Franklin]~~ Circuit Court *of competent jurisdiction*. The entity may appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the entity's application for reinstatement, and the Secretary of State's notice of denial.
- (3) The court may summarily order the Secretary of State to reinstate the dissolved entity or may take other action the court considers appropriate.
- (4) The court's final decision may be appealed as in other civil proceedings.

➔Section 14. KRS 14A.9-090 is amended to read as follows:

- (1) A foreign entity may appeal the Secretary of State's revocation of its certificate of

authority to ~~any~~<sup>the Franklin</sup> Circuit Court **of competent jurisdiction** within thirty (30) days after service of the certificate of revocation. The foreign entity may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

- (2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings.

➔Section 15. KRS 15.394 is amended to read as follows:

- (1) If the council believes an agency's job task analysis to be insufficient or erroneous, the council shall file a declaratory action in Franklin Circuit Court **or the Circuit Court of the county where the agency is located** to declare the job task analysis invalid.
- (2) Until the job task analysis has been declared invalid and all appeals have been exhausted, the council shall accept the agency's job task analysis.

➔Section 16. KRS 15.707 is amended to read as follows:

The Prosecutors Advisory Council shall have the power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of any matter that it is authorized to consider or reasonably necessary therefor. Subpoenas may be signed and oaths administered by any member of the council. Subpoenas so issued shall be served by any sheriff, constable, police officer, or other peace officer at the request of the council, and a return of subpoena shall be made to the council in the same manner as similar process in the Circuit Court. Any person who refuses to testify, testifies falsely, or fails to appear when subpoenaed, or fails or refuses to produce documents, records, or other such material when subpoenaed, or fails or refuses to serve a subpoena or execute a return thereon, upon citation by the Franklin Circuit Court **or the Circuit Court of the county**

where the person is located and after hearing by ~~that~~<sup>the</sup> court, shall be subject to the same order and penalties to which persons before that court are subject. Any Circuit Court, upon application of the council or the Attorney General, may compel the attendance of witnesses, the production of documents, records, or other such material, and the giving of testimony before the council.

→ Section 17. KRS 16.150 is amended to read as follows:

- (1) Any officer of the department who shall be found guilty by the trial board of any charge as provided in KRS 16.140 shall have the right, within ten (10) days from the date of judgment of the trial board, to appeal to the Franklin Circuit Court or the Circuit Court of the county where the officer resides, provided the punishment be a suspension of more than twenty (20) days or his pay be reduced more than ten percent (10%), or if he is reduced in grade, if his classification so warrants, or is removed or dismissed from the department; provided, however, the enforcement of the judgment of the trial board upon said charges shall not be suspended during said appeal.
- (2) To perfect said appeal within the time specified, such officer shall file in the office of the circuit clerk ~~of the Franklin Circuit Court~~ a copy of the order, of all the evidence heard, and of all the steps taken by the trial board relative to such charges, but shall first post a bond to secure the cost of the action in a lump sum to be approved by the circuit clerk, with corporate surety approved by the Department of Insurance as to solvency and responsibility and authorized to transact business in this state, or he may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to such appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.

- (3) Such action shall be set down for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.
- (4) No new or additional evidence shall be introduced in the ~~Franklin~~ Circuit Court, except as to fraud or misconduct of some party engaged in the administration of KRS 16.010 to 16.170, or one (1) who is a member of the trial board, but the court shall otherwise hear the case upon the record as attested by the board, and in all respects dispose of the appeal in a summary manner. Its review shall be limited to determining whether or not:
- (a) The board acted without or in excess of its powers;
  - (b) The order appealed from was procured by fraud; or
  - (c) If questions of fact are in issue, whether or not any substantial evidence supports the order appealed from. After such a hearing, the court shall enter a judgment sustaining or setting aside the order of the trial board appealed from.
- The cost of the action shall follow the judgment of the court.
- (5) Any party aggrieved by a judgment of the ~~Franklin~~ Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure, but such appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time be extended by the Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.

➔Section 18. KRS 16.193 is amended to read as follows:

- (1) Any officer of the department found guilty by the trial board of any charge as provided in KRS 16.192 shall have the right, within ten (10) days from the date of judgment of the trial board, to appeal to the Franklin Circuit Court ***or to the Circuit Court of the county where the officer resides*** if the punishment is:
- (a) A suspension of more than twenty (20) days;
  - (b) A pay reduction of more than ten percent (10%);
  - (c) A grade reduction if his classification so warrants; or

(d) Dismissal from the department.

The enforcement of the judgment of the trial board upon said charges shall not be suspended during the appeal.

- (2) To perfect the appeal within the specified time, an officer shall file a copy of the order, all the evidence heard, and a full transcribed record relative to the charges with the ~~Franklin County~~ circuit clerk. The officer shall first post a bond to secure the cost of the action in a lump-sum amount to be approved by the circuit clerk, with corporate surety approved by the Department of Insurance as to solvency and responsibility and authority to transact business in this state, or the officer may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to the appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.
- (3) The appeal shall be scheduled for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.
- (4) No new or additional evidence shall be introduced in the ~~Franklin~~ Circuit Court, except as to fraud or misconduct of some party involved in the investigation of the charges or a member of the trial board. The court shall sit in appellate jurisdiction and shall not overturn the verdict of the trial board unless it finds:
- (a) The board acted without or in excess of its powers;
  - (b) The order appealed from was procured by fraud; or
  - (c) If questions of fact are at issue, whether any substantial evidence exists to support the order issued by the trial board. The court shall enter a judgment sustaining or setting aside the order of the trial board. The cost of the action shall follow the judgment of the court.

- (5) Any party aggrieved by a judgment of the ~~Franklin~~ Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure. The appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time is extended by the ~~Franklin~~ Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.

➔Section 19. KRS 17.560 is amended to read as follows:

- (1) Prior to the refusal to issue, renew, probate, suspend, or revoke the approval of a provider, the board shall conduct a hearing in accordance with the provisions of this chapter and KRS Chapter 13B.
- (a) The hearing may be conducted by a hearing officer;
- (b) The hearing officer may only issue a recommended order, and the recommended order shall be subject to review by a majority of the full board, which shall issue a final order.
- (2) The board may proceed against an approved provider on its own initiative, on the basis of either information contained in its own records, or information obtained through its informal investigation.
- (3) If a formal complaint verified by affidavit is filed with the board by a responsible citizen or organization containing allegations that if true would warrant action, the board may proceed against the approved provider.
- (4) Any final order of the board may be appealed to the Franklin Circuit Court ***or the Circuit Court of any county where the provider is located*** in accordance with KRS Chapter 13B.

➔Section 20. KRS 17.568 is amended to read as follows:

Whenever in the judgment of the board any person has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of KRS 17.500 to 17.580 and 17.991, the board may apply to the Franklin Circuit Court ***or the Circuit Court of any county where the provider is located*** for an order enjoining these acts or practices.

- (1) Upon a showing by the board that a person has engaged or is about to engage in any of these acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.
- (2) Any order of the ~~Franklin~~ Circuit Court shall be enforceable and shall be valid anywhere in this state, and the order of the court shall be reviewable as provided in the Rules of Civil Procedure in the case of other injunctions and restraining orders.

➔Section 21. KRS 18A.085 is amended to read as follows:

- (1) Members of the board may be removed by the Governor for cause after being given a copy of charges against them and an opportunity for an administrative hearing to be conducted in accordance with KRS Chapter 13B.
- (2) Any member of the board removed by the Governor may appeal the Governor's final order removing him from the board to the Franklin Circuit Court ***or the Circuit Court of the county where the board member resides*** in accordance with KRS Chapter 13B.

➔Section 22. KRS 18A.100 is amended to read as follows:

- (1) Any final order of the board either upholding or invalidating the dismissal, demotion, suspension, or other penalization of a classified or an unclassified employee may be appealed either by the employee or by the appointing authority.
- (2) The party aggrieved may appeal a final order by filing a petition with the clerk of the Franklin Circuit Court ***or the Circuit Court of any county where the employee was employed*** in accordance with KRS Chapter 13B.

➔Section 23. KRS 18A.170 is amended to read as follows:

It is further provided that the responsible departmental, board, commission or agency head shall at the time at which he elects to come under the provisions of KRS 18A.005 to 18A.200, certify to the board the positions of those division directors or heads under their jurisdiction whose duties are nonpolicy making together with a sufficient statement of their duties to enable the board to determine whether or not, as a matter of fact, such

duties are nonpolicy making in their nature. He shall, at any time subsequent to coming under the provisions of KRS 18A.005 to 18A.200 certify to the board additional division directors or heads whose duties are nonpolicy making. At the time of certification notice thereof shall be given to the interested division director or head in the form of a copy of the statement certifying the duties of his office. The board may conduct such hearings as it may deem necessary, and shall conduct hearings pursuant to the administrative provisions of KRS 18A.095 in the event of a difference of opinion between the certifying officer and the interested division director or head, before entering its findings of fact and an order either classifying or denying classification to such position. Either the certifying officer or the division director or head may appeal the findings of fact and the final order of the board by initiating action in the Franklin Circuit Court or the Circuit Court of any county where the appellant or appellee is located pursuant to the provisions of KRS 418.040 et seq.

→Section 24. KRS 18A.175 is amended to read as follows:

The responsible departmental, board, commission or agency head shall periodically evaluate the duties of those division directors or heads placed under the classified service pursuant to the provisions of KRS 18A.170, and shall determine whether the duties of such directors or heads have become policy making in their nature. If it is determined that the duties of such directors and heads are policy making, the responsible agency head shall certify that fact to the board. At the time of certification, notice thereof shall be given to the interested division director or head in a form of a copy of the statement certifying the policy making duties of his office. The board may conduct such hearings as it may deem necessary, and shall conduct hearings pursuant to the administrative provisions of KRS 18A.095 in the event of a difference of opinion between the certifying officer and the interested division director or head, before entering its findings of fact and an order either removing the position from the classified service or retaining it within the classified service. Either the certifying officer or the division director or head may appeal

the findings of fact and the final order of the board by initiating action in the Franklin Circuit Court or the Circuit Court of any county where the appellant or appellee is located pursuant to the provisions of KRS Chapter 418.

→Section 25. KRS 39C.050 is amended to read as follows:

Local emergency management agencies created pursuant to KRS 39B.010 shall be eligible to apply for benefits from the fund created pursuant to KRS 39C.010 and 39C.020 if they meet the following criteria:

- (1) The local emergency management agency shall have a qualified, duly appointed local director who is capable of fully executing the duties of the position pursuant to KRS 39B.030. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, during the first year of participation in the funding program, the local director, whether serving on a voluntary or paid basis, shall have successfully completed all correspondence courses specified by the division by administrative regulation. The local director shall also participate in an emergency management workshop when offered. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, each local director shall also attend an introductory emergency management course when offered.
  - (a) In each following year, each local director shall attend an emergency management workshop, when offered.
  - (b) In subsequent years, a local director shall continue his or her education by annually completing advanced instruction offered by the division, including the training courses and the Emergency Management Development Program as required by administrative regulations promulgated by the division. The requirements of this section may be met by successfully completing related courses offered by federal agencies and other organizations, as approved by

the division.

- (2) Each local emergency management agency employee, other than the local director, whose salary is reimbursed in part by this fund, shall attend one (1) emergency management workshop at least every other year, and shall complete other instruction offered by the division as required by administrative regulations promulgated by the division.
- (3) The local director appointed pursuant to KRS Chapters 39A to 39F, shall develop a local emergency operations plan and appropriate annexes. This plan shall be subject to concurrence review by the director of the division. In subsequent years, the plan and all annexes shall annually be reviewed, updated, approved, and officially adopted in accordance with the provisions of KRS Chapters 39A to 39F.
- (4) During the second and each subsequent year of participation in the program, the local director shall conduct an exercise to test the local emergency operations plan in accordance with exercise program requirements and guidelines of the Federal Emergency Management Agency or the division.
- (5) Each local emergency management agency created pursuant to KRS Chapters 39A to 39F shall provide for an organized and designated emergency operating center in the local jurisdiction from which all operations of the local disaster and emergency services organization shall be coordinated. This center shall provide resources for communications, information management, and other operational capabilities necessary to ensure the coordination of all disaster and emergency response in the local jurisdiction. The local emergency operations center shall be a direction and control component of the integrated emergency management system of the Commonwealth.
- (6) Each local emergency management agency shall develop, and submit annually to the division, a program paper detailing agency administrative data, current staff personnel listings, a specific work plan of program objectives scheduled for

accomplishment during the next fiscal year, and a budget request. Forms and guidance materials for this report shall be provided by the division.

- (7) Each employee of a local emergency management agency created pursuant to this chapter with the exception of the local director and each deputy, if the deputy functions in a policymaking capacity, whose salary is reimbursed in part or in total with these funds, shall meet the standards of the Kentucky merit system, or the standards of the Federal Office of Personnel Management or its successor or local equivalent, when recognized by the director.
- (8) In order for a local emergency management agency to participate in the funding program, one (1) of the following persons shall attend an annual emergency management workshop:
  - (a) The county judge/executive;
  - (b) The deputy county judge/executive;
  - (c) The mayor of an urban-county government, or of a consolidated local government, or of the largest city in the county, or the mayor of the city which is the county seat of the county, or the chief executive of other local government;
  - (d) The city manager;
  - (e) The local emergency management deputy director; or
  - (f) A member of the fiscal court, urban-county council, or consolidated local government of the county.
- (9) The division shall determine by administrative regulation:
  - (a) Public officials and disaster and emergency services personnel who may be reimbursed for attendance at emergency management workshops or other activities; and
  - (b) Reimbursements for attending courses and workshops, which shall be limited as follows:

1. Reimbursement rates for meals and travel mileage shall not exceed those for state employees.
  2. Reimbursement shall be made for attending the workshop or course nearest to the participant's residence. A participant may attend a workshop at a greater distance but will be reimbursed for meals and mileage equal to that of attending the nearest workshop or course. In cases of extreme hardship, the nearest course or workshop requirement may be waived, in writing, by the director.
- (10) The division shall:
- (a) Publicize all available state and federal emergency management agency training courses to mayors, county judges/executive, and local directors; and
  - (b) Assist local personnel listed in this section in gaining entrance to state and federal emergency management agency training courses.
- (11) If, at any time, the director of the division determines that a local emergency management agency or a local director does not comply with the eligibility requirements of this section, the director shall notify that local director and the appointing authorities, in writing, of the intent to deny financial assistance to the local emergency management agency. The local director shall have ten (10) working days to come into compliance or otherwise provide information to the director to justify eligibility for funding. If the director continues to determine that the local emergency management agency or the local director does not meet eligibility requirements, the local emergency management agency shall be ineligible for funds and the director shall notify the local director and the appointing authorities, of the determination. A local director aggrieved by a decision of the director may appeal to the Franklin Circuit Court *or the Circuit Court of any county where the agency is located* within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo.

➔Section 26. KRS 39C.080 is amended to read as follows:

- (1) The performance of each local emergency management agency or local director receiving funding pursuant to KRS 39C.010 and 39C.020 shall be evaluated quarterly as to compliance with the provisions of KRS Chapters 39A to 39F, satisfactory program administration, and the achievement of scheduled program objectives by the local emergency management agency or local director. Based upon this evaluation:
  - (a) Programs which are judged deficient, or otherwise not in compliance with KRS Chapters 39A to 39F, or program guidance of the division, may have funds withheld and those funds which have been withheld may be transferred to other local emergency management agencies.
  - (b) Programs which meet or exceed their minimum program objectives and have needs for additional funds for program improvements may be granted additional requested funds, or portions thereof, for use by the local emergency management agency in making the improvements, subject to the availability of funds.
- (2) Within fifteen (15) days after the end of each quarter, the local emergency management director shall prepare and submit all documentation, records, or reports required by the division to substantiate and document the work activity of the local director and the local emergency management agency in performing official duties or work plan objectives during each quarter.
- (3) Program progress and compliance shall be reviewed quarterly by the area manager of the geographical area in which the local emergency management agency is located. The area manager shall review training records, exercise reports, financial records and budget expenditure rates, all work plan documentation reports or materials submitted by the local director at the end of each quarter, program guidance materials, or other sources of information, and make an assessment as to

whether the local emergency management agency or local director is in compliance with current program requirements or guidance, or is making satisfactory progress toward the full achievement of the objectives outlined in the work plan of the annual program paper. The area manager shall transmit an assessment report to the director of the division together with any recommendations thereon.

- (4) The director shall then review the material submitted, together with the area manager's recommendations, and submit it to the advisory committee for its evaluation and recommendations with regard thereto.
- (5) The advisory committee shall transmit to the director its determination of the local emergency management agency's state of compliance or progress, and that of the local director, and the committee's recommendations with regard thereto. The director shall review the report and all recommendations thereon. The director shall then make a final determination with regard to compliance and progress and, if a deficiency is found, the measures which shall be taken to assure compliance.
- (6) Local emergency management agencies or local directors determined not to be making satisfactory progress toward the accomplishment or completion of work plan objectives as outlined in the annual program paper, or not performing in accordance with the written program guidance or the requirements of KRS Chapters 39A to 39F, shall be given thirty (30) days to correct the deficiencies in the manner outlined by the director.
- (7) A local emergency management agency aggrieved by a decision of the director may appeal to the Franklin Circuit Court *or the Circuit Court of any county where the agency is located* within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo, unless the record is insufficient.
- (8) If a decision has been made by the director to withhold funding from the local emergency management agency, that funding shall remain withheld during the

pendency of any appeals of the decision.

- (9) At the end of the thirty (30) day period further funding may be withdrawn by the director, if the deficiencies have not been corrected. The funds may then be reallocated to other local emergency management agencies.
- (10) The director, during the review process outlined in this section, shall also review the expenditure rate of each local emergency management agency receiving funds. If it is determined that a local agency will not utilize all allocated funds, appropriate portions of the allocation may be withdrawn and reallocated to another local emergency management agency.

➔Section 27. KRS 41.990 is amended to read as follows:

- (1) If the president or cashier of any state depository willfully violates any of the provisions of KRS 41.230, 41.240, 41.270 or 41.320, he shall be fined not less than one thousand dollars (\$1,000).
- (2) Any officer, agent or employee of any budget unit who willfully fails or refuses to comply with, or expends any money in violation of, any of the provisions of KRS 41.070, 41.110 to 41.170, 41.210, 41.220, 41.260, 41.270, 41.290 or 41.300 shall be subject to indictment in the Franklin Circuit Court *or the Circuit Court of the county where the violation occurred*, and upon conviction shall be fined not less than fifty (50) nor more than five hundred dollars (\$500) for each offense.

➔Section 28. KRS 43.990 is amended to read as follows:

- (1) Any officer who prevents, attempts to prevent or obstructs an examination by the Auditor, under the provisions of paragraph (c) of subsection (2) of KRS 43.050, or of subsection (3) of KRS 43.050, into his official conduct, or the conduct or condition of the office in his charge or with which he is connected, except when the office constitutes a state agency, is guilty of a high misdemeanor, and, upon conviction on indictment in the Franklin Circuit Court *or the Circuit Court of the county where the violation occurred*, shall be fined five hundred dollars (\$500) and

removed by the Governor. Any person, other than an officer, who prevents, attempts to prevent or obstructs such an examination shall be fined one thousand dollars (\$1,000).

- (2) If the Auditor fails or refuses without good cause to perform the duties imposed upon him by KRS 43.060, he shall be fined not less than two hundred and fifty dollars (\$250) nor more than one thousand dollars (\$1,000) for each offense.
- (3) Any county officer who prevents, attempts to prevent or obstructs an examination by the Auditor, under KRS 43.070, into his official conduct, or the conduct or condition of the office in his charge or with which he is connected, is guilty of a high misdemeanor, and shall, upon indictment and conviction in the Franklin Circuit Court or the Circuit Court of the county where the violation occurred, be fined five hundred dollars (\$500). Any person, other than a county officer, who prevents, attempts to prevent or obstructs such an examination shall be fined one thousand dollars (\$1,000).
- (4) Any officer or other person who fails or refuses to permit the access and examination provided for in subsection (1) of KRS 43.080, or who interferes with such examination, shall be fined not less than one hundred dollars (\$100), or imprisoned in the county jail for not less than one (1) month nor more than twelve (12) months, or both. Each refusal by an officer shall constitute a separate offense.
- (5) Any person who has custody of any papers, books or records of an asylum, prison, institution for the intellectually disabled or eleemosynary institution or public works, other than a state agency, that the Auditor is authorized to examine under paragraph (c) of subsection (2) of KRS 43.050, under subsection (3) of KRS 43.050, and under subsection (2) of KRS 43.080, who fails or refuses, when called upon by the Auditor for that purpose, to permit him to inspect any of such papers, books or records, shall, upon conviction on indictment in the Franklin Circuit Court or the Circuit Court of the county where the violation occurred, be fined not more

than five hundred dollars (\$500) and be subject to removal by the Governor.

- (6) Any person who refuses to be sworn when required by the Auditor to be sworn for the purpose mentioned in subsection (3) of KRS 43.080 shall be fined not more than one hundred dollars (\$100).
- (7) Any witness called by the Auditor under subsection (4) of KRS 43.080 who fails, without legal excuse, to attend or testify shall be fined not more than two hundred and fifty dollars (\$250).

➔Section 29. KRS 44.020 is amended to read as follows:

- (1) Within three (3) working days after the first and fifteenth of each month, the sheriff, or any other public official with a claim payable from the State Treasury for duties performed in any court of the Court of Justice, shall make out the claim and have it certified by the judge of the court as allowable for payment, and transmit the list to the Department for Local Government. The claim approved by the judge of the court shall serve as an order of allowance notwithstanding any statutory provision to the contrary. The Department for Local Government shall keep a separate record of all claims allowed in each county, noting the number and amount of each warrant issued for the payment of the claims.
- (2) The order of any court authorized by law to approve and allow fee bills, settlements, credits, charges, and other claims against the State Treasury shall not be treated as a judgment, or made conclusive against the state, but shall only be regarded as prima facie evidence of the correctness and legality of the fee bill, settlement, credit, charge, or claim. The Department for Local Government, if it believes the fee bill, settlement, credit, charge, or claim to be fraudulent, erroneous, or illegal, may, upon the advice of the Attorney General, refuse to pay and may contest the claim in the Franklin Circuit Court or the Circuit Court of any county where the settlement, credit, charge, or claim originated, which shall have ~~exclusive~~ jurisdiction of all actions against the Department for Local Government to compel the payment of

claims against the State Treasury.

→Section 30. KRS 44.130 is amended to read as follows:

Orders, awards, and judgments of the board may be enforced by filing in the office of the clerk of ~~any~~<sup>the Franklin</sup> Circuit Court **of competent jurisdiction** an authenticated copy of the order, award, or judgment, which, when ordered entered by the judge of the court, shall be entered on the order book and become to all effects and purposes an order, award, or judgment of the court, and be enforceable in a like manner.

→Section 31. KRS 44.140 is amended to read as follows:

- (1) Appeals may be taken by a state agency from all awards of the board where the amount in controversy, exclusive of interest and costs, is more than one thousand dollars (\$1,000). Appeals shall be taken to the Circuit Court of the county wherein the hearing was conducted, provided, however, that an appeal involving a nonresident claimant may be taken by a state agency to the Franklin Circuit Court **or the Circuit Court of the county where the agency has its principal office** with the approval of the board. No state agency can appeal any decision of the board without securing the prior approval of the Attorney General. Appeals shall be taken within forty-five (45) days from the rendition of the award, and the method of appeals shall follow as nearly as may be the rules of civil procedure, except the Commonwealth shall not be required to execute bond.
- (2) Any claimant whose claim is one thousand dollars (\$1,000) or greater may within forty-five (45) days after receipt of the copy of the report containing the final decision of the board, file a proceeding in the Circuit Court of the county wherein the hearing was conducted to review the decision of the board. A copy of the filing and complaint shall be served on the Attorney General in the manner provided by the rules of civil procedure.
- (3) The board, the state agency and the claimant shall be necessary parties to such appeals. It shall not be necessary for the board to file responsive pleadings unless it

so desires.

- (4) The executive director of the board shall within thirty (30) days after service of the summons file the entire original record properly bound, with the clerk of the Circuit Court, after certifying that such record is the board's entire original record and such record shall be considered by the Circuit Court in its review. If either party requests a transcript of the evidence in writing, the requesting party shall bear the cost of the original copy of the transcript and it shall be furnished within ninety (90) days from the date of the written request.
- (5) On appeal no new evidence may be introduced, except as to fraud or misconduct of some person engaged in the hearing before the board. The court sitting without a jury shall hear the cause upon the record before it, and dispose of the appeal in a summary manner, being limited to determining: Whether or not the board acted without or in excess of its powers; the award was procured by fraud; the award is not in conformity to the provisions of KRS 44.070 to 44.160; and whether the findings of fact support the award. The court shall enter its findings on the order book as a judgment of the court, and such judgment shall have the same effect and be enforceable as any other judgment of the court in civil causes.

➔Section 32. KRS 45.990 is amended to read as follows:

- (1) Any officer, agent, or employee of any budget unit who willfully fails or refuses to comply with any of the provisions of KRS 45.011 to 45.031, 45.121, 45.142, 45.151, 45.242, 45.244, 45.251, 45.253, 45.305, or 45.313, or who expends any money in violation of any of the provisions of those sections, shall be subject to prosecution in the Franklin Circuit Court *or the Circuit Court of the county where the violation occurred*, and upon conviction shall be guilty of a violation.
- (2) If any person incurs, or orders or votes for the incurrence of, any obligations in violation of any of the provisions of KRS 45.244, he and his sureties shall be jointly and severally liable therefor.

- (3) Any employee of the Office of Material and Procurement Services established within the Office of the Controller, or any official of the Commonwealth of Kentucky, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement in the procurement of business, or the giving of business, including, but not limited to, personal service contracts, for, or to, or from, any person, partnership, firm, or corporation, offering, bidding for, or in open market seeking to make sales to the Commonwealth of Kentucky, shall be deemed guilty of a Class C felony.
- (4) Every person, firm, or corporation offering to make, or pay, or give, any rebate, percentage of contract, money, or any other thing of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, including, but not limited to, personal service contracts, to any employee of the Office of Material and Procurement Services or to any official of the Commonwealth, elective or appointive, in his efforts to bid for, or offer for sale, or to seek in the open market, shall be deemed guilty of a Class C felony.

➔Section 33. KRS 45.991 is amended to read as follows:

Any officer, agent, or employee of the Finance and Administration Cabinet who willfully fails or refuses to comply with any of the provisions of KRS 45.131 is subject to indictment in the Franklin Circuit Court or the Circuit Court of the county where the violation occurred and, upon conviction shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each offense.

➔Section 34. KRS 45A.245 is amended to read as follows:

- (1) Any person, firm or corporation, having a lawfully authorized written contract with the Commonwealth at the time of or after June 21, 1974, may bring an action against the Commonwealth on the contract, including but not limited to actions either for breach of contracts or for enforcement of contracts or for both. Any such

action shall be brought in the Franklin Circuit Court **or any other Circuit Court that would ordinarily have jurisdiction and venue over the contractual dispute** and shall be tried by the court sitting without a jury. All defenses in law or equity, except the defense of governmental immunity, shall be preserved to the Commonwealth.

- (2) If damages awarded on any contract claim under this section exceed the original amount of the contract, such excess shall be limited to an amount which is equal to the amount of the original contract.

➔Section 35. KRS 45A.255 is amended to read as follows:

Appeals may be taken to the Court of Appeals from ~~the~~[Franklin] Circuit Court under the same conditions and under the same practice as appeals are taken from judgments in civil causes rendered by Circuit Courts.

➔Section 36. KRS 45A.260 is amended to read as follows:

- (1) Any claim arising from a construction contract executed and administered by the Transportation Cabinet pursuant to the provisions of KRS Chapters 175, 176, 177 and 180 shall be commenced in Franklin Circuit Court **or any other Circuit Court that would ordinarily have jurisdiction and venue over the contractual dispute** within one (1) year from the time the Commonwealth has determined final pay quantities and issues a final pay estimate to the contracting party, notifying him of its final determination, or from the receipt of a final adverse decision from the Commonwealth, whichever occurs later.
- (2) Any other claim shall be commenced in ~~any~~[Franklin] Circuit Court **of competent jurisdiction** within one (1) year from the date of completion specified in the contract.

➔Section 37. KRS 46.080 is amended to read as follows:

The~~Franklin~~ Circuit Court **of the county where the Department for Local Government has its principal offices** shall have concurrent jurisdiction of all civil and criminal actions

brought to enforce any of the provisions of subsection (2) of KRS 46.030 or of subsection (1) of KRS 46.990.

➔Section 38. KRS 46.990 is amended to read as follows:

- (1) Any county or district officer authorized by law to make collections of funds for the state who fails or refuses to pay over to the state the funds so collected at the time he is required by law to report the collections to any state department shall be required to pay a penalty of ten percent (10%) on all funds not so paid.
- (2) Any officer who fails or neglects to perform any duty required of him by KRS 46.030(1) shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each offense.
- (3) Any officer who fails to use any book, blank, or record required to be used under KRS 46.020, or who willfully refuses to make any report required by the Department for Local Government under the provisions of KRS 46.010 or 46.020, shall be subject to indictment in the Franklin Circuit Court *or the Circuit Court of the county where the violation occurred*, and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each offense.

➔Section 39. KRS 61.330 is amended to read as follows:

Upon retiring from office the chief state school officer shall deliver to his successor all books, papers, and effects belonging to the office, and on failure to do so he shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), which shall be recovered by indictment in the Franklin Circuit Court *or the Circuit Court of the county where his or her principal office is located*.

➔Section 40. KRS 61.460 is amended to read as follows:

- (1) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending insurance coverage to employees of the political subdivision; except that no plan shall provide insurance coverage to an

employee occupying a position to which KRS 161.220 to 161.710 are applicable except for employees of the state universities and public junior colleges. Each plan and any amendments thereof shall be approved by the state agency if it finds that the plan, or the plan as amended, is in conformity with requirements as are provided in administrative regulations of the state agency, except that no plan shall be approved unless:

- (a) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under KRS 61.430;
  - (b) It provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;
  - (c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are expected to be derived and contains reasonable assurance that those sources will be adequate for that purpose;
  - (d) It provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration thereof; and
  - (e) It provides that the political subdivision will make reports, in the form and containing the information, as the state agency may from time to time require, and will comply with any provisions the state agency or the commissioner may from time to time find necessary to assure the correctness and verification of the reports.
- (2) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1) of this section without reasonable notice and opportunity for hearing to the political subdivision affected thereby.
- (3) (a) Each political subdivision for which a plan has been approved under this

section is authorized to and shall pay into the contribution fund, with respect to contributions due for wages paid prior to 1987, at the time or times as the state agency may by administrative regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under KRS 61.430; and, furthermore, in anticipation of the due date of any payments of contributions required by this paragraph, is authorized to and shall make any advancements the state agency, by administrative regulation or contract, may require.

- (b) Each political subdivision is authorized to and shall make the payments as are determined by the state agency to be necessary for the purpose of defraying the expenses incurred by the state agency in administering KRS 61.410 to 61.500 for the benefit of those employees covered under any plan approved under subsection (1) of this section, but in no event shall such amount be greater than five percent (5%) of the contributions required under paragraph (a) of this subsection. The payments shall be made into the State Treasury and shall be credited to a separate trust and agency fund to be used by the state agency solely for the purpose stated in this paragraph.
- (c) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after the effective date of KRS 61.410 to 61.500, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to wages received for each calendar year, at the rate established by the Federal Insurance Contributions Act, as amended, and the Social Security Act, as amended. Contributions so collected for wages paid prior to 1987 shall be paid into the contribution fund in partial discharge of the liability of the political subdivision under paragraph (a) of this subsection. Failure to deduct the contribution shall not relieve the

employer of liability therefor.

- (4) Delinquent payments due under paragraph (a) of subsection (3) of this section, with interest at the rate prescribed by Section 218 (j) of the Social Security Act, may be recovered by action in the Franklin Circuit Court or the Circuit Court of any county in which a portion of the political subdivision is located against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by any department or agency of the state.

➔Section 41. KRS 61.615 is amended to read as follows:

- (1) If the board's medical examiner determines that a recipient of a disability retirement allowance is, prior to his normal retirement date, employed in a position with the same or similar duties, or in a position with duties requiring greater residual functional capacity and physical exertion, as the position from which he was disabled, except where the recipient has returned to work on a trial basis not to exceed nine (9) months, the system may reduce or discontinue the retirement allowance. Each recipient of a disability retirement allowance who is engaged in gainful employment shall notify the system of any employment; otherwise, the system shall have the right to recover payments of a disability retirement allowance made during the employment.
- (2) If the board's medical examiner determines that a recipient of a disability retirement allowance is, prior to his normal retirement date, no longer incapacitated by the bodily injury, mental illness, or disease for which he receives a disability retirement allowance, the board may reduce or discontinue the retirement allowance.
- (3) The system shall have full power and exclusive authority to reduce or discontinue a disability retirement allowance and the system shall utilize the services of a medical examiner as provided in KRS 61.665, in determining whether to continue, reduce, or discontinue a disability retirement allowance under this section.

- (a) The system shall select a medical examiner to evaluate the forms and medical information submitted by the person. If there is objective medical evidence of a mental impairment, the medical examiner may request the board's licensed mental health professional to assist in determining the level of the mental impairment.
- (b) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
- (c) The medical examiner shall recommend that disability retirement allowance be continued, reduced, or discontinued.
  - 1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make retirement payments in accordance with the retirement plan selected by the person.
  - 2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued, the system shall send notice of the recommendation by United States first-class mail to the person's last address on file in the retirement office.
    - a. The person shall have sixty (60) days from the day that the system mailed the notice to file at the retirement office additional supporting employment or medical information and certify to the retirement office that the forms and additional supporting employment information or medical information are ready to be evaluated by the medical examiner or to appeal the recommendation of the medical examiner to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for a formal hearing.
    - b. If the person fails or refuses to file at the retirement office the forms, the additional supporting employment information, and

current medical information or to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.

- (d) The medical examiner shall make a recommendation based upon the evaluation of additional supporting medical information submitted in accordance with paragraph (c)2.a. of this subsection.
1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make disability retirement payments in accordance with the retirement plan selected by the person.
  2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued based upon the evaluation of additional supporting medical information, the system shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office.
    - a. The person shall have sixty (60) days from the day that the system mailed the notice of the recommendation to appeal the recommendation to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for formal hearing.
    - b. If the person fails or refuses to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his retirement allowance shall be discontinued on the first day of the month following the expiration

of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.

- (e) Any person whose disability benefits have been reduced or discontinued, pursuant to paragraph (c)2. or (d)2. of this subsection, may file at the retirement office a request for formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of sixty (60) days after the person had notice, as described in paragraph (c) or (d) of this subsection. The request for formal hearing shall be filed with the system, at the retirement office in Frankfort. The request for formal hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability retirement is being contested.
- (f) Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with contesting the reduction or discontinuation of disability retirement allowance, except as provided in subsection (6)(d) of this section. This paragraph shall not limit the person's right to appeal to a court.
- (g) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based. If the board orders that the person's disability retirement allowance be discontinued or reduced, the order shall take effect on the first day of the month following the day the system mailed the order to the person's last address on file in the retirement office. Judicial review of the final board order shall not operate as a stay and the system shall discontinue or reduce the person's disability retirement allowance as provided in this section.
- (h) Notwithstanding any other provisions of this section, the system may require

the person to submit to one (1) or more medical or psychological examinations at any time. The system shall be responsible for any costs associated with any examinations of the person requested by the medical examiner or the system for the purpose of providing medical information deemed necessary by the medical examiner or the system. Notice of the time and place of the examination shall be mailed to the person or his legal representative. If the person fails or refuses to submit to one (1) or more medical examinations, his rights to further disability retirement allowance shall cease.

- (i) All requests for a hearing pursuant to this section shall be made in writing.
- (4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.
- (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court or the Circuit Court of the county where the person resides in accordance with KRS Chapter 13B.
- (6) If a disability retirement allowance is reduced or discontinued for a person who began participating in the system prior to January 1, 2014, the person may apply for early retirement benefits as provided under KRS 61.559, subject to the following provisions:
  - (a) The person may not change his beneficiary or payment option;
  - (b) If the person has returned to employment with an employer participating in one (1) of the systems administered by Kentucky Retirement Systems, the service and creditable compensation shall be used in recomputing his benefit, except that the person's final compensation shall not be less than the final compensation last used in determining his retirement allowance;

- (c) The benefit shall be reduced as provided by KRS 61.595(2);
  - (d) The person shall remain eligible for reinstatement of his disability allowance upon reevaluation by the medical review board until his normal retirement age. The person shall apply for reinstatement of disability benefits in accordance with the provisions of this section. An application for reinstatement of disability benefits shall be administered as an application under KRS 61.600, and only the bodily injuries, mental illnesses, diseases, or conditions for which the person was originally approved for disability benefits shall be considered. Bodily injuries, mental illnesses, diseases, or conditions that came into existence after the person's last day of paid employment shall not be considered as a basis for reinstatement of disability benefits. Bodily injuries, mental illnesses, diseases, or conditions alleged by the person as being incapacitating, but which were not the basis for the award of disability retirement benefits, shall not be considered. If the person establishes that the disability benefits should be reinstated, the retirement system shall pay disability benefits effective from the first day of the month following the month in which the person applied for reinstatement of the disability benefits; and
  - (e) Upon attaining normal retirement age, the person shall receive the higher of either his disability retirement allowance or his early retirement allowance.
- (7) No disability retirement allowance shall be reduced or discontinued by the system after the person's normal retirement date except in case of reemployment as provided for by KRS 61.637. If a disability retirement allowance has been reduced or discontinued, except if the person is reemployed as provided for by KRS 61.637, the retirement allowance shall be reinstated upon attainment of the person's normal retirement date to the retirement allowance prior to adjustment. No reinstated payment shall be less than the person is receiving upon attainment of the person's

normal retirement date.

➔Section 42. KRS 61.645 is amended to read as follows:

- (1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of thirteen (13) members, who shall be selected as follows:
  - (a) The secretary of the Personnel Cabinet shall serve as trustee for as long as he occupies the position of secretary under KRS 18A.015, except as provided under subsections (5) and (6) of this section;
  - (b) Three (3) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;
  - (c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;
  - (d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and
  - (e) Six (6) trustees, appointed by the Governor of the Commonwealth. Of the six (6) trustees appointed by the Governor:
    1. One (1) trustee shall be knowledgeable about the impact of pension requirements on local governments;
    2. One (1) trustee shall be appointed from a list of three (3) applicants submitted by the Kentucky League of Cities;
    3. One (1) trustee shall be appointed from a list of three (3) applicants submitted by the Kentucky Association of Counties;
    4. One (1) trustee shall be appointed from a list of three (3) applicants

submitted by the Kentucky School Boards Association; and

5. Two (2) trustees shall have investment experience. For purposes of this subparagraph, a trustee with "investment experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:
  - a. A portfolio manager acting in a fiduciary capacity;
  - b. A professional securities analyst or investment consultant;
  - c. A current or retired employee or principal of a trust institution, investment or finance organization, or endowment fund acting in an investment-related capacity;
  - d. A chartered financial analyst in good standing as determined by the CFA Institute;
  - e. A university professor, teaching economics or investment-related studies; or
  - f. Any other professional with exceptional experience in the field of public or private finances.
- (2) The board is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:
  - (a) To sue and be sued in its corporate name;
  - (b) To make bylaws not inconsistent with the law;
  - (c) To conduct the business and promote the purposes for which it was formed;
  - (d) To contract for investment counseling, actuarial, auditing, medical, and other professional or technical services as required to carry out the obligations of the board without limitation, notwithstanding the provisions of KRS Chapters 45, 45A, 56, and 57;
  - (e) To purchase fiduciary liability insurance;

- (f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage, the goods or property necessary to exercise the board's powers and perform the board's duties without limitation, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and
  - (g) The board shall reimburse any trustee, officer, or employee for any legal expense resulting from a civil action arising out of the performance of his official duties.
- (3) (a) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee or a trustee appointed by the Governor under subsection (1)(e) of this section, shall not serve more than three (3) consecutive four (4) year terms. An elected trustee or a trustee appointed by the Governor under subsection (1)(e) of this section, who has served three (3) consecutive terms may be elected or appointed again after an absence of four (4) years from the board.
- (b) The term limits established by paragraph (a) of this subsection shall apply to trustees serving on or after July 1, 2012, and all terms of office served prior to July 1, 2012, shall be used to determine if the trustee has exceeded the term limits provided by paragraph (a) of this subsection.
- (4) (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board may nominate, not less than six (6) months before a term of office of a trustee is due to expire, three (3) constitutionally eligible individuals.
- (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the executive director, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, last four digits of the Social Security number, and signature of no

- less than one-tenth (1/10) of the number voting in the last election by the retirement system members.
- (c) Within four (4) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the executive director shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes.
  - (d) The ballots shall be distributed to the eligible voters by mail to their last known residence address.
  - (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected.
  - (f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall sign and mail the ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot.
  - (g) The board's contracted auditing firm shall report in writing the outcome to the chair of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
  - (h) For purposes of this subsection, an eligible voter shall be a person who was a member of the retirement system on December 31 of the year preceding the election year.
  - (i) Each individual who submits a request to be nominated by the board under paragraph (a) of this subsection and each individual who is nominated by the membership under paragraph (b) of this subsection shall:

1. Complete an application developed by the retirement systems which shall include but not be limited to a disclosure of any prior felonies and any conflicts of interest that would hinder the individual's ability to serve on the board;
  2. Submit a resume detailing the individual's education and employment history and a cover letter detailing the member's qualifications for serving as trustee to the board; and
  3. Authorize the systems to have a criminal background check performed. The criminal background check shall be performed by the Department of Kentucky State Police.
- (5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the secretary of the Personnel Cabinet resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.
- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.
- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
- (c) A current or former employee of Kentucky Retirement Systems shall not be eligible to serve as a member of the board.
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars (\$80) for each day they are in session or on official

duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.

- (8)
  - (a) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the executive director.
  - (b) The board shall elect a chair and a vice chair. The chair shall not serve more than four (4) consecutive years as chair or vice-chair of the board. The vice-chair shall not serve more than four (4) consecutive years as chair or vice-chair of the board. A trustee who has served four (4) consecutive years as chair or vice-chair of the board may be elected chair or vice-chair of the board after an absence of two (2) years from the positions.
  - (c) A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9)
  - (a) The board of trustees shall appoint or contract for the services of an executive director and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A and 45A and KRS 64.640. The executive director shall be the chief administrative officer of the board.
  - (b) The board of trustees shall authorize the executive director to appoint the employees deemed necessary to transact the business of the system. For an appointee deemed to be in a policy-making position, the board shall determine the compensation and other terms of employment for the policy-making position without limitation of the provisions of KRS Chapter 18A. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and control of determining and maintaining an adequate complement of employees shall be under the exclusive jurisdiction of the board of trustees.
  - (c) Effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board.

Employees of Kentucky Retirement Systems covered by the personnel system adopted by the board shall be:

1. Provided the same health insurance coverage as all other state government employees as provided in KRS 18A.225;
2. Eligible to participate in the deferred compensation system provided for all state government employees as provided in KRS 18A.250 to 18A.265;
3. Provided the same life insurance coverage provided all state employees as provided in KRS 18A.205 to 18A.215;
4. Reimbursed for all reasonable and necessary travel expenses and disbursements incurred or made in the performance of official duties in accordance with KRS Chapter 45;
5. Ensured equal employment opportunity regardless of race, color, gender, religion, national origin, disability, sexual orientation, or age;
6. Given those holidays and rights granted to state employees as provided in KRS 18A.190;
7. Paid a salary not less than the salary paid as of the date of transfer to the personnel system, unless voluntarily demoted or involuntarily demoted for cause;
8. Credited with all accumulated sick leave, compensatory time, and annual leave accumulated in accordance with KRS Chapter 18A, and for an employee leaving service, the system shall attest to the employee's accumulated sick leave, compensatory time, and annual leave which shall be credited with other state and county employers to the extent provided for by statute or policy. The Kentucky Retirement Systems may, at the discretion of the board, accept from other state and county employers all accumulated sick leave, compensatory time, and annual

leave for an employee leaving a state or county employer and accepting employment with the Kentucky Retirement Systems. The executive branch shall accept from the Kentucky Retirement Systems all accumulated sick leave, compensatory time, and annual leave for an employee leaving the Kentucky Retirement Systems and accepting employment with the executive branch. The Kentucky Retirement Systems shall accept from the executive branch all accumulated sick leave, compensatory time, and annual leave for an employee leaving the executive branch and accepting employment with the Kentucky Retirement Systems;

9. Classified with status upon transfer to the personnel system on December 1, 2002, if the employee was classified with status as a merit employee under KRS Chapter 18A. Any employee of the Kentucky Retirement Systems transferred on December 1, 2002, during the probationary period before earning classified status as a merit system employee under KRS Chapter 18A shall transfer all accrued probationary time and the time shall be credited to the probationary time required to attain classified status in the personnel system;
  10. Ensured a grievance appeal procedure and the employee's right to have a representative present at each step of the grievance procedure; and
  11. Ensured of the right of appeal in a manner consistent with the provisions of KRS 18A.095 to the Kentucky Personnel Board and employees classified with status in the personnel system shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (d) The board shall adopt by administrative regulation a fair, equitable, and comprehensive personnel policy with a minimum of the following provisions for the personnel system:

1. A code of conduct including provisions describing performance of duties, abuse of position, conflicts of interest, and outside employment;
  2. An appointments plan including provisions describing the appointing authority, appointments, equal employment policy, sexual harassment policy, and drug-free workplace policy;
  3. A classification plan including provisions describing class specifications, position actions, and employee actions;
  4. A compensation plan based on qualifications, experience, and responsibilities and including provisions which describe a salary schedule, salary adjustments, salary advancements, and an employee suggestion program;
  5. Separations, disciplinary actions, and appeal policies including provisions describing classified with status, exemptions from classified with status, lay-offs, abolishment of position, dismissals and notification of dismissal, dismissals during probationary period, disciplinary actions, right of appeal, grievance and appeal procedures, and an employee grievance and appeal committee;
  6. Service and benefits regulations including provisions describing hours of work, fringe benefits, workers' compensation, payroll deductions, holidays, inclement weather days, compensatory time, retirement, resignations, employee evaluations, and political activities; and
  7. Leave policies including provisions describing special leave, annual leave, court leave and jury duty, military leave, voting leave, educational leave, sick leave, family medical leave, leave without pay, absence without leave, and blood donation leave.
- (e) The board shall require the executive director and the employees as it thinks proper to execute bonds for the faithful performance of their duties

notwithstanding the limitations of KRS Chapter 62.

- (f) The board shall establish a system of accounting.
  - (g) The board shall do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 conform with federal statute or regulation and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance. Provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 which conflict with federal statute or regulation or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance shall not be available. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation and to meet the qualification requirements under 26 U.S.C. sec. 401(a), including an administrative regulation to comply with 26 U.S.C. sec. 401(a)(9). The board shall have the authority to promulgate an administrative regulation to comply with any consent decrees entered into by the board in Civil Action No. 3:99CV500(C) in order to bring the systems into compliance with the Age Discrimination in Employment Act, 29 U.S.C. Section 621, et seq., as amended.
- (10) All employees of the board shall serve during its will and pleasure. Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.
  - (11) The Attorney General, or an assistant designated by him, may attend each meeting

of the board and may receive the agenda, board minutes, and other information distributed to trustees of the board upon request. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.

- (12) (a) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. Except as provided by paragraph (b) of this subsection, the board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the office of the executive director of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.
- (b) At least once every five (5) years, the Auditor of Public Accounts shall perform the audit described by this subsection, and the system shall reimburse the Auditor of Public Accounts for all costs of the audit. The Auditor of Public Accounts shall determine which fiscal year during the five (5) year period the audit prescribed by this paragraph will be completed.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement

allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.

- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, may appeal the decision of the board to the Franklin Circuit Court or the Circuit Court of the county where the person resides within sixty (60) days of the board action.
- (15) (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:
1. In good faith;
  2. On an informed basis; and
  3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.
- (b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
  2. Legal counsel, public accountants, actuaries, or other persons as to

- matters the trustee honestly believes are within the person's professional or expert competence; or
3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.
- (d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
  - (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
    1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
    2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
  - (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
  - (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
  - (h) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, or when an employer disagrees with an order of the system as

provided by KRS 61.598, the affected member, retired member, recipient, or employer may request a hearing to be held in accordance with KRS Chapter 13B. The board may establish an appeals committee whose members shall be appointed by the chair and who shall have authority to act upon the recommendations and reports of the hearing officer on behalf of the board. The member, retired member, recipient, or employer aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court or the Circuit Court of the county where the person resides, in accordance with KRS Chapter 13B.

- (17) The board shall give the Kentucky Education Support Personnel Association twenty-four (24) hours notice of the board meetings, to the extent possible.
- (18) The board shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:
- (a) A required orientation program for all new trustees elected or appointed to the board. The orientation program shall include training on:
1. Benefits and benefits administration;
  2. Investment concepts, policies, and current composition and administration of retirement systems investments;
  3. Laws, bylaws, and administrative regulations pertaining to the retirement systems and to fiduciaries; and
  4. Actuarial and financial concepts pertaining to the retirement systems.
- If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 and 78.780 until the trustee has completed the orientation program;
- (b) Annual required training for board members on the administration, benefits, financing, and investing of the retirement systems. If a trustee fails to

complete the annual required training during the calendar or fiscal year, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 and 78.780 until the board member has met the annual training requirements; and

(c) The retirement systems shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.

(19) In order to improve public transparency regarding the administration of the systems, the board of trustees shall adopt a best practices model by posting the following information to the retirement systems' Web site and shall make available to the public:

(a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the retirement systems' Web site at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;

(b) The Comprehensive Annual Financial Report with the information as follows:

1. A general overview and update on the retirement systems by the executive director;
2. A listing of the board of trustees;
3. A listing of key staff;
4. An organizational chart;
5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;
6. Investment information, including a general overview, a list of the retirement system's professional consultants, a total return on retirement systems investments over a historical period, an investment summary,

- contracted investment management expenses, transaction commissions, and a schedule of investments;
7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and
  8. A general statistical section, including information on contributions, benefit payouts, and retirement systems' demographic data;
- (c) All external audits;
  - (d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;
  - (e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;
  - (f) The retirement systems' summary plan description;
  - (g) A document containing an unofficial copy of the statutes governing the systems administered by Kentucky Retirement Systems;
  - (h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;
  - (i) All investment holdings and commissions for each fund administered by the board. The board shall update the list of holdings and commissions on a quarterly basis for fiscal years beginning on or after July 1, 2008;
  - (j) An update of investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund and for each asset class administered by the board. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2008;
  - (k) A searchable database of the systems' expenditures and a listing of each individual employed by the systems along with the employee's salary or wages. In lieu of posting the information required by this paragraph to the systems' Web site, the systems may provide the information through a Web

site established by the executive branch to inform the public about executive branch agency expenditures and public employee salaries and wages. No provision of this paragraph shall require the systems to disclose confidential member information protected under KRS 61.661; and

- (1) Information regarding the systems' financial and actuarial condition that is easily understood by the members, retired members, and the public.
- (20) Notwithstanding the requirements of subsection (19) of this section, the retirement systems shall not be required to furnish information that is protected under KRS 61.661, exempt under KRS 61.878, or that, if disclosed, would compromise the retirement systems' ability to competitively invest in real estate or other asset classes, or to competitively negotiate vendor fees.
- (21) Notwithstanding any other provision of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 to the contrary, no funds of the systems administered by Kentucky Retirement Systems, including fees and commissions paid to an investment manager, private fund, or company issuing securities, who manages systems assets, shall be used to pay fees and commissions to unregulated placement agents. For purposes of this subsection, "unregulated placement agent" means an individual or firm who solicits investments on behalf of an investment manager, private fund, or company issuing securities, who is prohibited by federal securities laws and regulations promulgated thereunder from receiving compensation for soliciting a government agency.

➔Section 43. KRS 61.665 is amended to read as follows:

- (1) The board shall employ at least three (3) physicians, licensed in the state and not members of the system, upon terms and conditions it prescribes to serve as medical examiners, whose duty it shall be to pass upon all medical examinations required under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, to investigate all health or medical statements and certificates made by or in behalf of any person

in connection with the payment of money to the person under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and who shall report in writing to the system the conclusions and recommendations upon all matters referred to them. The board may employ one (1) or more licensed mental health professionals in making recommendations regarding mental impairments.

- (2) (a) Each person requesting disability retirement shall file at the retirement office an application for disability retirement and supporting medical information to report the person's physical and mental condition. The person shall also file at the retirement office a complete description of the job and duties from which he received his last pay as well as evidence that the person has made a request for reasonable accommodation as provided for in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630. The person shall certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners in accordance with paragraph (d) of this subsection. If, after good faith efforts, the person informs the system that he has been unable to obtain the employment or medical information, the system shall assist the person in obtaining the records and may use the authority granted pursuant to KRS 61.685(1) to obtain the records. If the person fails to file, at the retirement office within one hundred eighty (180) days of the date the person filed his notification of retirement, any of the forms, certifications, or information required by this subsection, the person's application for disability retirement shall be void. Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in paragraph (f) of this subsection or KRS 61.600(2).
- (b) The employer shall file at the retirement office a complete description of the job and duties for which the person was last paid and shall submit a detailed

description of reasonable accommodations attempted.

- (c) The cost of medical examinations and the filing of the medical information, reports, or data with the retirement office shall be paid by the person applying for disability retirement.
- (d) The system shall select three (3) medical examiners to evaluate the medical evidence submitted by the person. The medical examiners shall recommend that disability retirement be approved, or that disability retirement be denied. If there is evidence of a mental impairment, the medical examiners may request the board's licensed mental health professional to assist in determining the level of the mental impairment.
- (e) If two (2) or more of the three (3) medical examiners recommend that the person be approved for disability retirement, the system shall make retirement payments in accordance with the retirement plan selected by the person.
- (f) If two (2) or more of the three (3) medical examiners recommend that the person be denied disability retirement, the system shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office. The person shall have one hundred eighty (180) days from the day that the system mailed the notice to file at the retirement office additional supporting medical information and certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners or to appeal his denial of disability retirement by filing at the retirement office a request for a formal hearing. Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in KRS 61.600(2).
- (g) If two (2) or more of the three (3) medical examiners recommend that the person be approved for disability retirement based upon the evaluation of

additional supporting medical information in accordance with paragraph (f) of this subsection, the system shall make retirement payments in accordance with the retirement plan selected by the person.

- (h) If two (2) or more of the three (3) medical examiners recommend that the person be denied disability retirement based upon the evaluation of additional supporting medical information in accordance with paragraph (f) of this subsection, the system shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office. The person shall have one hundred eighty (180) days from the day that the system mailed the notice to appeal his denial of disability retirement by filing at the retirement office a request for a formal hearing.
  - (i) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
  - (j) Notwithstanding the foregoing provisions of this section, the system may pay for one (1) or more medical examinations of the person requested by the medical examiners for the purpose of providing medical information deemed necessary by the medical examiners. The system may require the person to submit to one (1) or more medical examinations.
- (3) (a) Any person whose disability benefits have been reduced, discontinued, or denied pursuant to subsection (2)(f) or (2)(h) of this section may file at the retirement office a request for a formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of one hundred eighty (180) days after the person had notice of the system's determination, as described in subsection (2)(f) or (2)(h) of this section. The request for a formal hearing shall be filed with the executive director, at the retirement office in Frankfort. The request for a formal hearing shall include a short and plain statement of the reasons the denial of disability

retirement is being contested.

- (b) Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with the application for disability retirement, except as provided in KRS 61.600(2). This paragraph shall not limit the person's right to appeal to a court.
  - (c) The system may require the person requesting the formal hearing to submit to one (1) or more medical or psychological examinations. Notice of the time and place of the examination shall be mailed to the person or his legal representative. The system shall be responsible for the cost of the examination.
  - (d) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.
  - (e) All requests for a hearing pursuant to this section shall be made in writing.
- (4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.
  - (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court *or the Circuit Court of the county where the person resides* in accordance with KRS Chapter 13B.
  - (6) The system, pursuant to regulations, may refer an employee determined by it to be disabled to the Kentucky Office of Vocational Rehabilitation for evaluation and, if appropriate, retraining.
    - (a) The cost of the evaluation and retraining shall be paid by the system in accordance with the regulations established by the board.
    - (b) The member shall perform all acts that are necessary to enroll in and satisfy

the requirements of Vocational Rehabilitation as prescribed by the board. This shall include the exchange of confidential information between Kentucky Retirement Systems and the Kentucky Office of Vocational Rehabilitation as necessary to conduct the rehabilitation process. Failure of the member to cooperate with the system or Vocational Rehabilitation may result in his disability allowance being discontinued, reduced, or denied until the member complies with the agency requests. If the refusal continues for one (1) year, all his rights to any further disability allowance shall cease.

➔Section 44. KRS 61.685 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS Chapter 413, upon discovery of any error or omission in system records, the system shall correct all records including, but not limited to, membership in the system, service credit, member and employer contributions, and benefits paid or payable. The system may conduct audits to detect possible fraud, misrepresentation, and change in circumstance, which may result in errors or omissions in the system's records. The system, by its executive director or by representatives appointed in writing by the executive director, may take testimony or depositions, and may examine records, documents, or files of any person whose records, documents, or files may furnish knowledge concerning any system records, when the executive director or representative deems this reasonably necessary for purposes incident to the performance of the system's functions. The system may enforce these powers by application to any~~the Franklin~~ Circuit Court of competent jurisdiction, which court may compel compliance with the orders of the executive director or representatives appointed by the executive director.
- (2) Neither the board nor any of its individual members shall be liable to any person for any claim arising from the failure of any participating employer, or any employer who should have been participating in any retirement system operated by the board, to make retirement contributions on behalf of the person.

→Section 45. KRS 63.075 is amended to read as follows:

In a proceeding for impeachment instituted by the House of Representatives without a petition from any person, if the accused be acquitted he shall be entitled to his costs, to be taxed by the clerk of the Senate against the Commonwealth. If the accused be convicted, he shall pay the costs, to be taxed by the clerk and recovered by motion by the Attorney General, in the ~~Franklin~~ Circuit Court **of the county where the General Assembly conducted the proceeding.**

→Section 46. KRS 63.180 is amended to read as follows:

- (1) Any person serving as a nonelective peace officer or deputy peace officer in violation of the provisions of KRS 61.300 shall be subject to removal. The Circuit Court of the county in which such person is serving ~~or~~ and the Circuit Court of Franklin County shall have ~~concurrent~~ jurisdiction of all proceedings for the removal of any such person. The proceedings shall be in equity and the procedure shall be as set forth in subsections (2), (3), and (4) of this section.
- (2) The Commonwealth's attorney of the judicial circuit or the county attorney of the county in which such person is serving, the Attorney General, or any three (3) or more citizens of said county may file a petition in equity setting forth the facts constituting a violation of the provisions of KRS 61.300. If instituted by the Commonwealth's attorney, county attorney or Attorney General, the proceeding shall be in the name of the Commonwealth, and if instituted by three (3) or more citizens, it shall be in the name of such citizens as plaintiffs. A copy of the petition shall be served upon the person complained against, who shall have ten (10) days in which to answer.
- (3) Thereafter the proceeding shall be heard and determined by the court as a proceeding in equity. The court shall render a final judgment within sixty (60) days from the date the petition is filed, unless the court, for good cause shown, extends the time for the final hearing, but in no case shall it be extended beyond ninety (90)

days from the date the petition is filed.

- (4) If it appears upon final hearing that any nonelective peace officer or deputy peace officer is disqualified under the provisions of KRS 61.300, the court shall enter a judgment forthwith removing the officer from office.

➔Section 47. KRS 66.310 is amended to read as follows:

- (1) No county may issue bonds which, together with all other net indebtedness of the county plus the principal amount of any outstanding self-supporting obligations, is in excess of one-half of one percent (0.5%) of the value of the taxable property therein, as determined by the next preceding certified assessment, without having first secured the written approval of the state local debt officer. Any other bonds to be issued by any county may be submitted for approval as hereinafter provided. When the fiscal court of any county has petitioned the state local debt officer under KRS 66.320 for assistance in formulating a plan for reorganizing its debt structure, or has received the approval of any issue of county bonds voluntarily as provided in this section, all bonds thereafter issued by the county must be approved as provided in this section.
- (2) Without the approval of the state local debt officer a county may not lease, as lessee, a building or public facility that has been or is to be financed at the county's request or on its behalf through the issuance of bonds by another public body or by a nonprofit corporation serving as an agency and instrumentality of the county for that purpose, unless the bonds, if issued by the county itself as its own general obligations, would be exempt under the provisions of subsection (1) ***of this section.*** If his or her approval is required, the state local debt officer shall hold a hearing for the purpose of considering the terms of the lease upon the same basis as is provided under subsections (3) and (4) of this section, and interested parties shall have the same right of appeal as is therein provided. This subsection does not apply to leases entered into before July 1, 1964, nor to renewals thereafter of leases entered into

before that date, nor to bonds referred to in this subsection if those bonds have been sold prior to that date, whether or not actually delivered to the purchaser or purchasers thereof before that date.

- (3) The state local debt officer shall hold a hearing in accordance with KRS Chapter 13B for the purpose of determining whether any issue of bonds submitted to him or her for approval should be approved or disapproved. The state local debt officer shall provide notice of the hearing to the county judge/executive of the county proposing to issue bonds, and the county judge/executive shall cause a copy of that notice to be published not less than twenty (20) days in advance of the date set for the hearing. Any person having a material interest in the issuance of the bonds shall have an opportunity to be heard and to present evidence at the hearing held by a hearing officer appointed by the state local debt officer. A record of the proceedings of the hearing shall be made, and the state local debt officer shall review the record and prepare a written decision approving or disapproving the issuance of the proposed bonds. The decision shall set forth the findings of fact upon which the state local debt officer bases his or her decision. On the day that the state local debt officer issues a decision, he or she shall mail a copy to the county judge/executive of the county proposing to issue the bonds and to any person who attended the hearing and requested to receive a copy of the decision.
- (4) The state local debt officer shall disapprove the issuance of the proposed bonds if he or she finds that one (1) or more of the following conditions exist:
  - (a) The financial condition and prospects of the county do not warrant a reasonable expectation that interest and principal maturities can be met when due without seriously restricting other expenditures of the county, including the debt service on the other outstanding obligations of the county;
  - (b) The issue of bonds will not serve the best interests of both the county issuing the bonds and a majority of its creditors; or

- (c) The bonds or the issuance thereof will be invalid.
- (5) If the state local debt officer is petitioned by any county to approve the issuance of bonds to refund outstanding county bonds, and if the state local debt officer is unable to find that the bonds sought to be refunded were in their entirety validly issued, he or she shall nevertheless find that bonds may be issued validly for the purpose of refunding the bonds, in equivalent or lesser par principal amount, provided that the interest rate to be borne by the refunding bonds shall be sufficient to make possible their liquidation within their life at no greater average annual cost to the county than would be required to liquidate, within the same number of years, the portion of the outstanding indebtedness found to be valid at the interest rate borne by it before refunding.
- (6) Within thirty (30) days after the date of a decision by the state local debt officer approving a county's proposal to issue bonds, any interested party or taxpayer of the county may appeal to the Circuit Court of the county proposing to issue the bonds. Appeal shall be taken by filing a complaint with the clerk of the court and serving a copy of the complaint upon the state local debt officer by certified mail, return receipt requested. The fiscal court and, in the case of funding or refunding bonds, the creditors whose claims or bonds are proposed to be funded or refunded, shall be made parties to the appeal. The state local debt officer shall not be named as a party to an appeal under this subsection, but shall be allowed to intervene in the appeal upon his or her motion. Summons shall be served and class representatives designated as provided in the Rules of Civil Procedure. Within thirty (30) days of receipt of the complaint, the state local debt officer shall certify and file a copy of the record of the proceedings and his or her decision with the Circuit Court.
- (7) A county proposing to issue bonds may appeal a decision of the state local debt officer disapproving the issuance of the bonds by filing a complaint with the Franklin Circuit Court or the Circuit Court of that county within thirty (30) days

after the date of the decision. The state local debt officer shall be named as a defendant in an appeal under this subsection. Summons shall be issued and served as provided in the Rules of Civil Procedure. With his or her answer, the state local debt officer shall certify and file a copy of the record of the proceedings and his or her decision.

- (8) Appeals to the Circuit Court shall be advanced on the docket and shall be heard and decided upon the record certified by the state local debt officer. The findings of fact of the state local debt officer shall be final if supported by any substantial evidence; however, if only the question of the validity of the bonds proposed to be funded or refunded is in issue, additional evidence relating to the validity of the bonds may be presented.
- (9) An appeal may be taken from the Circuit Court to the Court of Appeals in the manner provided in the Rules of Civil Procedure.
- (10) If no appeal is taken from the approval of a bond issue by the state local debt officer as provided in this section, the decision as to the legality of the bonds shall be res judicata in any subsequent case or cases raising the question of their legality.
- (11) Record of the approval of bonds as provided in this section shall be made in the minutes of the next meeting of the fiscal court of the county issuing the bonds so approved, and copies of all decisions of the state local debt officer shall be filed with the Secretary of State.
- (12) As used in this section, bonds means bonds and obligations.

➔Section 48. KRS 66.370 is amended to read as follows:

- (1) A county may, by order of its fiscal court, surrender to the state local debt officer, Department for Local Government, all money in hand, notes, bonds, accounts, or other credits representing assets available, and any other sums which may hereafter become available from any and all sources, for paying the principal and interest of any bonded debt of the county; however, if a county surrenders the sinking fund for

any bond issue payable either from the tax levy authorized by Section 157 or by Section 157a of the Constitution of Kentucky or from any special tax levy authorized by law, it shall also surrender the sinking funds for all other bonds payable from the same tax levy as herein defined. The surrender shall be irrevocable on the part of the county. Any county which has a bond issue approved under KRS 66.310 may comply with the provisions of this subsection with respect to the sinking funds for the bonds thus approved and for any other bonds payable from the same tax levy as herein defined.

- (2) All cash received under this section by the state local debt officer, Department for Local Government, shall be deposited with the commissioner, Department for Local Government, to the credit of a fund designated the "county sinking fund." All assets other than cash shall be deposited with the commissioner, Department for Local Government, and shall be liquidated, upon authorization of the commissioner, within a reasonable time.
- (3) The county treasurer of any county complying with the provisions of this section shall remit monthly to the state local debt officer, Department for Local Government, all moneys received from any tax levy made for the exclusive purpose of paying principal and interest on any bonds. Any moneys appropriated in the county budget from any other source or any moneys required by law to be used for the same purpose shall be remitted as required for paying any principal or interest maturities, or both, or meeting sinking fund requirements. The state local debt officer, Department for Local Government, may institute actions in the Franklin Circuit Court or the Circuit Court of that county to enforce the provisions of this subsection or to recover any funds that may have been misapplied.
- (4) Accounts showing the county sinking fund receipts and disbursements shall be kept by the state local debt officer, Department for Local Government, for each bond issue of each county for which deposits are made in the fund. As of the close of the

county fiscal year the state local debt officer, Department for Local Government, shall, within thirty (30) days thereafter, render to the county judge/executive of each county having deposits in the fund a statement thereof for each bond issue of that county. On or about the first day of May of each year, the state local debt officer, Department for Local Government, shall deliver to the county judge/executive an estimate of the principal and interest requirements of outstanding bonds issued by that county or of the proportionate annual amount which should be deposited in a sinking fund.

- (5) Disbursements from the county sinking fund shall, when authorized by the state local debt officer, Department for Local Government, be made in the same manner as other claims on the Commonwealth are paid. Disbursements may be made only for:
  - (a) The payment of principal or interest, or both, of the bonds for which the deposit was made; and
  - (b) The investment of the funds as authorized by law.
- (6) All coupons and bonds for the payment of which deposits are made in the county sinking fund shall be paid either directly by the state local debt officer, Department for Local Government, or by the bank designated as paying agent. That bank may be paid a reasonable fee for its services by the Department for Local Government out of its appropriation. All paid bonds and coupons shall be surrendered to the state local debt officer and canceled and shall be delivered to the judge/executive of each county along with the annual statement provided for in this section.

➔Section 49. KRS 74.012 is amended to read as follows:

- (1) Prior to the establishment of any water district as provided by KRS 74.010, and prior to the incorporation or formation of any nonprofit corporation, association or cooperative corporation having as its purpose the furnishing of a public water supply (herein referred to as a "water association"), a committee of not less than five

- (5) resident freeholders of the geographical area sought to be served with water facilities by the proposed district or the proposed water association shall formally make application to the Public Service Commission of Kentucky in such manner and following such procedures as the Public Service Commission may by regulation prescribe, seeking from the commission the authority to petition the appropriate county judge/executive for establishment of a water district, or to proceed to incorporate or otherwise create a water association. The commission shall thereupon set the application for formal public hearing, and shall give notice to all other water suppliers, whether publicly owned or privately owned, and whether or not regulated by the commission, rendering services in the general area proposed to be served by said water district or water association, and to any planning and zoning or other regulatory agency or agencies with authority in the general area having concern with the application. The commission may subpoena and summon for hearing purposes any persons deemed necessary by the commission in order to enable the commission to evaluate the application of the proponents of said proposed water district or water association, and reach a decision in the best interests of the general public. Intervention by any interested parties, water suppliers, municipal corporations, and governmental agencies shall be freely permitted at such hearing.
- (2) The public hearing shall be conducted by the commission pursuant to the provisions of KRS 278.020. At the time of the hearing, no employment of counsel or of engineering services shall have been made to be paid from water district funds, water association funds, or made a charge in futuro against water district or water association funds, if formation of such water district or water association is permitted by the commission.
- (3) Before the Public Service Commission shall approve any application for creation of a water district or water association, the commission must make a finding and

determination of fact that the geographical area sought to be served by such proposed water district or water association cannot be feasibly served by any existing water supplier, whether publicly or privately owned, and whether or not subject to the regulatory jurisdiction of the commission. If it shall be determined that the geographical area sought to be served by the proposed water district or water association can be served more feasibly by any other water supplier, the commission shall deny the application and shall hold such further hearings and make such further determinations as may in the circumstances be appropriate in the interests of the public health, safety and general welfare.

- (4) Any order entered by the commission in connection with an application for creation of a water district or water association shall be appealable to the Franklin Circuit Court or to the Circuit Court of any county in which a portion of the district is located as provided by KRS 278.410.

➔Section 50. KRS 78.535 is amended to read as follows:

(1) If a participating county fails to fully comply with the provisions of KRS 78.510 to 78.852, the board may require the county to involuntarily cease participation in the system as provided by KRS 61.522.

(2) In lieu of cessation of participation of a county which fails to fully comply with the provisions of KRS 78.510 to 78.852, the board may file an action in the Franklin Circuit Court or the Circuit Court of that county to collect money owed and to attach so much of the general fund of the delinquent county as is necessary to achieve full compliance with the provisions of KRS 78.625.

➔Section 51. KRS 78.625 is amended to read as follows:

(1) The agency reporting official of the county shall file the following at the retirement office on or before the tenth day of the month following the period being reported:

(a) The employee and employer contributions required under KRS 78.610, 61.565, and 61.702;

- (b) The employer contributions and reimbursements for retiree health insurance premiums required under KRS 61.637; and
  - (c) A record of all contributions to the system on the forms prescribed by the systems.
- (2) (a) If the agency reporting official fails to file at the retirement office all contributions and reports on or before the tenth day of the month following the period being reported, interest on the delinquent contributions at the actuarial rate adopted by the board compounded annually, but not less than one thousand dollars (\$1,000), shall be added to the amount due the system.
- (b) Delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties may be recovered by action in the Franklin Circuit Court or the Circuit Court of the delinquent county against the county liable or may, at the request of the board, be deducted from any other moneys payable to the county by any department or agency of the state.
- (3) If an agency is delinquent in the payment of contributions due in accordance with any of the provisions of KRS 78.510 to 78.852, refunds and retirement allowance payments to members of this agency may be suspended until the delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties have been paid to the system.

➔Section 52. KRS 117.022 is amended to read as follows:

The Attorney General, the Secretary of State, and the State Board of Elections, by mutual agreement, may petition the Franklin Circuit Court or the Circuit Court of any county where the declaration is to be effective to declare that an election crisis exists in a county where there is evidence of sufficient malfeasance, nonfeasance, or criminal activity to jeopardize a free and equal election in that county and to authorize the State Board of Elections to assume responsibility for the management of the election in that county. If the~~Franklin~~ Circuit Court makes that declaration and grant of authority, the State Board

of Elections shall appoint an election manager for that county to serve for the duration of the election cycle and the county clerk, county board of elections, precinct election officers, and any other person participating in the election process in that county shall be subject to the direction of the election manager.

➔Section 53. KRS 120.017 is amended to read as follows:

- (1) It shall be the duty of precinct election officers at all primary, regular, or special elections to immediately report to the county clerk any administrative or clerical error discovered in the process of conducting the polling or tabulation of votes at any such election.
- (2) Upon receipt by the county clerk of notice of error in conducting the polling or tabulation of votes pursuant to subsection (1) of this section, the county clerk shall file an action in the Circuit Court, within fifteen (15) days of the election, requesting a recount of ballots for the precinct reporting the administrative or clerical error. Simultaneously with the filing of such action, the county clerk shall make written notice by regular mail to all candidates appearing on the ballot of the precinct at issue that such action is being filed. **Actions shall be filed in the**~~In the case of an election for candidates for offices for the state at large or an election on a statewide public question, the action shall be filed in the~~ Franklin Circuit Court **or**~~;~~ ~~in the case of other elections, the action shall be filed~~ in the Circuit Court of the county in which the precinct reporting the error is located.
- (3) An action filed in the Circuit Court of proper jurisdiction pursuant to this section shall be heard summarily and without delay. Upon filing of the action, the circuit clerk shall immediately notify the Circuit Judge, and the judge shall at once enter an order directing custody of the voting machine, the ballots, boxes and all papers pertaining to the election from that precinct claiming error, to be transferred to the Circuit Court, and fix a day for the recount proceeding to begin.
- (4) Candidates notified pursuant to subsection (3) of this section shall, upon proper

motion, be made parties to the action.

- (5) On the day fixed for the recount, the court shall proceed to recount the ballots if their integrity is satisfactorily shown and shall complete the recount as soon as practicable, and shall file and enter of record the results thereof.
- (6) Any person made party to the action pursuant to subsection (4) of this section may appeal from the judgment to the Court of Appeals, in the same manner as provided in KRS 120.075.
- (7) The county clerk shall certify the final recount results entered of record in any action filed pursuant to this section to the county board of elections and to the local governing body of each of two (2) dominant political parties. Final certification of election results shall then proceed according to KRS Chapters 117, 118, and 118A.

➔Section 54. KRS 120.055 is amended to read as follows:

Any candidate or slate of candidates for nomination to office at a primary election held under the provisions of KRS 118.015 to 118.035 and 118.105 to 118.255, or any candidate for nomination to a city office at a primary election for which the statutes do not otherwise provide for determining contest elections, for whom a number of votes was cast equal to not less than fifty percent (50%) of the votes cast for the successful candidate or slate of candidates for nomination to the office, may contest the right of the successful candidate or slate of candidates, and of any other candidate or slate of candidates for nomination to the office, to the nomination, by filing a petition in the Circuit Court within ten (10) days from the day of the primary election, stating the specific grounds relied upon for the contest, and causing a summons to be issued, returnable in seven (7) days. ~~The~~~~[In the case of candidates or slates of candidates for offices for the state at large, the]~~ petition shall be filed in the Franklin Circuit Court ~~or~~~~;~~ ~~in the case of other candidates it shall be filed]~~ in the Circuit Court of the county in which the contestee resides. The summons may be personally served on the contestee in any county, or it may be served by leaving a copy at his home with a member of his family

over sixteen (16) years of age, or by posting a copy on the door of his residence. The contestee shall file his answer within seven (7) days after service of summons. The answer may contain grounds of contest in favor of the contestee and against the contestant, but the grounds shall be specifically set out. Any candidate or slate of candidates who would have been qualified to bring a contest action under this section, who is a party to a recount proceeding brought under KRS 120.095, may, by filing an answer in the recount proceeding within the time allowed by this section for filing grounds of contest, set forth grounds of contest against the petitioner in the recount proceeding. No ground of contest by either party shall be filed or made more definite by amendment after the expiration of the time allowed by this section for filing the original pleading. The contestant may file a reply within five (5) days after answer is filed, which shall complete the pleading, and any affirmative matter in the reply shall be treated as controverted. Upon return of the summons, properly executed, to the office of the circuit clerk of the county in which the action is pending, the clerk shall immediately docket the cause and notify the presiding judge of the court that the contest has been instituted, and the judge shall proceed to a trial of the cause within five (5) days after the issue was joined. In judicial circuits having more than one (1) Circuit Judge, the judge who shall hear the cause shall be determined by lot.

➔Section 55. KRS 120.155 is amended to read as follows:

Any candidate for election to any state, county, district or city office (except the office of Governor, Lieutenant Governor, member of the General Assembly, and those city offices as to which there are other provisions made by law for determining contest elections), for whom a number of votes was cast equal to not less than twenty-five percent (25%) of the number of votes cast for the successful candidate for the office, may contest the election of the successful candidate, by filing a petition in the Circuit Court of the county where the contestee resides or, ~~unless the officer is one (1) elected by the voters of the whole state, in which case the petition shall be filed~~ in the Franklin Circuit Court. The petition

shall be filed and process issued within thirty (30) days after the day of election; it shall state the grounds of the contest relied on, and no other grounds shall afterwards be relied upon. The contestee shall file an answer within twenty (20) days after the service of summons upon him. The answer may consist of a denial of the averments of the petition and may also set up grounds of contest against the contestant; if grounds are so set up they shall be specifically pointed out and none other shall thereafter be relied upon by the party. Any candidate who would have been qualified to bring a contest action under this section, who is a party to a recount proceeding under KRS 120.185, may, by filing answer in the recount proceeding within the time allowed by this section for filing grounds of contest, set forth grounds of contest against the petitioner in the recount proceeding. A reply may be filed within ten (10) days after the answer is filed; its affirmative allegations shall be treated as controverted, and no subsequent pleading shall be allowed.

➔Section 56. KRS 120.280 is amended to read as follows:

- (1) Any elector who was qualified to and did vote on any constitutional convention, constitutional amendment, or statewide public question submitted to the voters of the state for their ratification or rejection may contest the election or demand a recount of the ballots by filing a petition, not more than fifteen (15) days after the official canvass and the announcement of the vote for the state by the State Board of Elections, with the clerk of the Franklin Circuit Court or the Circuit Court of the county of the person's residence, ~~which court shall have exclusive jurisdiction to hear and determine all matters in such cases~~. The petition shall set forth the grounds of the contest. The contestant may file with the clerk of the ~~Franklin~~ Circuit Court and the Secretary of State a notice of his intention to contest the election before the announcement of the official count by the State Board of Elections and thereupon the Secretary of State shall forthwith notify all the county boards of elections in the counties involved in the contest to hold the ballots cast at the election on the question subject to the order of the ~~Franklin~~ Circuit Court. The

notice shall be served by the Secretary of State by mailing a true and certified copy of the notice of contest, and the order to hold the ballots subject to the order of the court, by certified mail, return receipt requested, to the sheriffs of the counties in question, and the sheriffs shall forthwith acknowledge receipt thereof.

- (2) The court shall, within five (5) days after the filing of the petition of contest, determine whether there are sufficient grounds stated to justify the contest, and shall thereupon require the contestants to give bonds for costs. All of the hearings relating to the contest shall be held in the courthouse~~[of Franklin County]~~.
- (3) The clerk of the~~[Franklin]~~ Circuit Court shall cause a notice of the contest to be published pursuant to KRS Chapter 424, setting out the substance or the grounds of contest alleged by the contestants.
- (4) Any elector who participated in the election on the convention, amendment, or statewide public question may make himself a party as contestee in the action by filing his petition to be made a party not later than five (5) days after the contest is instituted, and by giving bond of the costs as required of the contestant. If no elector makes himself a party to the contest, the Commonwealth's attorney for the~~[Franklin]~~ Circuit Court ***in which the action is filed*** shall attend the trial of the cause, and he may file motions and pleadings in the cause on behalf of the Commonwealth to ***ensure***~~[insure]~~ a fair and honest determination of the contest.
- (5) All laws relating to contested elections for state offices shall apply with equal force to contests of the character contemplated by this section, except as otherwise provided in this section and in KRS 120.290.

➔Section 57. KRS 120.290 is amended to read as follows:

- (1) If a contest instituted under KRS 120.280 involves the recount of ballots, and the court has determined that the petition of contest presents sufficient grounds, the court shall immediately order the ballots of the counties and precincts in which the recount is demanded sent to the courthouse ***where the court is sitting***~~[at Frankfort]~~,

in a manner designated in the order. The court may appoint two (2) special commissioners to help make the recount, who shall receive three dollars (\$3) per day and their actual traveling expenses, when approved by the ~~court~~ ~~Franklin Circuit Court~~. The attorneys representing the contestant and the Commonwealth's attorney representing the contestee may be present at all hearings on the recount. The contestant and contestee shall each be entitled to appoint one (1) inspector, who shall be allowed to witness the recount.

- (2) The result of the recount of ballots shall be reported to the court within three (3) days after it has been completed, together with all the disputed ballots and any ballots not counted. After inspecting and passing on the disputed and uncounted ballots, the court shall add such of them as are found to be legal to the number of legal ballots determined by the recount. If the court finds that any ballots were procured by fraud, duress, bribery, intimidation, or for valuable consideration, they shall be rejected as illegal and void. If there has been such error, fraud or other irregularity as to make it impossible to ascertain the correct result in any precinct, the ballots from that precinct shall be thrown out and considered void. The vote from a precinct shall not be counted if the contestants prove that there was bribery or intimidation of the electors in that precinct and the court finds that the contestants were in the minority in that precinct and were not in any way implicated in the bribery or fraud complained of.

➔Section 58. KRS 121.140 is amended to read as follows:

- (1) Upon the sworn complaint of any person, or on its own initiative, the registry shall investigate alleged violations of campaign finance law. In conducting any investigation, the registry shall have the power of subpoena and may compel production of evidence including the financial records of any person determined by the registry to be vital to the investigation. The records subject to subpoena include, but are not limited to, a person's bank records and other relevant documents, but

excluding individual and business income tax records.

- (2) If the registry concludes that there is probable cause to believe that the law has been violated, the registry shall notify the alleged violator of its conclusions and the evidence supporting them, and shall offer the alleged violator a conciliation agreement to resolve the issue. A conciliation agreement may require the alleged violator to comply with one (1) or more of the following:
  - (a) To cease and desist violations of the law;
  - (b) To file required reports or other documents or information;
  - (c) To pay a penalty not to exceed one hundred dollars (\$100) a day, up to a maximum total fine of five thousand dollars (\$5,000), for failure to file any report, payment of an administrative fee, or other document or information required by law until the report, fee payment, document, or information is filed; except that there shall be no maximum total fine for candidates for statewide office; or
  - (d) To pay a penalty not to exceed five thousand dollars (\$5,000) per violation for acts of noncompliance with provisions contained within this chapter.
- (3) To accept a conciliation agreement, an alleged violator shall deliver the signed agreement to the registry either in person or by mail postmarked not later than ten (10) days after the day he received it. The registry may institute a civil action in Franklin Circuit Court or the Circuit Court for the county of the violator's residence to enforce the provisions of any conciliation agreement accepted by a violator who is not complying with its provisions.
- (4) If the alleged violator declines to accept the conciliation agreement or fails to respond within the time allowed, the registry shall submit a written request to the Chief Justice of the Kentucky Supreme Court to recommend not fewer than five (5) nor more than ten (10) retired or former justices or retired or former judges of the Court of Justice who are qualified and willing to conduct a hearing to determine if a

violation has occurred. Upon receipt of the recommendations of the Chief Justice, the registry shall randomly select one (1) retired or former justice or judge from the list to conduct the hearing, which shall be held in accordance with the Kentucky Rules of Civil Procedure, or, if the Chief Justice declines to make recommendations, the registry, on its own initiative, shall request retired or former justices or judges to serve. The time and location of hearings shall be determined by the registry. Retired or former justices or judges selected to serve shall receive reimbursement from the registry for their reasonable and necessary expenses incurred as a result of the performance of their duties at the hourly rate set for attorneys by the Finance and Administration Cabinet. The registry shall notify the complainant and the alleged violator that a hearing shall be conducted of the specific offenses alleged not less than thirty (30) days prior to the date of the hearing. At the hearing, which shall be open to the public pursuant to KRS 61.810, the attorney for the registry shall present the evidence against the alleged violator, and the alleged violator shall have all of the protections of due process, including, but not limited to, the right to be represented by counsel, the right to call and examine witnesses, the right to the production of evidence by subpoena, the right to introduce exhibits and the right to cross-examine opposing witnesses. If the justice or judge determines that the preponderance of the evidence shows a violation has occurred, the justice or judge shall render a decision not more than sixty (60) days after the case is submitted for determination. The decision shall become the final decision of the registry unless the registry board at its next regular meeting acts to set aside or modify the justice's or judge's decision, in which case the registry board's decision shall become the final registry decision. A party adversely affected by the registry's order may appeal to Franklin Circuit Court ***or the Circuit Court of the county of the person's residence*** within thirty (30) days after the date of the registry's order. The violator may be ordered to comply with any one (1) or more of

the following requirements:

- (a) To cease and desist violation of this law;
  - (b) To file any reports or other documents or information required by this law;
  - (c) To pay a penalty not to exceed one hundred dollars (\$100) a day, up to a maximum total fine of five thousand dollars (\$5,000), for failure to file any report, payment of an administrative fee, or other document or information required by law until the report, fee payment, document, or information is filed; except that there shall be no maximum total fine for candidates for statewide office; or
  - (d) To pay a penalty not to exceed five thousand dollars (\$5,000) per violation for acts of noncompliance with provisions contained within this chapter. An appeal of an order shall be advanced on the docket to permit a timely decision.
- (5) If the registry concludes that there is probable cause to believe that the campaign finance law has been violated knowingly, it shall refer the violation to the Attorney General or the appropriate Commonwealth's or county attorney for prosecution. The Attorney General may request the registry's attorney or the appropriate county or Commonwealth's attorney to prosecute the matter and may request from the registry all evidence collected in its investigation. In the event the Attorney General or the appropriate local prosecutor fails to prosecute in a timely fashion, the registry may petition the Circuit Court to appoint the registry's attorney to prosecute, and upon a motion timely filed, for good cause shown, the court shall enter an order to that effect. Prosecutions involving campaign finance law violations, in which the reports are required to be filed in Frankfort, ~~shall~~<sup>may</sup> be conducted in Franklin Circuit Court or in the Circuit Court for the county in which the contribution or expenditure constituting a campaign finance violation was solicited, made, or accepted. The prosecution of a person who unlawfully solicits, makes, or accepts a contribution or expenditure through the use of the mail may be conducted in the Circuit Court for

the county in which the solicitation is mailed, the county in which the contribution is mailed or received, or the county in which the expenditure is mailed.

- (6) Any person directly involved or affected by an action of the registry which is final, other than of a determination to refer a violation to the Attorney General or appropriate Commonwealth's or county attorney for prosecution, may seek judicial review of the action within thirty (30) days after the date of the action.
- (7) If judicial review is sought of any action of the registry relating to a pending election, the matter shall be advanced on the docket of the court. The court may take any steps authorized by law to accelerate its procedures so as to permit a timely decision.

➔Section 59. KRS 132.570 is amended to read as follows:

No person shall willfully make a false statement or resort to any device to evade taxation. Any person doing so shall be subject to three (3) times the amount of tax upon his property, to be recovered by the sheriff by action in the name of the Commonwealth in the county in which the property is liable for taxation, or by the Department of Revenue, when the taxes are payable to it, in the Franklin Circuit Court **or the Circuit Court of any county where the person resides or conducts business.**

➔Section 60. KRS 135.080 is amended to read as follows:

- (1) When an action is brought in the [~~Franklin~~] Circuit Court against a sheriff or clerk, or against the sureties on his official bond, or against his heirs, devisees or representatives, or against any other person required to pay money into the State Treasury or to do any other act required by law to be done in connection with the payment of money into the State Treasury after it has been collected, the Department of Revenue shall, twenty (20) days before the trial, mail to the defendant in the action, directed to him at the courthouse of his county, a notice in writing stating the amount judgment will be asked for and the time the court will be held. The department shall file a copy of this notice, with the name of the person to

whom sent and the time when and the place where sent, with the clerk of the court, to be filed by him and kept with the papers in the action.

- (2) The court, without further notice to the parties, shall proceed with the action. The department shall file with the clerk of the court a memorandum of the names of the parties, the amount due from each defaulter against whom judgment is demanded, and a copy of the bond if any. The clerk shall docket the action in the order in which the names stand on the memorandum.
- (3) Judgments, when given against the defendants in the cases referred to in this section, shall be for the principal due with interest at the rate of ten percent (10%) per annum from the time the amount was due until paid.

➔Section 61. KRS 136.990 is amended to read as follows:

- (1) Any corporation that fails to pay its taxes, penalty, and interest as provided in subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty dollars (\$50) for each day the same remains unpaid, to be recovered by indictment or civil action in any Circuit Court of competent~~[-, of which the Franklin Circuit Court shall have]~~ jurisdiction.
- (2) Any public service corporation, or officer thereof, that willfully fails or refuses to make reports as required by KRS 136.130 and 136.140 shall be fined one thousand dollars (\$1,000), and fifty dollars (\$50) for each day the reports are not made after April 30 of each year.
- (3) Any superintendent of schools or county clerk who fails to report as required by KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each offense.
- (4) Any company or association that fails or refuses to return the statement or pay the taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars (\$1,000) for each offense.
- (5) Any insurance company that fails or refuses for thirty (30) days to return the

statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS 136.330 or 136.340, shall forfeit one hundred dollars (\$100) for each offense. The commissioner of insurance shall revoke the authority of the company or its agents to do business in this state, and shall publish the revocation pursuant to KRS Chapter 424.

- (6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (7) Where no other penalty is mentioned for failing to do an act required, or for doing an act forbidden by this chapter, the penalty shall be not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (8) ~~Any~~~~The Franklin~~ Circuit Court in the Commonwealth shall have jurisdiction of all prosecutions under subsections (4) to (6) of this section.
- (9) Any person who violates any of the provisions of KRS 136.073 or KRS 136.090 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.
- (10) If the tax imposed by KRS 136.070 or KRS 136.073, whether assessed by the department or the taxpayer, or any installment or portion of the tax, is not paid on or before the date prescribed for its payment, interest shall be collected upon the nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the department.
- (11) Any provider who violates the provisions of KRS 136.616(3) shall be subject to a penalty of twenty-five dollars (\$25) per purchaser offense, not to exceed ten thousand dollars (\$10,000) per month.

➔Section 62. KRS 138.205 is amended to read as follows:

- (1) Any licensee under KRS 138.195 who violates any provision of KRS 138.130 to 138.205, or any administrative regulation promulgated under them, shall become indebted to the Commonwealth in the sum of five hundred dollars (\$500) for each

violation. The civil penalty may be collected by action in any Circuit Court of competent jurisdiction~~[the Franklin Circuit Court]~~.

- (2) Any manufacturer who fails to keep written records, and submit reports to the department, as required by the provisions of subsection (10) of KRS 138.195, shall become indebted to the Commonwealth in the sum of one thousand dollars (\$1,000) for each violation. The penalty may be enforced by action of any~~[the Franklin]~~ Circuit Court of competent jurisdiction.
- (3) Any manufacturer doing business within this state without having complied with the provisions of KRS Chapter 271B as to designation of process agent shall, by so doing of business, be deemed to have made the Secretary of State its agent for the service of process in any civil action instituted in any~~[the Franklin]~~ Circuit Court of competent jurisdiction for the recovery of the penalty. In any action, the complaint shall set forth the post office address of the home office of the manufacturer.
- (4) Any nonresident person licensed under the provisions of KRS 138.195 shall, at the time of application for license, designate some resident of this state as a process agent for the purpose of service of civil process in any civil action originating in any court of this Commonwealth, and service upon the person so designated shall be sufficient to bring the nonresident person before any court of this Commonwealth for all purposes.
- (5) Any person acting in the capacity of a licensee under the provisions of KRS 138.130 to 138.205 without having secured a license as provided in KRS 138.195 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180 and interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.

➔Section 63. KRS 138.530 is amended to read as follows:

- (1) The department shall enforce the provisions of and collect the tax and penalties imposed and other payments required by KRS 138.510 to 138.550, and in doing so

it shall have the general powers and duties granted it in KRS Chapters 131 and 135, including the power to enforce, by an action in any~~the Franklin~~ Circuit Court of competent jurisdiction, the collection of the tax, penalties and other payments imposed or required by KRS 138.510 to 138.550.

- (2) (a) The remittance of the taxes imposed by KRS 138.510 shall be made weekly to the department no later than the fifth business day, excluding Saturday and Sunday, following the close of each week of racing, during each race meeting, and following the close of each week when historical horse races are conducted, and shall be accompanied by reports as prescribed by the department.
- (b) Except as otherwise provided in KRS 138.510 to 138.550, all funds received by the department from the taxes imposed by KRS 138.510 shall be paid into the State Treasury and shall be credited to the general fund.
- (c) The supervisor of pari-mutuel betting appointed by the commission shall weekly, during each race meeting, and during each week when historical horse races are conducted, report to the department the total amount bet or handled the preceding week and the amount of tax due the state thereon, under the provisions of KRS 138.510 to 138.550.
- (d) The supervisor of pari-mutuel betting appointed by the commission or his or her duly authorized representatives shall, at all reasonable times, have access to all books, records, issuing or vending machines, adding machines, and all other pari-mutuel equipment for the purpose of examining and checking the same and ascertaining whether or not the proper amount or amounts due the state are being or have been paid.
- (e) Every person, corporation, or association required to pay the tax imposed by KRS 138.510 shall keep its books and records so as to clearly show by a separate record the total amount of money contributed to every pari-mutuel

pool.

- (3) (a) The remittance of the tax imposed by KRS 138.513 shall be made weekly to the department no later than the first business day of the week next succeeding the week during which the wagers forming the base of the tax were received.
- (b) Along with the remittance of the tax, each advance deposit account wagering licensee shall file a return that includes the information required by the department.
- (c) Every advance deposit account wagering licensee shall keep its books and records in such a manner that:
1. Kentucky residents having accounts with the advance deposit account wagering licensee can be individually identified and their identity and residence verified; and
  2. The amount wagered through each account held by a Kentucky resident and the date of each wager can be determined and verified.
- (d) All books and records of the advance deposit account wagering licensee required by paragraph (c) of this subsection and any books and records that the department requires a licensee to maintain through promulgation of an administrative regulation shall be open to inspection by the department and the commission.
- (e) All revenue received by the department from the tax imposed by KRS 138.513 shall be distributed as follows:
1. Fifteen percent (15%) shall be distributed to the Commonwealth and credited to the general fund; and
  2. a. Eighty-five percent (85%) of revenue received from a wager placed on a race conducted at a track in Kentucky shall be distributed to the association that conducted the race;  
b. Eighty-five percent (85%) of revenue received from a wager

placed on a race conducted at a track outside Kentucky shall be distributed to the Kentucky track that is recognized as the host track by the commission at the time the wager is placed. However, if a wager subject to the tax imposed by KRS 138.513 is placed on a race conducted at a track outside Kentucky, and the individual placing the wager has registered an address with the advance deposit account wagering licensee that is within twenty-five (25) miles of a Kentucky track, the association licensed by the commission to operate that track shall receive the tax revenue derived from that wager; and

- c. An association receiving distributions under subdivisions a. and b. of this subparagraph shall allocate one-half (1/2) of the amount distributed to its purse account.

➔Section 64. KRS 138.705 is amended to read as follows:

- (1) The cabinet may audit the books and records of each licensee who has at any time since the last audit was made applied for a credit or refund thereunder and make such other investigations as it deems necessary to determine whether the credits or refunds applied for constitute proper claims.
- (2) If gasoline or special fuels taxes are erroneously credited or refunded, the cabinet shall advise the licensee of the erroneous credit or refund. If the licensee fails to reimburse the Commonwealth within fifteen (15) days after the receipt of notice, an action may be instituted by the cabinet in the *Circuit Court of the county where the licensee is located or in* Franklin Circuit Court and the cabinet shall recover from the licensee the amount of the erroneous credit or refund plus a penalty of twenty percent (20%).

➔Section 65. KRS 138.889 is amended to read as follows:

- (1) Any offender violating KRS 138.870 to 138.889 shall, in addition to paying the tax

imposed pursuant to KRS 138.872, pay a penalty equal to one hundred percent (100%) of the tax due and interest at the tax interest rate as defined in KRS 131.010(6) on the principal amount of the tax during the period in which the tax is due and unpaid.

- (2) (a) Any offender failing to affix the appropriate tax stamps, labels, or other tax indicia to any marijuana or controlled substance as required by KRS 138.874 is guilty of a Class C felony and, upon conviction, may be punished as provided in the Kentucky Penal Code. The penalty shall be cumulative to any other penalty or crime. Jurisdiction and venue for prosecution of this crime shall be in the Franklin Circuit Court or the Circuit Court of the county where the violation occurred.
- (b) Notwithstanding any other provision of the criminal laws of this state, an indictment may be found and filed upon any criminal offense specified in this section within six (6) years after the commission of the offense.

➔Section 66. KRS 146.290 is amended to read as follows:

- (1) The provisions of this section shall not apply to those uses existing at such time as a stream is included in the system.
- (2) Land uses to be allowed within the boundaries of a designated stream area shall be as follows:

New roads, structures or buildings may be constructed only where necessary to effect a use permitted under the other provisions of KRS 146.200 to 146.360. Utility lines or pipelines may be constructed as approved by the secretary in writing and under provision that the affected land be restored as nearly as possible to its former state. This provision, however, shall in no way affect the rights between a landowner and a utility company or pipeline company. There shall be no strip mining as defined in KRS 350.010, and select cutting of timber or other resource removal and agricultural use, may be allowed pursuant to regulations promulgated

by the secretary upon the granting of a permit under the other provisions of KRS 146.200 to 146.360. All instream disturbances such as dredging, shall be prohibited. Except for the management agency and any existing uses which do not conform to the purposes and intent of KRS 146.200 to 146.360, travel upon a wild river or any public lands within the designated boundaries thereof, shall be by foot, horseback, canoe, boat or other nonmechanical modes of transportation. If there are existing agricultural areas within the boundaries of the area, such areas may continue to be used for agricultural purposes.

- (3) Any landowner within the boundaries of the area may apply to the secretary for a change of use to permit the select cutting of timber, a resource removal or an agricultural use upon his property located within the area and the secretary shall hold a public hearing after public notice on the application within sixty (60) days. The landowner or any interested person shall be allowed to present evidence as to whether the proposed use by the applying landowner is in accordance with the management plan developed pursuant to KRS 146.270, the purpose and intent of the Wild Rivers Act as expressed in KRS 146.220, and other applicable law.
- (4) The secretary shall, within sixty (60) days after said hearing, either:
  - (a) Issue an order, with accompanying opinion, denying the permit; or
  - (b) Issue an order, with accompanying opinion, granting the permit with such restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the wild rivers area and the public trust therein within the intent of KRS 146.220; or
  - (c) Recommend an alternate use to which the land may be put under KRS 146.200 to 146.360 which is more consistent with the purposes and intent of KRS 146.200 to 146.360 than the use for which application was made; or
  - (d) Institute condemnation proceedings in the circuit court of the county in which the land is located or else negotiate a purchase of the land affected, or any

interest therein.

- (5) On or before thirty (30) days from the date of the secretary's ruling, the landowner may file with the department a written objection to the ruling. If, within the next sixty (60) days the landowner and the secretary are unable to reach an agreement with respect to a modification of his ruling, the secretary must either permit the use applied for, condemn the property, or petition the Franklin Circuit Court *or the Circuit Court of the county where any portion of the land is located* for an order restraining the proposed use. The order shall be entered immediately upon the filing of the petition and the execution of a bond without surety by the Commonwealth in an amount satisfactory to the court to indemnify the landowner against loss of profits from any wrongful restraint of the use of his property during the period from the filing of the petition until such time as the matter is concluded by the courts. The court shall review the decision as to both law and fact; but no factual finding shall be reversed unless clearly erroneous or else arbitrary, capricious, or an abuse of discretion.

➔Section 67. KRS 146.350 is amended to read as follows:

It shall be the duty of the cabinet's Office of Legal Services, or upon the secretary's request, of the Attorney General, to bring an action for the recovery of the penalties provided for in KRS 146.990 and to bring an action for a restraining order, temporary or permanent injunction, for the prevention or correction of a condition constituting or threatening to constitute a violation of KRS 146.200 to 146.360. All actions for injunctive relief for violation of KRS 146.200 to 146.360 shall be brought in the name of the Commonwealth of Kentucky by the cabinet's Office of Legal Services, or upon the secretary's request, by the Attorney General in the Franklin Circuit Court *or the Circuit Court of the county where the land lies*. If the action seeks recovery of penalties in addition to injunctive relief, it shall be brought to one (1) of the counties through which the designated portion of the river runs.

➔Section 68. KRS 150.195 is amended to read as follows:

- (1) The department shall by administrative regulation provide for the control of the design, issuance, distribution, and other matters relating to all licenses and permits issued by the department.
- (2) The department shall name each county clerk not granted an exemption from selling licenses or permits by the commissioner as an agent for the sale of licenses and permits or other items. The county clerk shall not appoint any other person or organization, other than a paid deputy clerk, to sell licenses and permits. A county clerk may, at any time during his term of office, apply in writing to the commissioner for an exemption from the requirement that he sell licenses and permits or other items for the department. The commissioner shall then grant the exemption until the clerk requests otherwise in writing.
- (3) The department shall sell its own licenses or permits and may name any other person or organization meeting the requirements specified by statute and by the department by administrative regulation as an agent for the sale of specified licenses and permits or other items for the department.
- (4) The department shall, by administrative regulation, determine:
  - (a) The number and distribution of agents in a county;
  - (b) Which licenses and permits or other items shall be sold by the department and agents of the department;
  - (c) The requirements for persons or organizations, other than county clerks, to sell licenses and permits or other items issued by the department;
  - (d) The fees allowed to be retained by agents of the department;
  - (e) Matters relating to the remittance of license and permit fees and proceeds of the sale of other items, procedures for accountability for licenses and permits, and accountability for license and permit fees and proceeds of the sales of other items;

- (f) The license and permit term, and the date of expiration of licenses and permits;
  - (g) The manner in which the licenses, permits, and other items issued by the department are designed, issued, and sold, and details relating to the application for and sale of licenses, permits, and other items, the reporting of license, permit, and other sales, and other matters deemed necessary by the department for the proper administration and operation of a program relating to the design, issuance, and sale of licenses, permits, and other items issued by the department.
- (5) No person shall make a false statement or provide any false information when applying for a license or permit.
  - (6) Unless permitted to do so by administrative regulation, no person shall alter or modify a license or permit in any manner.
  - (7) No employee of the department, no agent designated by the department, or no employee of an agent designated by the commissioner shall knowingly make a false entry upon a license or permit, license or permit record, or an application or report required by this chapter or by an administrative regulation issued thereunder.
  - (8) The department and each agent designated by the commissioner shall keep a correct and complete record of all licenses and permits applied for or issued, and all other records required to be kept by statute or by the department by administrative regulation. License and permit records shall be public records and shall be open to public inspection in the manner provided by KRS 61.870 to 61.884.
  - (9) No fee for the issuance of a license or permit issued by or on behalf of the department shall be charged or collected by the department or agent of the department other than the amount specified by administrative regulation. Tie-in sales required to obtain a license or permit are prohibited.
  - (10) The department shall by administrative regulation develop a procedure for

suspending or revoking the agent status of a person or organization violating any provision of this chapter, or the administrative regulations promulgated thereunder, relating to the sale, reporting of, or financial accountability for the sale of licenses or permits which the agent is authorized to sell on behalf of the department.

- (a) The initial determination to suspend or revoke an agent's status shall be made by the commissioner, or by his designee; and the agent shall be informed of the decision in writing.
  - (b) A decision of the commissioner or his designee may be appealed to the commission in writing and received by the department within ten (10) days of receipt of the commissioner's notice. Hearings of appeals shall be conducted in accordance with KRS Chapter 13B.
  - (c) Appeals from a final order of the commission shall be to the Franklin Circuit Court or the Circuit Court of any county where the appellant resides in accordance with KRS Chapter 13B.
- (11) Penalties which the commissioner, his designee in writing, or the commission may assess are:
- (a) A suspension of the agent's status for not less than one (1) nor more than five (5) years; or
  - (b) Revocation of the agent's status permanently, if a natural person, or for not less than ten (10) years to permanently, if an organization.
- (12) Suspension periods shall not be waived, probated, or delayed by the commissioner, his designee in writing, or the commission. The commission or the ~~Franklin~~ Circuit Court to which the order was appealed, as appropriate, may reduce a suspension period ordered by the commissioner or his designee in writing, but to not less than one (1) year, and may reduce a revocation to a suspension.
- (13) The department may experiment with computerized, electronic, or other improved forms of license and permit sales by the department and its agents. Experiments

may be conducted on a regional or other basis. The commission shall implement any improved method of license and permit sales finally selected, on a statewide basis by administrative regulation.

➔Section 69. KRS 150.735 is amended to read as follows:

- (1) An applicant may place his or her primary containment fence on the property line. The department shall not require applicants to set primary containment fences any distance away from the property line.
- (2) Any person who operates a captive cervid facility in accordance with this chapter may petition the department at any time to expand his or her captive cervid facility, provided the expansion is adjacent and connected to his or her existing facility and continues to comply with all applicable statutes and regulations.
- (3) A lawful permit for an existing captive cervid facility may be transferred, along with any related benefits, rights, responsibilities, and liabilities, to any person who purchases or otherwise takes ownership of the land area on which the captive cervid facility exists. Within thirty (30) days of the date of any transfer of permits, the party transferring the permit shall notify the department of the following:
  - (a) Name and address of the party to which the permit is to be transferred;
  - (b) Permit number;
  - (c) Deed indicating change of land ownership; and
  - (d) Any additional information the department deems necessary.
- (4) If any person holding captive cervids is determined in violation of Kentucky statute or administrative regulation pertaining to the holding of those cervids, then that person shall have sixty (60) days from when the violation was identified to come into compliance. The permit holder has the following rights and potential penalties during the sixty (60) day period:
  - (a) During the sixty (60) day period, the permit holder may continue to harvest, sell, or slaughter cervids unless the permit has been suspended in accordance

with administrative regulations promulgated by the department;

- (b) Failure to come into compliance within sixty (60) days of the notice of violation may result in a citation and cause the captive cervids to be immediately seized by the department or the permit to be suspended; and
- (c) The individual whose cervids were seized or whose permit was suspended under paragraph (a) or (b) of this subsection may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the issuance of a citation or suspension of the permit and may appeal the final decision to the Franklin Circuit Court or the Circuit Court of the county in which the seizure occurred in accordance with KRS Chapter 13B. Pending the final outcome from all appeals, the seized cervids may be disposed of by the department without compensation to the owner.

➔Section 70. KRS 150.740 is amended to read as follows:

- (1) There shall be a ban on the importation of live members of the animal family Cervidae into the Commonwealth that have not been subject to a program of surveillance and identification for cervid chronic wasting disease (CWD) that meets or exceeds:
  - (a) The requirements of the Kentucky Cervid CWD Surveillance and Identification (CCWDSI) Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and
  - (b) Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.
- (2) The Kentucky Department of Agriculture shall be responsible for authorizing importation of the members of the animal family Cervidae into the Commonwealth that have been subject to a program of surveillance and identification for cervid CWD that meets or exceeds:

- (a) The requirements of the Kentucky CCWDSI Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and
  - (b) Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.
- (3) Members of the animal family Cervidae shall not be eligible for importation into the Commonwealth unless the program of surveillance and identification for cervid CWD to which they have been subject:
- (a) Has been certified by the exporting state's state veterinarian or agency having jurisdiction over that state's surveillance and identification program;
  - (b) Has been approved by the Kentucky state veterinarian as meeting or exceeding the standards imposed under the Kentucky CCWDSI Program; and
  - (c) Meets, at minimum, the following requirements:
    - 1. The program shall require cervid owners to obtain identification and laboratory diagnosis from brain tissue as directed by the exporting state's state veterinarian or agency with jurisdiction for cervids twelve (12) months of age or greater that:
      - a. Display clinical signs of CWD;
      - b. Die, including deaths by slaughter or by hunting, including hunting on hunting preserves; or
      - c. Are ill or injured regardless of whether the illness or injury results in death; and
    - 2. The program shall require cervid owners to obtain cervids from herds that have been monitored for at least five (5) years and that have complied with the standards contained in the Kentucky CCWDSI Program.
- (4) Cervids originating from a state that has reported a confirmed case of CWD in wild

or captive cervids shall not be imported into Kentucky until The United States Department of Agriculture approves:

- (a) Regulations that allow importation from those states; and
  - (b) A live test for CWD that is available for live testing of cervids.
- (5) Importation of members of the animal family Cervidae into the Commonwealth shall be consistent with this section and with administrative regulations promulgated by the Kentucky Department of Agriculture in cooperation with the Kentucky Department of Fish and Wildlife Resources.
- (6) A person shall be guilty of a Class D felony upon conviction for violating this section. Upon conviction of a second violation of this section and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit. On or before November 1 of each year, the Department of Fish and Wildlife Resources and the Department of Agriculture, Office of the State Veterinarian, respectively shall issue reports to the Interim Joint Committee on Agriculture and the Interim Joint Committee on Natural Resources and Environment on the status of chronic wasting disease, and the reports may include the status of other animal or wildlife diseases in Kentucky and the United States. The reports shall be used for the purpose of determining the need for modifications to the statutory ban on the importation of cervids into the Commonwealth.
- (7) The Department of Fish and Wildlife Resources shall have the authority to immediately, and without compensation to the owner, seize captive cervids that have been imported into the Commonwealth contrary to this section. The individual whose cervids were seized may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the department's seizure and may appeal the final decision to the Franklin Circuit Court or the Circuit Court of the county in which the seizure occurred in accordance with KRS Chapter 13B. Pending the final outcome of all appeals, the seized cervids may be disposed of by the department

without compensation to the owner.

- (8) The department shall have the authority to immediately, and without compensation to the owner, seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary to this section.
- (9) A captive cervid originating from outside the Commonwealth of Kentucky which is in transit, as defined in KRS 150.725 and which is being transported through the Commonwealth to another state or nation of destination shall meet the entry requirements of the state or nation of destination.
- (10) A person intending to transport a captive cervid through Kentucky shall, prior to the captive cervid entering Kentucky, obtain a transportation permit from the Office of the State Veterinarian. This permit shall specify that:
  - (a) A captive cervid being transported through Kentucky shall not remain in Kentucky for more than twenty-four (24) hours from the time of entry and, if this requirement cannot be met once the animal is in Kentucky, the Office of the State Veterinarian shall be contacted to secure a variance to the permit;
  - (b) A captive cervid being transported through Kentucky shall not leave the transport vehicle while in Kentucky; and
  - (c) The person transporting the captive cervid through Kentucky shall follow the routes specified in the transport permit, if this requirement cannot be met once the animal is in Kentucky, the Office of the State Veterinarian shall be contacted to secure a variance to the permit.

➔Section 71. KRS 151.184 is amended to read as follows:

- (1) All hearings under this chapter shall be held before a qualified hearing officer, who may be a full-time employee of the cabinet, serve by contract, or be paid on a per diem basis at the discretion of the cabinet. After the conclusion of the hearing, the hearing officer shall within thirty (30) days make a report to the secretary and a recommended order which shall contain a finding of fact and a conclusion of law.

If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant an extension. The hearing officer shall serve a copy of his report and recommended order upon all parties of record to the proceeding and they shall be granted the right to file within fourteen (14) days of receipt exceptions thereto. The secretary shall consider the report, exceptions, and recommended order and decide the case. The decision shall be served by mail upon all parties and shall be a final order of the cabinet.

- (2) Any party to a hearing conducted pursuant to this chapter may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original.
- (3) In connection with a hearing the cabinet shall issue subpoenas in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of refusal to obey a subpoena issued to any person, the Franklin Circuit Court or the Circuit Court of any county where the person may be found, upon application by the cabinet, may issue to that person an order requiring him to appear before the cabinet, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.
- (4) All hearings conducted pursuant to this chapter shall be open to the public.  
➔Section 72. KRS 154.1-740 is amended to read as follows:
  - (1) Volunteers shall be disciplined or dismissed for cause only.
  - (2) In the event any volunteer is disciplined or dismissed for cause, he may appeal, within thirty (30) days, to the Franklin Circuit Court or the Circuit Court of the

county where the person volunteered for reinstatement.

- (3) If reinstatement is ordered by the ~~court~~ [Franklin Circuit Court], the volunteer shall be returned to his job immediately and made whole, provided the order is not appealed to a higher court.

➔Section 73. KRS 154.20-277 is amended to read as follows:

- (1) Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284. Each year the audit report shall be completed and certified by the independent certified public accountant and delivered to the authority within ninety (90) days after the end of the investment fund's fiscal year.
- (2) The authority and the Department of Revenue, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund regarding the affairs and business of the investment fund. The authority and the Department of Revenue, individually or collectively, may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court or the Circuit Court of any county where the person named in the subpoena may be found, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.
- (3) In addition to the audits required by this section, the authority or the Department of Revenue may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Department of Revenue may also audit, for cause, any small business in which an investment fund

has made a qualified investment. Nothing in this section shall be construed to prohibit the Department of Revenue from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Department of Revenue determines to be appropriate.

- (4) If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284, the authority and the Department of Revenue may consult with one another with respect to this noncompliance and the Department of Revenue may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.
- (5) The authority may give an investment fund manager written notice of any noncompliance with the provisions of KRS 154.20-250 to 154.20-284 and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.
- (6) Nothing in this section shall be construed to prohibit the Department of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation conducted pursuant to any securities laws or regulations discloses that an investment fund or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Department of

Revenue may or may not take with respect to the noncompliance.

➔Section 74. KRS 156.822 is amended to read as follows:

- (1) Any final order of the board either upholding or invalidating the dismissal, demotion, suspension, or other penalization of a certified, equivalent, or unclassified employee may be appealed either by the employee or by the appointing authority.
- (2) The party aggrieved may appeal the final order by filing a petition with the clerk of the Franklin Circuit Court ***or the Circuit Court of the county where the person was employed*** in accordance with KRS Chapter 13B.
- (3) If the appeal is from an order upholding the dismissal, demotion, suspension, or other penalization, the burden of appearing and defending the action of the board shall be upon the appointing authority. If the appeal is from an order refusing to uphold the dismissal, demotion, suspension, or other penalization, the burden of appearing and defending the action of the board shall be upon the employee.

➔Section 75. KRS 156.836 is amended to read as follows:

- (1) A final order of the board either upholding or invalidating the lay-off of a continuing status employee may be appealed either by the employee or by the appointing authority.
- (2) The party aggrieved may appeal that order by filing a petition with the clerk of the Franklin Circuit Court ***or the Circuit Court of the county where the person was employed*** in accordance with KRS Chapter 13B.

➔Section 76. KRS 161.017 is amended to read as follows:

- (1) The Education Professional Standards Board, established in KRS 161.028, shall be headed by an executive director who shall be responsible for the day to day operations of the board including the following:
  - (a) Setting up appropriate organizational structures and personnel policies for approval by the board;

- (b) Appointing all staff, including the deputy executive director;
  - (c) Preparing annual reports on the board's program of work;
  - (d) Carrying out policy and program directives of the board;
  - (e) Preparing and submitting to the board for its approval a proposed biennial budget; and
  - (f) Performing all other duties and responsibilities assigned by state law.
- (2) When it is necessary to fill the position of executive director, the board shall conduct a comprehensive search for candidates and may employ a search firm if the board deems it necessary. The executive director shall possess broad-based experience in education and teacher development, and have demonstrated leadership skills in addition to other qualifications to be established by the board as authorized in KRS 161.028.
- (3) With approval of the board, the executive director may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the board.
- (4) The executive director shall have access to the papers, books, and records of education personnel as part of an inquiry or investigation relating to disciplinary actions against a certified employee.
- (5) Pursuant to KRS 161.120, the executive director, on behalf of the board, may issue administrative subpoenas for the attendance of witnesses and the production of documents relevant to disciplinary cases under consideration. Compliance with the subpoenas shall be enforceable by any~~the~~ Circuit Court of competent jurisdiction~~in Franklin County~~.

➔Section 77. KRS 161.120 is amended to read as follows:

- (1) Except as described in KRS 161.795, the Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or

supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees for the following reasons:

(a) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, notwithstanding an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) of the following:

1. A felony;
2. A misdemeanor under KRS Chapter 218A, 508, 509, 510, 522, 525, 529, 530, or 531; or
3. A misdemeanor involving a student or minor.

A certified copy of the conviction or plea shall be conclusive evidence of the conviction or plea;

(b) Having sexual contact as defined in KRS 510.010(7) with a student or minor. Conviction in a criminal proceeding shall not be a requirement for disciplinary action;

(c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action;

(d) Demonstrating willful or careless disregard for the health, welfare, or safety of others;

(e) Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;

(f) Possessing, using, or being under the influence of alcohol, which impairs the

- performance of duties;
- (g) Unlawfully possessing or unlawfully using a drug during the performance of duties;
  - (h) Incompetency or neglect of duty;
  - (i) Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;
  - (j) Failing to report as required by subsection (2) of this section;
  - (k) Failing to comply with an order of the Education Professional Standards Board;
  - (l) Violating any state statute relating to schools or the teaching profession;
  - (m) Violating the professional code of ethics for Kentucky school certified personnel established by the Education Professional Standards Board through the promulgation of administrative regulation;
  - (n) Violating any administrative regulation promulgated by the Education Professional Standards Board or the Kentucky Board of Education; or
  - (o) Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation of this subsection.
- (2) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, address, phone number, Social Security number, and position name of any certified school employee in the employee's district whose contract is terminated or not renewed, for cause except failure to meet local standards for quality of teaching performance prior to the employee gaining tenure; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who otherwise may have engaged in any actions or conduct while employed in the

school district that might reasonably be expected to warrant consideration for action against the certificate under subsection (1) of this section. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.

- (b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, that may warrant action against the certificate under subsection (1) of this section, and shall forward copies of all relevant documents and records in his possession.
  - (c) The Education Professional Standards Board may consider reports and information received from other sources.
  - (d) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent or other sources. The employee shall have the right to file a written rebuttal to the report which shall be placed in the official file with the report.
- (3) A finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation of subsection (1) of this section.
- (4) The board may issue a written admonishment to the certificate holder if the board determines, based on the evidence, that a violation has occurred that is not of a serious nature. A copy of the written admonishment shall be placed in the official file of the certificate holder. The certificate holder may respond in writing to the admonishment within thirty (30) days of receipt and have that response placed in his official certification file. Alternatively, the certificate holder may file a request for a hearing with the board within thirty (30) days of receipt of the admonishment. Upon receipt of a request for a hearing, the board shall set aside the written admonishment

and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

- (5) (a) The Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B:
    1. Before revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate;
    2. After denying an application for a certificate, upon written request filed within thirty (30) days of receipt of the letter advising of the denial; or
    3. After issuing a written admonishment, upon written request for a hearing filed within thirty (30) days of receipt of the written admonishment.
  - (b) Upon request, a hearing may be public or private at the discretion of the certified employee or applicant.
  - (c) The hearing shall be conducted before the full board, a panel of three (3) members of the board, or a person appointed as hearing officer by the board pursuant to KRS 13B.030(1).
- (6) The Education Professional Standards Board or its chair may take emergency action pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's contract or tenure rights in the school district.
  - (7) If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student or minor, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student or minor which are needed as a result of the sexual contact.
  - (8) At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the certificate

holder.

- (9) The board may reconsider, modify, or reverse its decision on any disciplinary action.
- (10) Suspension of a certificate shall be for a specified period of time, not to exceed two (2) years.
  - (a) At the conclusion of the specified period, upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the certificate shall be reactivated.
  - (b) A suspended certificate is subject to expiration and termination.
- (11) Revocation of a certificate is a permanent forfeiture. The board shall establish the minimum period of time before an applicant can apply for a new certificate.
  - (a) At the conclusion of the specified period, and upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the applicant shall bear the burden of proof to show that he or she is again fit for practice.
  - (b) The board shall have discretion to impose conditions that it deems reasonably appropriate to ensure the applicant's fitness and the protection of public safety. Any conditions imposed by the board shall address or apply to only that time period after the revocation of the certificate.
- (12) An appeal from any final order of the Education Professional Standards Board shall be filed in the Franklin Circuit Court or the Circuit Court of any county where the person who was the subject of the action resides in accordance with KRS Chapter 13B.

➔Section 78. KRS 161.250 is amended to read as follows:

- (1) (a) The general administration and management of the retirement system, and the responsibility for its proper operation and for making effective provisions of KRS 161.155 and 161.220 to 161.714 are vested in a board of trustees to be

known as the "Board of Trustees of the Teachers' Retirement System of the State of Kentucky."

- (b) The board of trustees shall consist of the chief state school officer, the State Treasurer, and seven (7) other trustees elected as provided in KRS 161.260. Four (4) of the elective trustees shall be members of the retirement system, to be known as teacher trustees, two (2) shall be persons who are not members of the teaching profession, to be known as the lay trustees, and one (1) shall be an annuitant of the retirement system to be known as the retired teacher trustee. One (1) teacher trustee shall be elected annually for a four-year term. The retired teacher trustee shall be elected every four (4) years. The chief state school officer and the State Treasurer are considered ex officio members of the board of trustees and may designate in writing a person to represent them at board meetings.
- (c) 1. Elective trustees shall not serve more than three (3) consecutive four (4) year terms. An elective trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board of trustees.
2. The term limits established by subparagraph 1. of this paragraph shall apply to elective trustees serving on or after July 1, 2012, and all terms of office served prior to July 1, 2012, shall be used to determine if the elective trustee has exceeded the term limits provided by subparagraph 1. of this paragraph.
- (2) A member, retired member, or designated beneficiary may appeal the retirement system's decisions that materially affect the amount of service retirement allowance, amount of service credit, eligibility for service retirement, or eligibility for survivorship benefits to which that member, retired member, or designated beneficiary claims to be entitled. All appeals must be in writing and filed with the

retirement system within thirty (30) days of the claimant's first notice of the retirement system's decision. For purposes of this section, notice shall be complete and effective upon the date of mailing of the retirement system's decision to the claimant at the claimant's last known address. Failure by the claimant to file a written appeal with the retirement system within the thirty (30) day period shall result in the decision of the retirement system becoming permanent with the effect of a final and unappealable order. Appeals may include a request for an administrative hearing which shall be conducted in accordance with the provisions of KRS Chapter 13B. The board of trustees may establish an appeals committee whose members shall be appointed by the chairperson and who shall have the authority to act upon the report and recommendation of the hearing officer by issuing a final order on behalf of the full board of trustees. A member, retired member, or designated beneficiary who has filed a timely, written appeal of a decision of the retirement system may, following the administrative hearing and issuance of the final order by the board of trustees, appeal the final order of the board of trustees to the Franklin Circuit Court or the Circuit Court of any county in which the person resides in accordance with the provisions of KRS Chapter 13B.

- (3) The board of trustees shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:
- (a) A required orientation program for all new trustees to the board. The orientation program shall include training on:
1. Benefits and benefits administration;
  2. Investment concepts, policies, and current composition and administration of retirement system investments;
  3. Laws, bylaws, and administrative regulations pertaining to the retirement system and to fiduciaries; and

4. Actuarial and financial concepts pertaining to the retirement system.

If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the retirement system shall withhold payment of the per diem and travel expenses due to the board member under KRS 161.290 until the trustee has completed the orientation program;

- (b) Annual required training for trustees on the administration, benefits, financing, and investing of the retirement system. If a trustee fails to complete the annual required training during the calendar or fiscal year, the retirement system shall withhold payment of the per diem and travel expenses due to the board member under KRS 161.290 until the board member has met the annual training requirements; and
- (c) The retirement system shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.

(4) In order to improve public transparency regarding the administration of the system, the board of trustees shall adopt a best practices model by posting the following information to the retirement system's Web site and shall make available to the public:

- (a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the retirement system's Web site at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;
- (b) The Comprehensive Annual Financial Report with the information as follows:
  - 1. A general overview and update on the retirement system by the executive secretary;
  - 2. A listing of the board of trustees;
  - 3. A listing of key staff;

4. An organizational chart;
  5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;
  6. Investment information, including a general overview, a list of the retirement system's professional consultants, a total return on retirement system investments over a historical period, an investment summary, contracted investment management expenses, transaction commissions, and a schedule of investments;
  7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and
  8. A general statistical section, including information on contributions, benefit payouts, and retirement system demographic data;
- (c) All external audits;
  - (d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;
  - (e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;
  - (f) The retirement system's summary plan description;
  - (g) The retirement system's law book;
  - (h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;
  - (i) All investment holdings and commissions for each fund administered by the board. The board shall update the list of holdings and commissions on a quarterly basis for fiscal years beginning on or after July 1, 2008;
  - (j) An update of investment returns, asset allocations, and the performance of the

funds against benchmarks adopted by the board for each fund and for each asset class administered by the board. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2008; and

- (k) A searchable database of the system's expenditures and a listing of each individual employed by the system along with the employee's salary or wages. In lieu of posting the information required by this paragraph to the system's Web site, the system may provide the information through a Web site established by the executive branch to inform the public about executive branch agency expenditures and public employee salaries and wages. No provision of this paragraph shall require the system to disclose confidential member information protected under KRS 161.585.
- (5) Notwithstanding the requirements of subsection (4) of this section, the retirement system shall not be required to furnish information that is protected under KRS 161.585, exempt under KRS 61.878, or that, if disclosed, would compromise the retirement system's ability to competitively invest in real estate or other asset classes or to competitively negotiate vendor fees.
- (6) For any benefit improvements the General Assembly has authorized the board of trustees to establish under KRS 161.220 to 161.716 and that require formal adoption by the board, the board shall establish the benefits by promulgation of administrative regulations in accordance with KRS Chapter 13A.

➔Section 79. KRS 164.993 is amended to read as follows:

- (1) Any person, including campus personnel, who knowingly violates the provisions of KRS 164.9481 and 164.9483, or who knowingly induces another, directly or indirectly, to violate the provisions of those sections, shall be fined not less than five hundred dollars (\$500), nor more than one thousand five hundred dollars (\$1,500), or imprisoned in the county jail for up to thirty (30) days, or both.
- (2) In addition to the penalties required in subsection (1) of this section, any person or

any postsecondary education institution who violates the provisions of KRS 164.9483 shall be liable for a civil penalty of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) per violation for each day the violation occurs or remains in effect. The state fire marshal shall have the authority, after investigation, to assess and collect the fines. Any person or postsecondary education institution aggrieved by an assessment of a civil fine may appeal to the Franklin Circuit Court *or the Circuit Court of the county where the person resides or the institution is located.*

➔Section 80. KRS 165A.410 is amended to read as follows:

The Attorney General may, at the request of the Kentucky Commission on Proprietary Education or on his own motion, bring in a Circuit Court appropriate action for the enforcement of the provisions of this chapter. Any such action under this section may~~[-, at the discretion of the Attorney General,]~~ be brought either in the county in which the violation occurred, ~~for in~~ the Franklin Circuit Court, or *any* other appropriate court.

➔Section 81. KRS 165A.495 is amended to read as follows:

Any person whose license to conduct a CDL driver training school or any person whose license to give instructions in these schools has been suspended or revoked or the issue or renewal thereof is refused, may request a hearing. The request shall be in writing addressed to the commission, who shall conduct a hearing thereon as soon as possible. The hearing shall be conducted in accordance with KRS Chapter 13B. Any person may appeal from the final order of the commission in the Franklin Circuit Court *or the Circuit Court of the county where the person resides* in accordance with KRS Chapter 13B.

➔Section 82. KRS 176.170 is amended to read as follows:

(1) Any applicant aggrieved by the decision of the department made pursuant to KRS 176.160 may, within ten (10) days after receiving notification of the decision, request in writing an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

- (2) Any applicant who is aggrieved by the final order of the department may appeal to the Franklin Circuit Court *or the Circuit Court of the county where the applicant resides* in accordance with KRS Chapter 13B.

➔Section 83. KRS 177.190 is amended to read as follows:

- (1) Any railroad company dissatisfied with a final order of the department directing the elimination of any grade crossing or change of existing overhead or underpass structure, or any order modifying or amending the final order may appeal by filing a petition in the clerk's office of the Franklin Circuit Court *of the Circuit Court of the county in which the crossing or structure is located* in accordance with KRS Chapter 13B.
- (2) On the hearing of the appeal, the Circuit Court shall determine whether the elimination of the grade crossing, or the change in existing overhead or underpass structure, is reasonably necessary for the safety of the traveling public, and whether the plans and specifications prescribed by the order of the department are reasonably adequate to provide safety of operation for the trains of the railroad company, its employees and the public, and make reasonably adequate provisions for the future development of the railroad company's facilities.
- (3) If the court finds from the evidence that the elimination of the grade crossing or change in existing overhead or underpass structure is not reasonably necessary for the safety of the traveling public, it shall, by final judgment, enjoin the department from enforcing its final order.
- (4) If the court finds from the evidence that the elimination of the grade crossing or change in existing overhead or underpass structure is reasonably necessary for the safety of the traveling public, it shall, by final judgment, either order the railroad company to proceed with the work in accordance with the final order of the department, or in accordance with other plans and specifications prescribed by the court.

→Section 84. KRS 177.210 is amended to read as follows:

If any railroad company fails to comply with any order of the department issued under authority of KRS 177.120 to 177.210, the department may cause to be instituted in any~~the Franklin~~ Circuit Court **of competent jurisdiction**, in the name of the state, an action to compel compliance with the order by mandatory process of the court.

→Section 85. KRS 186.059 is amended to read as follows:

- (1) Operation of a commercial vehicle at a gross weight in excess of the declared gross weight at which such vehicle is registered under subsection (8), (9), or (10) of KRS 186.050, shall make any owner or operator, otherwise entitled to a reduced fee set out in those subsections ineligible for same for the entire license year.
- (2) The department, upon receipt of information substantiated by affidavit, that any owner or operator is operating a motor vehicle in excess of the gross weight at which it is registered under subsection (8), (9), or (10) of KRS 186.050, may issue notice to the owner or operator advising that he is ineligible for the reduced fee or, that the privilege is revoked for the current license year. Within thirty (30) days of the date of the issuance of the notice, any affected owner or operator may request a hearing to be conducted in accordance with the provisions of KRS Chapter 13B. Failure to request a hearing within thirty (30) days of the date of the issuance of the notice shall make the ruling absolute, and the owner or operator shall be liable for the payment of the fees applicable under KRS 186.050(3) for the entire license year.
- (3) If a hearing is requested in accordance with the provisions of subsection (2) of this section, the owner or operator shall not be entitled to the reduced fee during the interim between the application for hearing and the department's final order, unless he shall file with the department a bond in the amount of five hundred dollars (\$500) per vehicle to be applied to the payment of any taxes which the department, as a result of the hearing, may determine are due the Commonwealth.
- (4) The question for determination at any hearing held at the request of an owner or

operator receiving a notice from the department shall be whether or not the owner or operator has operated a commercial vehicle in excess of the declared gross weight at which it is registered under subsection (8), (9), or (10) or KRS 186.050. The burden of proof shall be upon the department to show such unlawful operation. Any final order of the department shall be subject to appeal to the Franklin Circuit Court or the Circuit Court of the county where the violation occurred in accordance with KRS Chapter 13B, and any bond posted with the department shall be held pending the judgment of the highest court to which the matter is appealed.

➔Section 86. KRS 190.040 is amended to read as follows:

- (1) A license may be denied, suspended, or revoked on the following grounds:
  - (a) Proof of financial or moral unfitness of applicant;
  - (b) Material misstatement in application for license;
  - (c) Filing a materially false or fraudulent tax return as certified by the Department of Revenue;
  - (d) Willful failure to comply with any provision of this chapter or any administrative regulation promulgated under this chapter;
  - (e) Willfully defrauding any retail buyer to the buyer's damage;
  - (f) Willful failure to perform any written agreement with any buyer;
  - (g) Failure or refusal to furnish and keep in force any bond required;
  - (h) Having made a fraudulent sale, transaction, or repossession;
  - (i) False or misleading advertising;
  - (j) Fraudulent misrepresentation, circumvention, or concealment through subterfuge or device of any of the material particulars or the nature of them required to be stated or furnished to the retail buyer;
  - (k) Employment of fraudulent devices, methods, or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption

and resale of goods;

- (l) Having violated any law relating to the sale, distribution, or financing of motor vehicles or new recreational vehicles;
- (m) Being a manufacturer of motor vehicles or recreational vehicles, factory branch, distributor, field representative, officer, agent, or any representative of the motor vehicle manufacturer, recreational vehicle manufacturer, or factory branch, who has induced, coerced, or attempted to induce or coerce any automobile dealer or new recreational vehicle dealer to accept delivery of any motor vehicle, new recreational vehicle, vehicles, parts, accessories, or any other commodities that shall not have been ordered by the dealer;
- (n) Being a manufacturer of motor vehicles or recreational vehicles, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any dealer to enter into any agreement with a manufacturer, factory branch, or representative, or to do any other act unfair to the dealer, by threatening to cancel any franchise existing between a manufacturer, factory branch, or representative and the dealer;
- (o) Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of the dealer and without just provocation, canceled the franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this section and shall constitute an unfair cancellation;
- (p) Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer, recreational vehicle manufacturer, or factory branch, or wholesaler who makes, attempts to

make, or aids or abets the making of a sale of a motor vehicle or a new recreational vehicle to a person other than a licensed motor vehicle dealer or new recreational vehicle dealer. This section shall not prevent any manufacturer from offering discounts or rebates on any motor vehicle or new recreational vehicle to any of its employees; or

- (q) Being a dealer who advertises for sale a new motor vehicle or new recreational vehicle unless he is a dealer operating under a franchise with a licensed manufacturer, factory branch, or distributor authorizing the sale of the new motor vehicle or the new recreational vehicle being advertised.
- (2) The licensor may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for denial. Upon request by the applicant whose license has been denied, the licensor shall set the time and place of hearing a review of denial, to be conducted in accordance with KRS Chapter 13B.
  - (3) A license shall not be suspended or revoked except after a hearing conducted in accordance with KRS Chapter 13B.
  - (4) The commission may inspect the pertinent books, letters, records, and contracts of a licensee.
  - (5) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to the party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if the licensee approved of or had knowledge of the acts and after approval or knowledge retained the benefit, proceeds, profits, or advantages accruing from the acts.
  - (6) Any licensee or other person in interest who is dissatisfied with a final order of the

commission may appeal to ~~any~~~~[the Franklin]~~ Circuit Court **of competent jurisdiction** and to the Court of Appeals in the manner provided by KRS Chapter 13B.

➔Section 87. KRS 190.059 is amended to read as follows:

The final order of the commission granting or refusing to grant an application for a license, or to suspend or revoke a license may be appealed by an aggrieved party **in accordance with KRS Chapter 13B** to the Circuit Court of Franklin County **or the Circuit Court of the county containing the location that is the subject of the license or license application**~~[in accordance with KRS Chapter 13B]~~. Nothing in this section shall be construed to limit the authority of the court to grant such relief as the circumstances may require. If the issues involved were first presented to the commission by a complaint filed with the commission, the complainant may appeal from the decision of the commission in the same manner as prescribed above.

➔Section 88. KRS 190.062 is amended to read as follows:

- (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, or the terms or provisions of any waiver, any person who is injured in his business or property by a violation of this section or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this section, may bring a civil action in ~~any~~~~[the Franklin]~~ Circuit Court **of competent jurisdiction** to enjoin further violations, to recover the actual damages sustained by him, together with costs of the suit, including a reasonable attorney's fee.
- (2) The commission may order, deny, suspend, or revoke the license of any new motor vehicle dealer, new recreational vehicle dealer, manufacturer, distributor, factory branch, or factory representative for failing to comply with any provisions of KRS 190.010 to 190.080 or KRS Chapter 190A, as such provisions apply, respectively, to new motor vehicle dealers, new recreational vehicle dealers, manufacturers,

distributors, factory branches, or factory representatives; or in lieu thereof, or in addition thereto, may assess monetary penalties of a civil nature not to exceed one thousand dollars (\$1,000) for each violation.

- (3) The provisions of KRS 190.010 to 190.080 and KRS Chapter 190A, as such provisions apply, respectively, to new motor vehicle dealers, new recreational vehicle dealers, manufacturers, distributors, factor branches, or factory representatives, shall apply to all persons required to be licensed under the terms herein, and to dealerships and contracts between new motor vehicle dealers, new recreational vehicle dealers, and manufacturers, distributors, factory branches, or factory representatives at the time of its passage, and to all such future new motor vehicle dealerships and contracts.
- (4) (a) In addition to the provisions of this section, before a civil action involving recreational vehicle franchise issues is brought, the party bringing suit for an alleged violation of this chapter shall serve a written demand for mediation on the offending party. The demand for mediation shall include a brief statement of the dispute and the relief sought by the party making the demand. The party making the demand shall serve the demand by certified mail to one (1) of the following addresses:
1. In an action between a new recreational vehicle dealer and a manufacturer, the address stated in the dealer agreement between the parties;
  2. In an action between a new recreational vehicle dealer and a warrantor that is not a manufacturer, the address stated in any agreement between the parties; or
  3. In an action between two (2) new recreational vehicle dealers, the address of the offending dealer in the records of the commission.
- (b) Within twenty (20) days after a demand for mediation is served under this

subsection, the parties shall mutually select an independent mediator who is approved by the commission and meet with that mediator for the purpose of attempting to resolve the dispute at a location in this state selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or if the parties agree to the extension.

- (c) The service of a demand for mediation under this subsection tolls the time for the filing of any complaint, petition, protest, or other action under this chapter until representatives of both parties have met with the mediator selected pursuant to paragraph (b) of this subsection for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, if all the parties to the proceeding or action stipulate in writing that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the court considers appropriate.
- (d) Each of the parties to the mediation under this subsection is responsible for its own attorney fees. The parties shall equally divide the cost of the mediator.

➔Section 89. KRS 197.510 is amended to read as follows:

Any contract entered on or after July 15, 1988, between the state and a private provider for the operation and management of an adult correctional facility shall include terms which comply with at least the following:

- (1) Unless otherwise provided by KRS 197.505 to 197.525, any adult correctional facility contracted for pursuant to KRS 197.505 shall submit a plan to the department for achieving American Correctional Association standards within five (5) years, which is appropriate for the specific type of adult correctional facility;
- (2) The provisions of KRS Chapter 45A shall apply to any contract or any proposal for a contract authorized by KRS 197.505 to 197.525 for an adult correctional facility;

- (3) The adult correctional facility shall prepare an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority. The facility shall have written policies which govern revisions in the budget. The facility shall have a fiscal system which accounts for all income and expenditures on an on-going basis;
- (4) The adult correctional facility shall prepare and distribute to its governing authority and appropriate agencies including the department, at a minimum, the following documents: annual budget income and expenditure statements; funding source financial reports; and annual independent audit report;
- (5) The adult correctional facility shall have written fiscal policies and procedures adopted by the governing authority which include, at a minimum, internal controls, petty cash, bonding, signature control on checks, resident funds, and employee expense reimbursement;
- (6) There shall be an annual independent audit of the adult correctional facility. The facility shall have a written policy for inventory control of all property and assets and for purchasing and requisitioning supplies and equipment. The facility shall use a method which documents and authorizes wage payment to employees and consultants;
- (7) The private provider shall develop and implement a plan for the dissemination of information about the adult correctional facility to the public, government agencies, and the media. The plan shall be made available to all persons. All documents and records, except financial records, maintained by the private provider shall be deemed public records as defined by KRS 61.870 and be subject to the provisions of KRS 61.872 to 61.884;
- (8) The adult correctional facility shall conform to all applicable zoning ordinances and all applicable state and local building codes, including the Kentucky Building Code, 1983 edition and subsequent modifications or replacements thereto;

- (9) The adult correctional facility shall comply with all applicable laws and regulations of the local and state government regarding sanitation, food service, safety, and health. Copies of inspections completed by the appropriate authorities shall be sent to the department;
- (10) The adult correctional facility shall comply with the provisions of the Life Safety Code, 1983 edition, National Fire Protection Association 101 and the regulations of the state or the local fire safety authority, whichever has primary jurisdiction over the adult correctional facility. Copies of the inspections completed by the appropriate authorities shall be sent to the department;
- (11) A minimum of sixty (60) square feet of floor space per resident shall be provided in the living area of the adult correctional facility. Other areas to be provided shall include space and furnishings to accommodate group meetings of the residents, private counseling space with adequate furniture, and a visiting area;
- (12) The adult correctional facility shall provide a variety of indoor and outdoor recreational and leisure time activities to include but not be limited to television, radio, library materials, and recreational facilities. Telephone facilities shall be available on the premises which are accessible to residents;
- (13) The adult correctional facility shall provide a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than ten percent (10%) of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities;
- (14) The adult correctional facility shall be staffed twenty-four (24) hours per day seven (7) days per week. The staffing pattern shall be adequate to insure close inmate surveillance and maintenance of security within the facility. The staffing pattern shall address the program, transportation, and security needs of the facility. In determining security need, the proximity of the facility to neighborhood and schools

shall be considered;

(15) The adult correctional facility shall have a written personnel policy and employees shall be given a copy. The personnel policies shall include, at a minimum:

- (a) Organization chart;
- (b) Employment practices and procedures including in-service training and staff developing;
- (c) Promotions;
- (d) Job qualifications and job descriptions;
- (e) Grievance and appeal procedures;
- (f) Employee evaluation;
- (g) Personnel records;
- (h) Benefits;
- (i) Holidays;
- (j) Leave;
- (k) Hours of work;
- (l) Salaries or the base for determining salaries;
- (m) Disciplinary procedures;
- (n) Termination; and
- (o) Resignation;

(16) The adult correctional facility shall maintain written job descriptions and job qualifications for all positions in the facility, including job title, responsibilities of the positions, and required minimum experience and education. An affirmative action program shall be adopted by the governing authority. The correctional facility shall maintain a current, accurate, and confidential personnel record on each employee. The facility shall have written policy and procedures requiring an annual performance evaluation of all employees. This evaluation shall be reviewed and discussed with the employee;

- (17) Prior to employment, all employees of the adult correctional facility shall be subject to thorough background investigation to include criminal, medical, and employment history. All security employees of the facility shall be at least eighteen (18) years of age. The facility shall provide initial orientation for all new employees during the first week of employment. The facility shall comply with all governmental regulatory requirements related to employment and personnel practices. Personnel selection and assignments shall be based on merit;
- (18) The administrator of the adult correctional facility shall have a minimum of five (5) years' experience in corrections or law enforcement and five (5) years' experience in administration. The remaining staff of the facility shall have the same qualifications and training as the staff employed in similar positions in adult correctional facilities operated by the department;
- (19) The adult correctional facility shall provide the following services and programs, the extent to which shall be set forth in the contract between the state and the private provider but shall be consistent with the standards of the American Correctional Association:
- (a) Health and medical services;
  - (b) Food services;
  - (c) Mail, telephone use, and visitation;
  - (d) Access to legal services and legal materials;
  - (e) Vocational training;
  - (f) Educational programs;
  - (g) Counseling services including personal counseling;
  - (h) Drug and alcohol counseling; and
  - (i) Sanitation services;
- (20) The adult correctional facility shall have a written fire and emergency plan for the facility which shall be communicated to all employees and inmates and updated, if

- needed. The facility's written emergency plan shall be conspicuously posted in the facility. The facility staff shall document the conduct of quarterly emergency drills;
- (21) The adult correctional facility shall have a written policy restricting the use of physical force to instances of justifiable self-protection, prevention of property damage, and prevention of escapes, and only to the degree necessary. In compliance with applicable laws, the facility shall maintain and make public, written policies and procedures for conducting searches of residents and all areas of the facility, to control contraband and locate missing or stolen property. The facility shall have a written plan to control movement in and out of the facility. The facility shall have written procedures to account for the whereabouts of the residents at all times;
- (22) The adult correctional facility shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly. Isolated security spot-checks shall be conducted daily. Items considered as contraband or items permitted in the facility shall be clearly defined in the facility's rules;
- (23) The adult correctional facility shall report all suspected felonies to the Department of Kentucky State Police for investigation. A written report shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence. This report shall be placed in the inmate's folder and a copy forwarded to the department. All these occurrences shall be promptly reported to the department verbally prior to submission of the written report. Extraordinary or unusual occurrences shall include but not be limited to:
- (a) Death of a resident;
  - (b) Attempted suicide or suicide;
  - (c) Serious injury, whether accidental or self-inflicted;
  - (d) Attempted escape or escape from confinement;
  - (e) Fire;

- (f) Riot;
  - (g) Battery, whether by a staff member or resident;
  - (h) Sexual assaults; and
  - (i) Occurrence of contagious or infectious disease or illness within the facility;
- (24) Each adult correctional facility shall have written policy and procedures for emergency situations including but not limited to:
- (a) Escapes;
  - (b) Taking of hostages;
  - (c) Riots;
  - (d) Food poisoning;
  - (e) Civil disturbances in the community;
  - (f) Natural disaster;
  - (g) Suicides; and
  - (h) Other deaths and disorder;
- (25) The adult correctional facility shall adopt a written policy and procedures which shall insure that the constitutional rights of inmates to voluntarily practice their own religious activities are protected, subject only to those limitations necessary to maintain order and security of the facility;
- (26) The adult correctional facility shall adopt a written policy which shall be implemented to insure that no inmate or group of inmates is in a position of control or authority over other inmates;
- (27) The adult correctional facility shall have a policy and procedure for recommending awarding of meritorious good time for inmates in accordance with policies and procedures of the department. The procedures shall include formation of a committee to include an administrator to screen all recommendations. The recommendations shall be sent to the department. Recommendations for restoration of good time shall be screened by the same committee and forwarded to the

department;

- (28) If the adult correctional facility operates a canteen, all profits shall be spent for recreational programs for inmates. Prices shall be in accordance with those established by the Department of Corrections Inmate Canteen Board;
- (29) The department shall have the authority to conduct periodic, scheduled, and unannounced inspections of the adult correctional facility during the term of the contract. The department shall generally observe and monitor the operations of the adult correctional facility at least once per week;
- (30) The contract shall provide a hold harmless clause by which the private provider agrees to indemnify, defend, and hold harmless the Commonwealth, its officers, agents, and employees from:
- (a) Any claims or losses for service rendered by the private provider, person, or firm performing or supplying services in connection with performance of the contract;
  - (b) Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts of the private provider, its officers, or employees in the performance of the contract;
  - (c) Any claims or losses resulting to any person or firm injured or damaged by the private provider, its officers, or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes; and
  - (d) Any failure of the private provider, its officers, or employees to observe Kentucky laws, including but not limited to labor laws and minimum wage laws;
- (31) The contract shall require that the private provider give a performance bond to the Commonwealth as obligee, in form satisfactory to the Commonwealth, executed by

- a surety company authorized to do business in Kentucky and in the penal sum equal to: twenty percent (20%) multiplied by the maximum number of inmates to be housed in the adult correctional facility multiplied by three hundred sixty-five (365) and further multiplied by the rate to be paid the private provider per inmate per day;
- (32) The private provider shall provide public liability, property damage, and workers' compensation insurance, insuring, as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the private provider's operations under the terms of this contract. If any carrier of the insurance exercises cancellation, notice shall be made immediately to the Commonwealth of the cancellation; and
- (33) As set forth within the contract between the Department of Corrections and the private provider:
- (a) Failure of the private provider to provide the required services, products, or facilities shall entitle the department to withhold from the contract an amount up to two (2) times the estimated value per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists;
  - (b) The department shall in writing notify the provider of any failure to provide services, products, or facilities as required. A copy of the written notice shall be sent to the Finance and Administration Cabinet. The private provider shall have fourteen (14) calendar days from its receipt of the notice to abate the failure to provide and to notify the department of the corrective action taken by the private provider;
  - (c) In the event the department determines that the failure to provide has not been abated within fourteen (14) calendar days after the initial notice, the commissioner of the Department of Corrections shall hold, or assign the matter to a hearing officer for, a hearing and issue findings of fact,

conclusions of law, and a recommended order;

- (d) Failure to provide services, products, or facilities as required in this agreement shall result in an order to withhold from the contract an amount up to two (2) times the estimated value, as determined after a hearing, per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists;
- (e) The withholding shall continue until such time as the failure to provide is corrected in the manner stated in the order;
- (f) The department and private provider shall in good faith negotiate the actual fair value of the omitted service, product, or facility which shall be subtracted from the amount withheld. The balance of the withholding, if any, shall be promptly returned to the private provider upon final agreement of the department and private provider. Additional withholding from the contract shall be made by the department if an additional amount is due; and
- (g) The provider may appeal, within thirty (30) days, any order of the department to the Franklin Circuit Court *or the Circuit Court of any county where a facility governed by this section and operated by the provider is located.*

➔Section 90. KRS 197.530 is amended to read as follows:

- (1) As set forth within the contract between the Department of Corrections and the private provider: The department may recommend to the secretary of the Finance and Administration Cabinet the assessment of an administrative fine against the private provider of not more than five thousand dollars (\$5,000) for the violation of each and any term of the contract, or of KRS 197.510. Recommendation of fine or penalty assessment by the department shall occur only after a notice of intent to do so has been presented by registered mail to the private provider. The notice of intent shall incorporate the findings of the department and other agencies, if appropriate.
- (2) The private provider may, within seventy-two (72) hours of the receipt of the notice

of intent, request in writing a hearing before an objective hearing officer of the Attorney General's Office. The secretary of the Finance and Administration Cabinet shall by order issue, modify, or repeal the recommended fine or penalty. The amount of any fine or penalty shall be consistent with the hearing officer's recommendations resulting from the administrative hearing. The private provider may, at its discretion, waive its right to an administrative hearing.

- (3) Appeals from any fine or penalty assessed pursuant to this section shall be granted as a matter of right, and shall be taken to the Franklin Circuit Court **or the Circuit Court of any county where the subject facility is located** within thirty (30) days from the date the fine or penalty is issued by the secretary of the Finance and Administration Cabinet.

➔Section 91. KRS 205.793 is amended to read as follows:

- (1) The cabinet shall have authority to issue an administrative subpoena commanding information and records relating to the establishment, enforcement, and collection of child support.
- (2) All public and private entities including financial institutions shall comply with a subpoena issued under this section within a reasonable time period. Financial institutions may deduct twenty dollars (\$20) from the account on which the subpoenaed information has been issued.
- (3) The cabinet may enforce compliance by filing an action in the Franklin Circuit Court **or the Circuit Court of any county where the entity is located.**
- (4) The subpoena shall be issued by a person designated by the secretary.

➔Section 92. KRS 210.720 is amended to read as follows:

- (1) Every patient admitted to a facility operated or utilized by the cabinet, except prisoners transferred pursuant to KRS 202A.201, shall be charged for their board, maintenance and treatment pursuant to this section and the cabinet may sue in the Franklin Circuit Court, ~~or~~ Franklin District Court, **or the Circuit Court or District**

*Court where the person resides* to recover from the patient or person responsible for the patient for liability as established by this section.

- (2) The secretary shall fix the patient cost per day for board, maintenance and treatment for each facility operated by the cabinet at frequent intervals which shall be the uniform charge for all persons receiving such services.
- (3) The liability of any patient, or person responsible for the patient, for payment of the charge for board, maintenance and treatment shall be based upon ability to pay by ascertaining the entire financial resources available to the patient, or to the person responsible for the patient, and shall include, but shall not be limited to: insurance, all third party coverage including Medicare and Medicaid and other governmental programs, cash, stocks, bonds, and all other property owned by the patient or controlled by the person responsible for the patient. The secretary shall establish a reasonable means test for determining payment liability of patients and persons responsible for patients. In no event shall liability be in excess of the cost per patient per day established by the secretary.
- (4) Nothing in KRS 210.710 to 210.760 shall be construed to limit any liability of insurance companies or other third party payors including Medicare and Medicaid and other governmental programs.

➔Section 93. KRS 211.935 is amended to read as follows:

- (1) If, upon the inspection of a state confinement facility, the cabinet finds that a condition exists which endangers the health of those confined or likely to be confined in the facility, or the public health of the citizens of the Commonwealth of Kentucky, the cabinet shall advise the supervising and maintaining authorities, and shall enter the appropriate order to correct that condition. The supervision and maintenance authorities shall insure that those persons confined in a facility are notified of the findings.
- (2) In addition to the penalties provided by KRS 211.990(2), the cabinet may institute

injunctive proceedings in the Franklin Circuit Court or the Circuit Court of any county where the facility is located to enforce any order given pursuant to subsection (1) of this section, and for which appropriate corrective action has not been taken.

➔Section 94. KRS 216.567 is amended to read as follows:

- (1) The manner in which appeals are presented from any decision on ratings, citations, or penalties pursuant to KRS 216.537 to 216.590 shall be in accordance with KRS Chapter 13B.
- (2) The secretary shall appoint one (1) or more impartial hearing officers to hear and decide upon appealed decisions. The decision of the hearing officer shall be the final order of the cabinet.
- (3) Any party aggrieved by a final order may seek judicial review by filing a petition in the Franklin Circuit Court or the Circuit Court of any county where the aggrieved party resides in accordance with KRS 13B.140 and 13B.150.

➔Section 95. KRS 216A.140 is amended to read as follows:

Persons aggrieved by orders of the board may appeal therefrom to the Franklin Circuit Court or the Circuit Court of the county where the person resides and thence to the Court of Appeals in the manner provided by law.

➔Section 96. KRS 216B.050 is amended to read as follows:

The cabinet may compel obedience to its lawful orders by mandamus, injunction, or other proper proceedings in the Franklin Circuit Court or the Circuit Court of the county where the person resides or any other Circuit Court of competent jurisdiction. Every order entered by the cabinet shall continue in force until the expiration of the time, if any, named by the cabinet in the order, or until revoked or modified.

➔Section 97. KRS 216B.115 is amended to read as follows:

- (1) An appeal to any~~the Franklin~~ Circuit Court of competent jurisdiction may be taken from any final decision of the cabinet with respect to a certificate-of-need

application, a certificate of need, or a license, by any party to the proceedings.

- (2) An appeal may be taken by filing a petition for review in the ~~Franklin~~ Circuit Court within thirty (30) days after notice of the final decision unless a request for reconsideration has been filed, in which case the petition shall be filed within fifteen (15) days of the cabinet's decision not to reconsider or notice of its decision on reconsideration. The petition shall state completely the grounds upon which the review is sought and shall assign all errors relied upon. The petitioner shall serve a copy of the petition to each person who was a party to the proceedings. Summons shall be issued upon the petition directing the adverse party or parties to file an answer within twenty (20) days after service of summons. The cabinet shall, upon being served with the summons and within thirty (30) days thereafter, file a copy of the record, duly certified by the secretary, the cost of the record to be taxed as costs upon appeal. In lieu of filing of the record, an abstract thereof may be filed if all parties to the appeal agree.

➔Section 98. KRS 216B.125 is amended to read as follows:

If the cabinet fails to issue or deny a certificate of need or an exemption pursuant to this chapter within the time prescribed under this chapter or administrative regulations promulgated by the cabinet, the applicant may seek judicial enforcement of this chapter by filing a civil action in any~~Franklin~~ Circuit Court ***of competent jurisdiction***.

➔Section 99. KRS 217.572 is amended to read as follows:

- (1) Upon certification pursuant to Section 24(c) of FIFRA by the administrator of EPA to register pesticides formulated to meet special local needs, the department shall consider the following for refusal to register, for cancellation, for suspension and for legal recourse for applicable pesticides:
  - (a) If it does not appear to the department that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of KRS 217.542

to 217.630 or administrative regulations promulgated thereunder, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of KRS 217.542 to 217.630 so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of this notice, the applicant does not make the required changes, the department may refuse to register the pesticide.

- (b) When the department determines that a pesticide or its labeling does not comply with the provisions of KRS 217.542 to 217.630 or the administrative regulations promulgated thereunder, the registration of a pesticide may be cancelled after a hearing that shall be conducted in accordance with KRS Chapter 13B.
  - (c) When the department determines that there is an imminent hazard, it may suspend the registration of a pesticide by issuing an emergency order pursuant to KRS 13B.125.
  - (d) Any person who will be adversely affected by a final order or emergency order issued under this section may obtain judicial review by filing a petition in the Franklin Circuit Court *or the Circuit Court of the county where the person resides* in accordance with KRS Chapter 13B.
- (2) If the department determines that the federally-registered pesticide with respect to the use of a pesticide subject to this section within this state does not warrant the proposed claims for it, or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of FIFRA or the regulations promulgated thereunder, EPA shall be notified of the manner in which the pesticide, labeling, or other material required to be submitted fail to comply with the provisions of FIFRA and suggest necessary corrections.

➔Section 100. KRS 217.821 is amended to read as follows:

Any person or party in interest aggrieved by the publication of the nonequivalent drug product formulary of the Board of Pharmacy shall be entitled to a judicial review in any~~Franklin County~~ Circuit Court ***of competent jurisdiction.***

➔Section 101. KRS 217B.200 is amended to read as follows:

Any person aggrieved by any action of the department may obtain a review thereof by filing in the Franklin Circuit Court ***or the Circuit Court of the county where the person resides*** within thirty (30) days of notice of the action a written petition praying that the action of the department be set aside. A copy of such petition shall forthwith be delivered to the department, and within sixty (60) days thereafter the department shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received, whereupon the court shall have jurisdiction to affirm, set aside or modify the action of the department, except that the findings of the department as to the facts, if supported by substantial evidence, shall be conclusive.

➔Section 102. KRS 217B.203 is amended to read as follows:

- (1) All hearings required by KRS 217B.010 to 217B.990 shall be conducted in accordance with KRS Chapter 13B.
- (2) Appeals may be taken from all final orders of the Commissioner to the Franklin Circuit Court ***or the Circuit Court of the county where the person resides*** in accordance with KRS Chapter 13B.

➔Section 103. KRS 222.231 is amended to read as follows:

- (1) The cabinet shall issue for a term of one (1) year, and may renew for like terms, a license, subject to revocation by it for cause, to any persons, other than an alcohol and other drug abuse program that has been issued a license by the cabinet entitled "Chemical Dependency Treatment Services" pursuant to KRS 216B.105 or a department, agency, or institution of the federal government, deemed by it to be responsible and suitable to establish and maintain a program and to meet applicable licensure standards and requirements.

- (2) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing requirements and standards for licensing agencies and approving programs. The requirements and standards shall include:
  - (a) The health and safety standards to be met by a facility housing a program;
  - (b) Patient care standards and minimum operating, training, and maintenance of patient records standards;
  - (c) Licensing fees, application, renewal and revocation procedures, and the procedures for evaluation of the alcohol and other drug abuse programs; and
  - (d) Classification of alcohol and other drug abuse programs according to type, range of services, and level of care provided.
- (3) The cabinet may establish different requirements and standards for different kinds of programs, and may impose stricter requirements and standards in contracts with agencies made pursuant to KRS 222.221.
- (4) Each agency shall be individually licensed or approved.
- (5) Each agency shall file with the cabinet from time to time, the data, statistics, schedules, or information the cabinet may reasonably require for the purposes of this section.
- (6) The cabinet shall have authority to deny, revoke, modify, or suspend a license in any case in which it finds that there has been a substantial failure to comply with the provisions of this chapter or the administrative regulations promulgated thereunder. The denial, revocation, modification, or suspension shall be effected by mailing to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the action. The denial, revocation, modification, or suspension shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within this thirty (30) day period, shall file a request in writing for a hearing before the cabinet.
- (7) The cabinet, after holding a hearing conducted by a hearing officer appointed by the

secretary and conducted in accordance with KRS Chapter 13B, may refuse to grant, suspend, revoke, limit, or restrict the applicability of or refuse to renew any agency license or approval of programs for any failure to meet the requirements of its administrative regulations or standards concerning a licensed agency and its program. A petition for judicial review shall be made to the Franklin Circuit Court or the Circuit Court of any county where the program is located in accordance with KRS Chapter 13B.

- (8) No person, excepting an alcohol and other drug abuse program that has been issued a license by the cabinet entitled "Chemical Dependency Treatment Services" pursuant to KRS 216B.105 or a department, agency, or institution of the federal government, shall operate a program without a license pursuant to this section.
- (9) Each program operated by a licensed agency shall be subject to visitation and inspection by the cabinet and the cabinet shall inspect each agency prior to granting or renewing a license. The cabinet may examine the books and accounts of any program if it deems the examination necessary for the purposes of this section.
- (10) The director may require agencies which contract with the Commonwealth pursuant to KRS 222.221 to admit as an inpatient or outpatient any person to be afforded treatment pursuant to this chapter, subject to service and bed availability and medical necessity.
- (11) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A governing the extent to which programs may be required to treat any person on an inpatient or outpatient basis pursuant to this chapter, except that no licensed hospital with an emergency service shall refuse any person suffering from acute alcohol or other drug intoxication or severe withdrawal syndrome from emergency medical care.
- (12) All narcotic treatment programs shall be licensed under this section prior to operation. The cabinet shall promulgate administrative regulations pursuant to KRS

Chapter 13A to establish additional standards of operation for narcotic treatment programs. The administrative regulations shall include minimum requirements in the following areas:

- (a) Compliance with relevant local ordinances and zoning requirements;
- (b) Submission of a plan of operation, including memoranda of agreement which reflect supportive services from local hospitals, law enforcement agencies, correctional facilities, community agencies for mental health or individuals with an intellectual disability, and other alcohol and drug abuse services in the community;
- (c) Criminal records checks for employees of the narcotic treatment program. Narcotic treatment programs shall not employ any person convicted of a crime involving a controlled substance as defined in KRS Chapter 218A;
- (d) Conditions under which clients are permitted to take home doses of medications;
- (e) Urine screening requirements;
- (f) Quality assurance procedures;
- (g) Program sponsor requirements;
- (h) Qualifications for the medical director for a narcotic treatment program, who at a minimum shall:
  - 1. Be a licensed physician pursuant to KRS Chapter 311 and function autonomously within the narcotic treatment program; and
  - 2. Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years' documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or
  - 3. Be a physician licensed pursuant to KRS Chapter 311 and certified as an addictionologist by the American Society of Addiction Medicine.
- (i) Security and control of narcotics and medications;

- (j) Program admissions standards;
- (k) Treatment protocols;
- (l) Treatment compliance requirements for program clients;
- (m) Rights of clients; and
- (n) Monitoring of narcotic treatment programs by the cabinet.

➔Section 104. KRS 224.10-470 is amended to read as follows:

- (1) Appeals may be taken from all final orders of the Energy and Environment Cabinet. Except as provided in subsection (3) of this section, the appeal shall be taken to the Franklin Circuit Court or the Circuit Court of the county where the case or controversy arose within thirty (30) days from entry of the final order. The party or parties affected by the final order shall file in the Circuit Court a petition which states fully the grounds upon which a review is sought and assign all errors relied on. The cabinet shall be named respondent, and service shall be had on the secretary. Summons shall issue upon the petition directing the cabinet to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that such record is its entire original record or a true copy thereof, which shall be filed by the clerk of the Circuit Court and such record shall then become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal, may, upon notice to the parties and upon proper showing and in the discretion of the court be permitted to intervene. Upon hearing of the appeal the findings of the cabinet shall be prima facie evidence of the facts found therein. The court shall review the entire record and the findings and final order of the cabinet.
- (2) Appeals to the Court of Appeals from orders of the Circuit Court, shall be taken in the manner provided in the Kentucky Rules of Civil Procedure.
- (3) Final orders of the cabinet regarding environmental permits for an industrial energy facility as defined in KRS 224.1-010 shall be subject to expedited review by the

Circuit Court located in the county where the industrial energy facility is proposed to be located.

➔Section 105. KRS 224.46-820 is amended to read as follows:

- (1) There is created the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board consisting of nine (9) permanent members and three (3) temporary members. All members shall be residents of the Commonwealth of Kentucky. The secretary of the Cabinet for Health and Family Services or his designated representative shall be a permanent member of the board.
- (2) The other eight (8) permanent members of the board shall be appointed by the Governor. Except for initial appointments, board members shall be appointed for a term of four (4) years. Of the initial appointments, one (1) shall be appointed for a term of one (1) year, two (2) for a term of two (2) years, two (2) for a term of three (3) years, and three (3) for a term of four (4) years. Each of the members appointed by the Governor shall hold office for the term for which he was appointed and until his successor shall have been appointed and taken office in his stead or until he shall resign or be removed in a manner provided by law.
- (3) The permanent membership of the board shall be composed of members having the following qualifications:
  - (a) Two (2) members having a demonstrated experience in hazardous waste management;
  - (b) Two (2) members from the Kentucky General Assembly;
  - (c) Two (2) members chosen from the science and engineering faculties of the institutions of higher education in Kentucky;
  - (d) One (1) member having demonstrated experience in industrial development planning; and
  - (e) One (1) member representative of the general public.
- (4) Three (3) temporary members of the board shall be appointed each time that an

application for a certificate of environmental safety and public necessity is submitted. The temporary members of the board shall be appointed by the county judge/executive of the county in which a regional integrated waste treatment and disposal demonstration facility is proposed to be located and shall be bona fide residents of the county. The temporary members of the board shall be appointed within thirty (30) days of the declaration of intent required by KRS 224.46-825 and 224.46-830; however, failure of the appropriate appointing authority to appoint temporary members of the board within thirty (30) days shall not preclude the board from acting upon applications for certificates of environmental safety and public necessity. Temporary members of the board shall have all the rights and privileges of membership on the board while acting upon those applications for certificates for which they were appointed, but shall not participate in the transaction of other business by the board.

- (5) The permanent members of the board shall choose from among their membership a chairperson of the board.
- (6) Members of the board shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.
- (7) Staff services for the board shall be provided to the extent practicable by personnel of the cabinet; however, the board may request and receive the assistance of any state or municipal educational institution, experiment station, laboratory, or other agency and arrange by contract for governmental and nongovernmental assistance as necessary in the performance of its duties, including expenses for administrative start-up costs incidental to the organization of the board. Services provided by state and municipal agencies shall be reimbursed at cost.
- (8) The cabinet shall not provide legal representation to the board. The board may enter into personal service contracts pursuant to KRS Chapter 45A to obtain legal counsel for representation on appeals ~~to Franklin Circuit Court~~ and in other legal matters.

- (9) The board shall meet as necessary for the performance of its duties, upon the call of the chairperson or upon the request of seven (7) members of the board by delivery of written notice of the meeting to each member of the board at least five (5) days prior to the meeting.
- (10) Seven (7) members of the board shall constitute a quorum for the transaction of business of the board and all actions by the board shall require the affirmative vote of seven (7) members of the board.

➔Section 106. KRS 224.46-830 is amended to read as follows:

- (1) No person shall construct or operate a regional integrated waste treatment and disposal demonstration facility without having first obtained from the board a certificate of environmental safety and public necessity for the siting of a facility. A person desiring a certificate of environmental safety and public necessity shall submit an application to the board only after the secretary has declared the intent to issue a construction permit for a regional integrated waste treatment and disposal demonstration facility. A construction permit for a regional integrated waste treatment and disposal demonstration facility pursuant to KRS 224.46-520 shall not be issued before the certificate of environmental safety and public necessity has been obtained. Applications shall be submitted and processed and a certificate shall be issued in accordance with procedures established under regulations promulgated by the board pursuant to KRS 224.46-825.
- (2) In issuing a certificate of environmental safety and public necessity, the board shall consider the following factors:
  - (a) The social and economic impacts of the proposed facility on the affected community including changes in property values, community perception and other psychic costs;
  - (b) Costs and availability of public services, facilities and improvements required to support the facility and protect public health, safety and the environment;

- (c) The relationship of the proposed facility to local planning and existing development; the relationship of the proposed facility to any state-owned commercial low level nuclear waste disposal site, to major transportation arteries and to existing state primary and secondary roads, and to the hydrology of the area;
  - (d) The location of the proposed facility in relationship to the existing industries in the Commonwealth that generate large volumes of hazardous waste and to the areas projected to be areas of generation of large volumes of hazardous waste based on known potential industrial locations within the Commonwealth, so as to minimize the transportation distance between the major generators of hazardous waste and the proposed facility. The cabinet shall provide the board with data concerning said existing and projected areas of hazardous waste generation in the Commonwealth;
  - (e) The impact of the proposed facility on public safety and provisions made to minimize the risk to public health and safety;
  - (f) The consistency of the proposed facility with the state's hazardous waste management needs and any state hazardous waste management plan established under KRS 224.10-100(24);
  - (g) The policies, findings and purposes contained in KRS 224.43-810.
- (3) No certificate of environmental safety and public necessity shall be issued until the board has presented its findings at a meeting of the interim joint committee of the Legislative Research Commission with jurisdiction in the area of hazardous waste management or if the General Assembly is in session, at a joint meeting of the House and Senate standing committees with jurisdiction in the area of hazardous waste management. The board shall notify the chairperson or chairpersons of said appropriate joint committees in writing of its intent to issue a certificate of environmental safety and public necessity. The chairperson or chairpersons shall

call a meeting of said joint committee within thirty (30) days of the date of receipt of such notification by the board to hear the findings of the board.

- (4) All other provisions of state or local law or ordinance to the contrary notwithstanding, the issuance of a certificate of environmental safety and public necessity by the board and the issuance of applicable permits by the cabinet shall constitute the exclusive governmental approval or land use determination required for the siting, location or use of a regional integrated waste treatment and disposal demonstration facility. Any facility holding a certificate of environmental safety and public necessity shall be exempt from regulation under KRS 67.083 and KRS Chapter 100. The board and the cabinet may set standards for monitoring, operations, maintenance, record keeping, closure, post-closure, and liability coverage for the release or escape of waste into the environment that are more stringent than requirements for other hazardous waste facilities in order to evaluate the integration and operation of the technologies in use at the site, to assure proper maintenance, and to protect public health and the environment.
- (5) Appeals may be taken from the issuance or denial of certificates of environmental safety and public necessity. Such appeals shall be taken to the Franklin Circuit Court or the Circuit Court of any county where the case or controversy arose within thirty (30) days from the board's decision of issuance or denial. The party or parties affected by the issuance or denial of the certificate shall file in the Circuit Court a petition which states fully the grounds upon which a review is sought and assign all errors relied on. The board shall be named respondent, and service shall be had on the chairperson of the board. Summons shall issue upon the petition directing the board to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that such record is its entire original record or a true copy thereof, which shall be filed by the clerk of the Circuit Court and such record shall then become official and be considered by the Circuit Court on the review.

After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal may, upon notice to the parties and upon proper showing and in the discretion of the court, be permitted to intervene. Upon hearing of the appeal, the findings of the board shall be prima facie evidence of the facts found therein. The court shall review the entire record and the findings and decision of the board.

➔Section 107. KRS 224.80-180 is amended to read as follows:

- (1) An environmental covenant shall be perpetual except under the following circumstances:
  - (a) By its terms, the environmental covenant is limited to a specific duration or is terminated by the occurrence of a specific event;
  - (b) The environmental covenant is terminated pursuant to KRS 224.80-190;
  - (c) The environmental covenant is terminated by foreclosure of an interest that has priority over the environmental covenant; or
  - (d) The environmental covenant is terminated or modified in an eminent domain proceeding and the following conditions exist:
    1. The cabinet is a party to the eminent domain proceeding;
    2. All persons identified in KRS 224.80-190(1) and (2) are given notice of the pendency of the eminent domain proceeding; and
    3. A court of competent jurisdiction determines, after hearing, that the termination or modification of the environmental covenant will not adversely affect human health or the environment.
- (2) If the cabinet or if any holder determines that the intended benefits of an environmental covenant can no longer be realized, *the* Franklin Circuit Court *or the* *Circuit Court of any county where the covenant is filed*, under the doctrine of changed circumstances, in an action in which all persons identified in KRS 224.80-190(1) and (2) have been given notice, may terminate the environmental covenant

or reduce its burden on the real property subject to the environmental covenant.

- (3) Except as otherwise provided in subsections (1) and (2) of this section, an environmental covenant may not be extinguished, limited, or impaired through the issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, acquiescence, or a similar doctrine.

➔Section 108. KRS 227.640 is amended to read as follows:

- (1) The board or its designee may deny the application for a license, certification, or certificate of acceptability within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for such denial.
- (2) No license, certification, or certificate of acceptability shall be suspended or revoked by the board unless the licensee or certificate holder is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.
- (3) Any manufacturer, certified installer, or licensed retailer who violates or fails to comply with KRS 227.550 to 227.660 or any administrative regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation, if it is correctable, within twenty (20) days. Should the manufacturer, certified installer, or retailer fail to make the necessary corrections within the specified time or if the violation is not correctable, the board may, after notice and hearing in accordance with KRS Chapter 13B, suspend or revoke any certificate of acceptability, certification, or license if it finds that:
  - (a) The manufacturer, certified installer, or retailer has failed to pay the fees authorized by KRS 227.550 to 227.660; or that
  - (b) The manufacturer, certified installer, or retailer, either knowingly or without the exercise of due care to prevent the same, has violated any provision of KRS 227.550 to 227.660 or any administrative regulation or order lawfully

made pursuant to and within the authority of KRS 227.550 to 227.660; or that

- (c) The manufacturer has shipped or imported into this state a manufactured home or mobile home to any person other than to a duly licensed retailer.

The board shall set out, through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, and shall provide for a dispute resolution process which may be used prior to a formal hearing under KRS Chapter 13B. The dispute resolution process shall be nonbinding on the licensee, certified installer, or manufacturer and shall be conducted after application for a KRS Chapter 13B hearing, but prior to the convening of the KRS Chapter 13B hearing.

- (4) Any person aggrieved by any final order of the department may appeal to the Franklin Circuit Court or the Circuit Court of the county where the person resides in accordance with KRS Chapter 13B.

➔Section 109. KRS 227A.120 is amended to read as follows:

Any party aggrieved by a disciplinary action of the department may bring an action in the Circuit Court of Franklin County or the Circuit Court of the county where the person resides or has a principal place of business under the provisions of KRS Chapter 13B.

➔Section 110. KRS 229.190 is amended to read as follows:

- (1) Any action of the authority taken under KRS 229.200 may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The authority may provide for hearing officers or impanel not less than three (3) of its members to conduct hearings.
- (2) Any party aggrieved by a final order of the authority may appeal to the Franklin Circuit Court or the Circuit Court of any county where the person resides in accordance with KRS Chapter 13B.

➔Section 111. KRS 230.330 is amended to read as follows:

Any licensee or any applicant aggrieved by any final order of the racing commission may appeal to the Franklin Circuit Court or the Circuit Court of the county where the person

resides in accordance with KRS Chapter 13B.

→Section 112. KRS 230.368 is amended to read as follows:

Any person dissatisfied with the decision of the racing commission under KRS 230.367 may appeal to the Franklin Circuit Court or the Circuit Court of the county where the person resides in accordance with the provisions of KRS 243.560 to 243.590.

→Section 113. KRS 234.302 is amended to read as follows:

When in the judgment of the council or an association certified under KRS 234.280, a person has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 234.270 to 234.302, the council or the certified association may make application to the Franklin Circuit Court or the Circuit Court of the county where the person resides for an order enjoining the act or acts or practices, and obtain a restraining order and preliminary injunction against the person.

→Section 114. KRS 236.150 is amended to read as follows:

- (1) Any person aggrieved by an order or act of a boiler inspector, under this chapter, may, within fifteen (15) days of notice thereof, appeal from the order or act to the commissioner who shall schedule and conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) Any person aggrieved by a final order of the commissioner may file a petition in the Franklin Circuit Court or the Circuit Court of the county where the person resides for judicial review in accordance with KRS Chapter 13B.

→Section 115. KRS 238.565 is amended to read as follows:

- (1) A license holder may appeal any administrative action taken under KRS 238.560. A license holder shall be notified in writing of any action to be taken against him. The notification may be delivered in person or mailed by certified mail, return receipt requested, to the last known address of the license holder. Service of notification of administrative action, whether by hand delivery or by certified mail, shall be deemed complete if the license holder fails or refuses to accept delivery. For service

by hand delivery, notification shall be deemed received upon acceptance of delivery or upon failure or refusal to accept delivery, and the person affecting service on behalf of the department shall record the fact of the failure or refusal. For service by certified mail, the notification of administrative action shall be deemed received when the license holder accepts delivery or fails or refuses to accept delivery at the last known address. The notification shall specify the charges against the license holder, specify the proposed administrative sanction, and advise him of his right to appeal the decision within ten (10) days of the date of receipt of the notification.

- (2) Upon receipt of an appeal, the department shall schedule the matter for an administrative hearing that shall be conducted in accordance with KRS Chapter 13B.
- (3) Any provisions of KRS Chapter 13B notwithstanding, within twenty (20) days after the conclusion of a hearing, the hearing officer shall prepare and present to the commissioner a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the commissioner shall affirm, reject, or modify, in whole or in part, the recommended order and shall issue a final order. The final order shall be the final administrative action on the matter and a copy of the final order shall be mailed to the license holder, by certified mail, return receipt requested.
- (4) Any administrative action taken under this section shall, upon appeal, be stayed until a final order is issued, with the exception of a summary suspension. The department may issue an emergency order pursuant to KRS 13B.125 to summarily suspend a license upon finding that continued operation of the license holder pending a hearing would constitute a threat to the public health, safety, or welfare.
- (5) A final order of the commissioner may be appealed to *the* Franklin Circuit Court *or* *the Circuit Court of the county where the person resides* in accordance with KRS Chapter 13B. If the license holder against whom administrative action is proposed

does not request an appeal of the action, the department shall enter a final order imposing the proposed administrative action.

➔Section 116. KRS 243.560 is amended to read as follows:

- (1) Any final order of the board refusing, revoking or suspending a license may be appealed from by the applicant or licensee, and any final order of the board granting or refusing to revoke or suspend a license may be appealed from by any citizen feeling himself aggrieved.
- (2) The person aggrieved by a final order may file a petition in the office of the clerk of the Franklin Circuit Court or the Circuit Court of the county where the person resides in accordance with KRS Chapter 13B.
- (3) The board and the licensee or applicant shall be necessary parties to any appeals. If the appeal is from a final order refusing, revoking, or suspending a license, the board, when served with the summons, or a person as the board may designate, shall appear and defend the action of the board in refusing, revoking, or suspending the license in question. If the appeal is from a final order granting or refusing to revoke or suspend a license the burden of appearing and defending the action of the board shall be upon the licensee.
- (4) If the appeal is from a final order of the board refusing, revoking, or suspending a license, the costs of the appeal shall be taxed against the applicant or licensee in any case. If the appeal is from a final order issuing or refusing to revoke or suspend a license, the costs shall be taxed against the citizen who, feeling himself aggrieved, has contested the final order, if the final order of the board issuing or refusing to revoke the license is sustained. If the final order is set aside with direction to the board to refuse, revoke, or suspend the license, the costs shall be taxed against the licensee.
- (5) No final order of the board issuing a license shall become effective, and no license under that final order shall be issued, until the expiration of the appeal period

contained in KRS Chapter 13B. If an appeal from a final order has been filed as provided under KRS 13B.140, the final order shall not become effective until the appeal has been finally determined by the courts.

→Section 117. KRS 243.590 is amended to read as follows:

Any party aggrieved by a judgment of the ~~Franklin~~ Circuit Court may appeal to the Court of Appeals in accordance with the Rules of Civil Procedure.

→Section 118. KRS 243.675 is amended to read as follows:

The board may compel obedience to its lawful orders by injunction or other proper proceedings in ~~Franklin Circuit Court or~~ any ~~other~~ court of competent jurisdiction, and the proceedings shall have priority over all pending cases.

→Section 119. KRS 247.4483 is amended to read as follows:

Whenever in the judgment of the board or the certified commission, council, board, association, or other agency of producers, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the sections of KRS 247.4451 to 247.4483, the board or the certified commission, council, board, association, or other agency of producers may make application to the Franklin Circuit Court ***or the Circuit Court of any county where the purchaser resides or has a principal place of business*** for an order enjoining the act or acts or practices and obtain a restraining order and preliminary injunction against the purchaser.

→Section 120. KRS 247.505 is amended to read as follows:

Whenever in the judgment of the board or the certified commission, council, board, association or other agency of producers, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the sections of KRS 247.450 to 247.505, the board or the certified commission, council, board, association or other agency of producers may make application to the Franklin Circuit Court ***or the Circuit Court of any county where the purchaser resides or has a principal place of business*** for an order enjoining such act or acts or practices and obtain a restraining order and

preliminary injunction against such purchaser.

→Section 121. KRS 247.595 is amended to read as follows:

Whenever in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.510 to 247.585, the board or the duly certified association may make application to the Franklin Circuit Court or the Circuit Court of any county where the purchaser resides or has a principal place of business for an order enjoining such act or acts or practices, and obtain a restraining order and preliminary injunction against such purchaser.

→Section 122. KRS 247.6035 is amended to read as follows:

When in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.6001 to 247.6035, the board or the duly certified association may make application to the Franklin Circuit Court or the Circuit Court of any county where the purchaser resides or has a principal place of business for an order enjoining the act or acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

→Section 123. KRS 247.685 is amended to read as follows:

Whenever in the judgment of the board or the duly certified association, an operator of a livestock market, meat packing establishment, or slaughter establishment, or an order buyer has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.610 to 247.685, the board or the duly certified association may make application to the Franklin Circuit Court or the Circuit Court of any county where the operator or buyer is located for an order enjoining such act, or acts, or practices and obtain a restraining order and preliminary injunction against such operator or order buyer.

→Section 124. KRS 247.6957 is amended to read as follows:

If, in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.6901 to 247.6957, the board or the duly certified association may make application to the Franklin Circuit Court *or the Circuit Court of any county where the purchaser is located* for an order enjoining the act or acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

→Section 125. KRS 247.785 is amended to read as follows:

Whenever in the judgment of the board or the duly certified association, an operator of a tobacco warehouse, tobacco manufacturing establishment, or tobacco dealer has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.710 to 247.785, the board or the duly certified association may make application to the Franklin Circuit Court *or the Circuit Court of any county where the operator or dealer is located* for an order enjoining such act or practices and obtain a restraining order and preliminary injunction against the operator.

→Section 126. KRS 247.7928 is amended to read as follows:

If, in the judgment of the board or the duly certified association, an operator of a livestock market, meat packing establishment, or slaughter establishment has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.7900 to 247.7928, the board or the duly certified association may make application to the Franklin Circuit Court *or the Circuit Court of any county where the market or establishment is located* for an order enjoining the act, or acts, or practices and obtain a restraining order and preliminary injunction against the operator.

→Section 127. KRS 247.865 is amended to read as follows:

Whenever in the judgment of the board or the duly certified association, a handler has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.850 to 247.864, the board or the duly certified association may make application to the Franklin Circuit Court *or the Circuit Court of any county*

where the packer is located for an order enjoining such act, or acts or practices and obtain a restraining order and preliminary injunction against the handler.

→Section 128. KRS 250.710 is amended to read as follows:

The Commissioner shall notify any applicant or owner by certified mail, return receipt requested of any decision to refuse to grant a registration or to revoke a registration within ten (10) days after the decision, and the applicant or owner shall have thirty (30) days after the notification within which to petition the Commissioner for a hearing to be conducted in accordance with KRS Chapter 13B. If the applicant or owner is aggrieved by the final order, the applicant or owner may appeal the final order to the Franklin Circuit Court or the Circuit Court of any county where the applicant or owner resides or has its principal place of business in accordance with KRS Chapter 13B. If the owner takes an appeal within the time herein provided, the revocation by the Commissioner shall not become final until finally adjudicated; however, the Commissioner may require the posting of a reasonable and appropriate bond pending final adjudication.

→Section 129. KRS 251.485 is amended to read as follows:

(1) A forward pricing (delayed pricing) contract means an executory contract which shall be in a form and contain terms the department shall adopt by administrative regulation pursuant to KRS 251.480. The forward pricing (delayed pricing) contract shall be executed by the licensed grain establishment and the producer, or by their authorized representatives, not later than thirty (30) days after the first delivery of grain is received under the forward pricing (delayed pricing) contract. The licensed grain establishment shall maintain a file of executed forward pricing (delayed pricing) contracts that are available for inspection at any reasonable time by the department. The licensed grain establishment shall keep records and ledgers which the department deems necessary to document the licensed grain establishment's obligations to the producer under a forward pricing (delayed pricing) contract. The licensee shall provide reports, forms, and other evidence the department shall adopt

by administrative regulation to document the storage and marketing of grain under the forward pricing (delayed pricing) contract.

- (2) Except as otherwise provided in subsection (3) of this section, a licensed grain establishment which purchases grain under a forward pricing (delayed pricing) agreement shall at all times maintain the grain in storage, rights in the grain, proceeds from the sale of grain, or a combination of the grain, rights, and proceeds equal to eighty percent (80%) of the value of the licensed grain storage establishment's unpaid obligations for all grain that it has purchased and for which delivery has been made under a forward pricing (delayed pricing) contract. The obligation shall be secured or represented by one (1) or more of the following:
- (a) Maintenance of the grain in storage in the licensed grain establishment's warehouse or storage facilities;
  - (b) Rights in grain as evidenced by a receipt or ticket for storage of the grain under a bailment agreement in another warehouse approved by the department; or
  - (c) Proceeds from the sale of grain as evidenced or represented by one (1) or more of the following:
    - 1. Funds held in a separate account for the benefit of all unpaid producers of grain delivered under a forward pricing (delayed pricing) contract with the separate account existing in a state or federal licensed financial institution or a lending agency of the federal Farm Credit Administration;
    - 2. Short-term investments held in time accounts for the benefit of all unpaid producers of grain delivered under a forward pricing (delayed pricing) contract with state or federal licensed financial institutions or a lending agency of the federal Farm Credit Administration; or
    - 3. Other evidence of unencumbered assets as may be acceptable to the

department, including an irrevocable letter of credit or surety bond.

- (3) The licensed grain establishment handler account required by subsection (2) of this section shall be deemed grain or the proceeds for grain arising from unpaid obligations for all grain purchased and for which delivery has been made under a forward pricing (delayed pricing) contract. The Commissioner shall have a priority lien upon the property or assets required to be maintained in the licensed grain establishment's grain handler account as provided in subsection (2) of this section. The Commissioner shall, when he questions a licensed grain establishment's ability to pay producers for grain purchased, or when he determines that the licensed establishment does not have sufficient net worth to satisfy indebtedness, after giving notice to the owner or agent of the owner, prohibit the transfer or disbursement of any grain, property, or assets maintained in the licensed grain establishment handler account, except for the satisfaction of unpaid obligations for grain that has been purchased and for which delivery has been made under a forward pricing (delayed pricing) contract. Disbursements shall be made under the direction of the Commissioner to grain producers on a pro rata basis. An action to enforce the priority lien created by this subsection may be brought in the name of the Commissioner or the Kentucky Grain Insurance Corporation in any~~the Franklin~~ Circuit Court *of competent jurisdiction*.
- (4) The licensed warehouse establishment and the producer may at the time a forward pricing (delayed pricing) contract is executed mutually agree and waive the payment of compensation from the Kentucky Grain Insurance Fund authorized by KRS 251.670. The waiver shall be made in writing at the time the forward pricing (delayed pricing) contract is executed and shall be made in a manner prescribed by the Commissioner and filed with the department within ten (10) days thereafter. Upon the waiver, the grain sold pursuant to the forward pricing (delayed pricing) contract shall be excluded from the coverage of the Kentucky Grain Insurance Fund

and the producer shall be exempted from the assessment at KRS 251.640(1) for the amount of grain covered by the contract. The licensed grain establishment shall not be required to maintain rights in the grain, proceeds from the sale of grain, or a combination of the grain, rights, and proceeds equal to eighty percent (80%) of the value of the licensed storage establishment's unpaid obligation relating to the amount of grain exempted from the payment of compensation from the Kentucky Grain Insurance Fund.

➔Section 130. KRS 251.640 is amended to read as follows:

- (1) It is declared to be in the public interest and highly advantageous to the agricultural economy of the state that all producers of grain shall be assessed at a rate of .0025 times the gross value of all marketed grain and provide for the collection of the assessment for the purpose of financing or contributing to the financing of the Kentucky grain insurance fund, which is hereby created.
- (2) Upon the establishment of the Kentucky Grain Insurance Corporation, the Commissioner shall notify by certified mail, all persons in this state engaged in the business of purchasing grain from producers, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the purchase price of the grain. The deducted assessment shall, on or before the fifteenth day of the month following the end of the month in which the grains are sold to the purchaser, be remitted by the purchaser to the grain insurance fund. The books and records of all purchasers of grain, which shall clearly indicate the producer assessment, shall at all times be open for inspection by the Commissioner of Agriculture or his duly authorized agents during regular business hours. The Commissioner or his agents may take steps as are reasonably necessary to verify the accuracy of books and records of purchasers of grain.
- (3) (a) Beginning with the first assessment levied on or after June 25, 2009, no

assessments shall be collected by the department under paragraph (b) of this subsection unless the board has certified that the fund is less than three million dollars (\$3,000,000). For subsequent assessments, the provisions and amounts specified in paragraph (b) of this subsection apply.

- (b) If and when the fund is more than ten million dollars (\$10,000,000), no fees shall be assessed by the department unless the amount in the fund drops below ten million dollars (\$10,000,000). If the fund is more than ten million dollars (\$10,000,000), no later than April 30 of each year, the board shall meet and certify the fund is in excess of ten million dollars (\$10,000,000). Upon this certification, no assessment shall be assessed or collected for that licensed year. If at any time after the board has certified the ten million dollars (\$10,000,000) amount, the board receives notification of the fund being less than eight million dollars (\$8,000,000), the board shall within thirty (30) days certify that the fund has less than eight million dollars (\$8,000,000), and the assessment shall be reinstated. Upon notification from the board, the department shall within thirty (30) days reinstate the assessment fee of .0025 times the gross value of the grain purchased.
- (4) Any producer upon and against whom the assessment is levied and collected under the provisions of this section, if dissatisfied with the assessment, may demand of and receive from the treasurer of the grain insurance corporation a refund of assessment collected from the producer, if the demand for refund is made in writing within thirty (30) days from the date on which the assessment is collected from the producer. By voluntarily submitting to a refund, the producer forgoes any protection or compensation provided for by the grain insurance corporation.
- (5) When in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, or

251.600 to 251.740, the grain insurance corporation may make application to ~~any~~~~[the Franklin]~~ Circuit Court **of competent jurisdiction** for an order enjoining the acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

- (6) The assessments by the department in accordance with this section are in addition to any other fees or assessments required by law.

→Section 131. KRS 257.440 is amended to read as follows:

Any permit may be suspended or canceled by the Division of Animal Health, after opportunity for a hearing to be conducted in accordance with KRS Chapter 13B, for any violation of KRS 257.370 to 257.460 or the regulations promulgated under KRS 257.370 to 257.460. Any person who is refused a permit or whose permit is revoked after a hearing may appeal the final order to the Circuit Court of Franklin County **or the Circuit Court of any county where the permit would have authorized the person to operate** in accordance with KRS Chapter 13B.

→Section 132. KRS 257.552 is amended to read as follows:

If any person holding captive cervids regulated under KRS 150.725 to 150.735 is determined in violation of a Kentucky statute or administrative regulation pertaining to the health requirements, eradication of diseases, importation, and identification of those cervids, then that person shall have sixty (60) days from when the violation was identified to come into compliance. During the sixty (60) day period, the cervids shall be subject to quarantine by the Kentucky Department of Agriculture. The permit holder may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the notice of violation and may appeal the final decision to ~~any~~~~[Franklin]~~ Circuit Court **of competent jurisdiction** in accordance with KRS Chapter 13B. If a final determination upholds the Kentucky Department of Agriculture, the permit holder's cervids may be disposed of by the department without compensation to the owner.

→Section 133. KRS 260.560 is amended to read as follows:

- (1) The department shall administer all provisions and exercise all administrative powers in the egg marketing law. The department may promulgate reasonable administrative regulations necessary to carry out the provisions of the egg marketing law.
- (2) The department may conduct administrative hearings, in accordance with KRS Chapter 13B, to the extent necessary for proper administration of the egg marketing law.
- (3) Any final order of the department refusing, revoking, or suspending an egg license may be appealed by the aggrieved party to the Franklin Circuit Court *or the Circuit Court of any county where the aggrieved party resides or has a principal place of business* in accordance with KRS Chapter 13B.

➔Section 134. KRS 262.918 is amended to read as follows:

- (1) (a) A grantor may terminate an easement, in whole or in part, only by filing an action in the Franklin Circuit Court *or the Circuit Court of the county where the easement is filed*, and demonstrating by clear and convincing evidence that conditions on or surrounding the land subject to an agricultural conservation easement have changed so much that agriculture is no longer viable and it has become impossible to fulfill any of the easement's conservation purposes. The grantor shall name the PACE Corporation as the defendant in the action.
- (b) In the event that a finding is made by the court that a portion of the land subject to the agricultural conservation easement is no longer suitable for agricultural purposes, the owner shall, at the owner's expense, provide a survey of the land area on which the agricultural conservation easement is to be terminated.
- (2) (a) No agricultural conservation easement or portion thereof which has been purchased with Commonwealth funds shall be terminated by the court except

upon payment by the grantor to the PACE Corporation of its then fair value. The value of the easement shall be established by one of the following two methods, as determined by the court:

1. The owner shall pay the PACE Corporation an amount equal in current dollars to the full cost of acquiring and monitoring the easement during its full duration, plus reasonable interest as determined by court; or
  2. The owner shall pay the PACE Corporation an amount equal to the easement's current market value as determined by independent appraisal, performed at the owner's expense and satisfactory to the Commonwealth.
- (b) The PACE Corporation shall place the proceeds from the termination of the easement in the agricultural enhancement fund and use the proceeds consistent with the purposes of KRS 262.900 to 262.920.

➔Section 135. KRS 278.021 is amended to read as follows:

- (1) If the commission, after notice and hearing, enters an order in which it finds that a utility is abandoned, the commission may bring an action in the Franklin Circuit Court *or the Circuit Court of any county in which the abandoned utility is located* for an order attaching the assets of the utility and placing those assets under the sole control and responsibility of a receiver.
- (2) For purposes of this section, a utility shall be considered abandoned if it:
  - (a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;
  - (b) Notifies the commission of its intent to abandon the operation of the facilities used to provide service;
  - (c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a

reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or

- (d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.
- (3) Within twenty (20) days after commencing an action in the~~Franklin~~ Circuit Court, the commission shall file a certified copy of the record of the administrative proceeding in which the commission entered its finding of abandonment.
- (4) Any action brought pursuant to KRS 278.410 for review of an order of the commission containing a finding that a utility is abandoned shall be consolidated with any action brought pursuant to subsection (1) of this section and based upon the same order.
- (5) Any receiver appointed by the court shall file a bond in an amount fixed by the court. The receiver shall operate the utility to preserve its assets, to restore or maintain a reasonable level of service, and to serve the best interests of its customers.
- (6) During the pendency of any receivership, the receiver may bring or defend any cause of action on behalf of the utility and generally perform acts on behalf of the utility as the court may authorize.
- (7) The receiver shall control and manage the assets and operations of the utility until the~~Franklin~~ Circuit Court, after reasonable notice and hearing, orders the receiver to return control of those assets to the utility or to liquidate those assets as provided by law.
- (8) (a) Notwithstanding subsection (1) of this section, the commission may petition

the ~~Franklin~~ Circuit Court to appoint temporarily a receiver to operate and manage the assets of an abandoned utility. After notice to the utility and a hearing, the court may grant a petition, upon terms and conditions as it deems appropriate, upon a showing by a preponderance of the evidence:

1. That a utility has been abandoned;
  2. That the abandonment is an immediate threat to the public health, safety, or the continued availability of service to the utility's customers; and
  3. That the delay required for the commission to conduct a hearing would place the public health, safety, or continued utility service at unnecessary risk.
- (b) Sixty (60) days after its entry, the order of temporary receivership shall terminate and control and responsibility for the assets and operations of the utility shall revert to the utility without further action of the court unless the commission brings an action under subsection (1) of this section.

➔Section 136. KRS 278.390 is amended to read as follows:

The commission may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in ~~the Franklin Circuit Court or~~ any ~~other~~ court of competent jurisdiction, and such proceedings shall have priority over all pending cases. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

➔Section 137. KRS 278.410 is amended to read as follows:

- (1) Any party to a commission proceeding or any utility affected by an order of the commission may, within thirty (30) days after service of the order, or within twenty (20) days after its application for rehearing has been denied by failure of the commission to act, or within twenty (20) days after service of the final order on

rehearing, when a rehearing has been granted, bring an action against the commission in the ~~Franklin~~ Circuit Court **of competent jurisdiction** to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. Service of a commission order is complete three (3) days after the date the order is mailed. Notice of the institution of such action shall be given to all parties of record before the commission.

- (2) The answer of the commission shall be served and filed within twenty (20) days after service of the complaint. The action shall then be at issue and stand ready for trial upon ten (10) days' notice to either party, on the equity side of the docket of the court. The answer need not deny verbatim the allegations of the petition, but a general denial thereof on behalf of the commission shall be sufficient.
- (3) Injunctive relief may be granted by the Circuit Court in the manner and upon the terms provided by law.

➔Section 138. KRS 278.990 is amended to read as follows:

- (1) Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less

than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

- (2) Actions to recover the principal amount due and penalties under this chapter shall be brought in the name of the Commonwealth in any~~the Franklin~~ Circuit Court of competent jurisdiction. Whenever any utility is subject to a penalty under this chapter, the commission shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the State Treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the State Treasury and credited to the general fund.
- (3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars (\$1,000), and twenty-five dollars (\$25) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.
- (4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars (\$10,000).
- (5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars (\$100) for each offense.
- (6) Any company that willfully fails to receive, transport, and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured

person, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and each day of willful failure shall constitute a separate offense.

- (7) Any telephone company that refuses to make a connection with the exchange or lines of another company for a period of thirty (30) days after being ordered to do so by the commission under subsection (2) of KRS 278.530 shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), to be recovered by indictment in the Franklin Circuit Court or in the Circuit Court of the county where the company requesting the connection resides or has its chief office in this state. If the company desiring the connection proceeds to make the connection, as permitted by subsection (2) of KRS 278.530, and the company so connected with refuses to receive and transmit the toll messages offered to it by the company making the connection, or refuses to deliver messages from its own lines or exchanges to the lines or exchanges of the company making the connection, the company so refusing shall be fined one hundred dollars (\$100) for each day it refuses, to be recovered by indictment in the courts mentioned in the first sentence of this subsection; if it continues so to refuse for a period of six (6) months it shall forfeit its right to do business in this state, and any of its officers, agents, or employees who does or attempts to do any business in this state for it after the expiration of the six (6) months' period shall be fined fifty dollars (\$50) for each day he does or attempts to do such business.

➔Section 139. KRS 278.992 is amended to read as follows:

- (1) Any person who violates any minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq., or any amendments thereto, or any regulation adopted and filed pursuant to KRS Chapter 13A by the Public Service Commission governing the safety of pipeline facilities or the transportation of gas as those terms are defined in

the Natural Gas Pipeline Safety Act, shall be subject to a civil penalty to be assessed by the Public Service Commission not to exceed the maximum civil penalty as contained in 49 C.F.R. sec. 190.223, as of December 31, 2011, for a violation of any provision of 49 U.S.C. secs. 60101 et seq., or any regulation or order issued thereunder, for each violation for each day that the violation persists. Any civil penalty assessed for a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the Commonwealth of Kentucky to the person charged or may be recovered in a civil action in the ~~Franklin~~ Circuit Court *of competent jurisdiction*.

- (2) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by the Natural Gas Pipeline Safety Act or any regulation or order issued pursuant to it shall, upon conviction, be subject for each offense to a fine of not more than five thousand dollars (\$5,000), imprisonment for a term not to exceed one (1) year, or both.

➔Section 140. KRS 280.110 is amended to read as follows:

In all matters in which the Department of Highways has power and authority under KRS 280.010 to 280.100, it may hear applications and complaints, issue subpoenas, compel the attendance of witnesses, require persons to testify under oath, administer oaths, and issue process, orders, opinions and decisions, but from each final order of the department an appeal may be taken to the Franklin Circuit Court *or the Circuit Court of any county where an aggrieved party resides or has a principal place of business* as provided in KRS Chapter 13B.

➔Section 141. KRS 286.2-685 is amended to read as follows:

- (1) No person may use the term "bank," "banker," "banking," "trust," or a similar term or a character, ideogram, phonogram, phrase, or foreign language word in its name, stationery, or advertising in a manner that would imply to the public that the person is engaged in the banking or trust business.
- (2) Subsection (1) of this section does not apply to a depository institution or other entity organized under the laws of this state, another state, or the United States to the extent that the depository institution or other entity is:
  - (a) Authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by subsection (1) of this section; and
  - (b) Authorized by the laws of this state or the United States to conduct the activities in which it is engaged in this state.
- (3) For purposes of this section, unless the context requires otherwise, "financial institution" means any person or entity operating in the Commonwealth of Kentucky, as permitted under the laws of this state, any other state, or the United States, as a bank, bank holding company, credit union, savings and loan association, or any wholly owned subsidiary thereof.
- (4) Except as provided in subsection (5) of this section, no person that is not a financial institution may use the trade name, trademark, service mark, logo, or symbol, or any combination thereof, of any financial institution, or any trade name, trademark, service mark, logo, or symbol, or any combination thereof, that is similar to the trade name, trademark, service mark, logo, or symbol of such a financial institution, in any marketing material, solicitation, or advertising provided or directed to another person in a manner such that a reasonable person may be confused, mistaken, or deceived that the marketing material, solicitation, or advertising originated from, is endorsed by, or has been consented to by the financial

institution.

- (5) Subsection (4) of this section shall not apply to a person who uses the trade name, trademark, service mark, logo, or symbol of a financial institution with the written consent of the financial institution.
- (6) The financial institution whose trade name, trademark, service mark, logo, or symbol has been used in violation of this section may institute an action in ~~the Franklin Circuit Court or~~ any court of competent jurisdiction against any person or entity in violation of subsection (4) of this section to enjoin a continuance of any activity in violation of subsection (4) of this section and, if injured thereby, for the recovery of damages at three (3) times the amount of any actual damages sustained and for civil penalties in the amount of one thousand dollars (\$1,000). It shall not be necessary that actual damages be alleged or proved in order to recover injunctive relief or civil penalties. The penalties prescribed by this subsection shall be cumulative.

➔Section 142. KRS 286.4-500 is amended to read as follows:

Whenever the commissioner denies any application for a license under the provisions of this subtitle or revokes any license issued pursuant to this subtitle, the commissioner shall forthwith file in his or her office a written order to that effect, stating his or her findings with respect thereto and the reasons for the action. The commissioner shall also forthwith serve upon the applicant for license or licensee a copy of the order, and the applicant or licensee may appeal to the Circuit Court of Franklin County ***or the Circuit Court of the county where the business was sought to be conducted***, within thirty (30) days after the service of a copy of the order.

➔Section 143. KRS 286.4-630 is amended to read as follows:

In addition to any other available remedy, any person considering himself aggrieved by any act or omission of the commissioner may, within thirty (30) days from the date of such act or failure to act, bring an action in ~~any~~ ***any*** ~~the~~ Circuit Court ***of competent***

jurisdiction~~[in and for Franklin County]~~ to review such act or omission. The hearing before the court shall be based on the record before the commissioner and the commissioner's findings, if any, and on such new evidence as may be introduced.

➔Section 144. KRS 286.7-450 is amended to read as follows:

- (1) The commissioner shall upon approval issue a certificate of approval in triplicate, one (1) copy of which shall be delivered to the applicant and one (1) copy to the Secretary of State which shall constitute the authority of the Secretary of State to file and record the articles as provided in the general corporation law.
- (2) Upon the receipt of payment of fees and filing of the articles of incorporation by the Secretary of State, the commissioner shall issue a certificate or certificates authorizing the corporation to operate an industrial loan business in this state at the places specified, such certificates to be in any form the commissioner prescribes.
- (3) The commissioner shall mail one (1) copy of the certificate to each office of the corporation and shall retain one (1) copy, which shall be filed in the office of the commissioner.
- (4) If the commissioner does not approve the application, the commissioner shall notify the applicant of the denial and return the sum paid by the applicant as a fee for the privilege of doing business, retaining the fifty-dollar (\$50) investigation fee.
- (5) The commissioner shall approve or deny every application within sixty (60) days after the filing thereof with the fees paid, unless the time is extended by the commissioner for good cause.
- (6) All findings of the commissioner, together with a summary of the evidence supporting them, shall be filed in the office of the commissioner as public records.
- (7) The certificate or certificates issued to the corporation shall expire on the succeeding January 15, and shall be renewed only on compliance with the provisions of KRS 286.7-410 to 286.7-600.
- (8) Whenever the commissioner denies any application for certificate under the

provisions of KRS 286.7-410 to 286.7-600, the commissioner shall promptly file in his office a written order to that effect, stating his or her findings with respect thereto and the reasons for his or her action. The commissioner shall also promptly serve upon the applicant for a certificate a copy of the order. The applicant may request an administrative hearing to be conducted in accordance with KRS Chapter 13B. Any party aggrieved by a final order issued pursuant to a hearing authorized under this subsection may appeal to the Circuit Court of Franklin County or the *Circuit Court of any county where the industrial loan business had proposed to operate* in accordance with KRS Chapter 13B.

- (9) The corporation shall not conduct any industrial loan business until it receives a certificate from the commissioner stating that it has fully complied with all the provisions of KRS 286.7-410 to 286.7-600, and that the requisite capital is in good faith subscribed and paid in cash.

➔Section 145. KRS 286.7-550 is amended to read as follows:

- (1) The commissioner, for good cause and after an opportunity for a hearing to be conducted in accordance with KRS Chapter 13B, may revoke and remove from the department's file, or suspend for thirty (30) days, any certificate issued under KRS 286.7-410 to 286.7-600 if the commissioner finds that:
- (a) The holder of the certificate has failed to pay his or her annual fee for the privilege of doing business;
  - (b) The certificate holder has violated any provision of KRS 286.7-410 to 286.7-600 or has failed to comply with any administrative regulation lawfully promulgated pursuant thereto;
  - (c) Any fact or condition then exists which clearly would have warranted the commissioner in refusing to issue a certificate on an original application; or
  - (d) The certificate holder has failed to open an office for business within one hundred and twenty (120) days from the date the certificate is granted, or has

failed to remain open for business for a period of one hundred and twenty (120) days, unless in each case good cause be shown.

- (2) The commissioner may reinstate suspended certificates or issue new certificates to a certificate holder whose certificate has been revoked if no fact or condition then exists which clearly would have warranted him in refusing originally to issue such certificate under KRS 286.7-410 to 286.7-600.
- (3) Any certificate holder may surrender any certificate by delivering it to the commissioner together with written notice that he or she thereby surrenders the certificate.
- (4) Any person whose certificate is revoked or suspended may appeal the final order by filing in the Franklin Circuit Court or the Circuit Court of any county where the industrial loan company was authorized to operate a petition for judicial review in accordance with KRS Chapter 13B.

➔Section 146. KRS 286.8-090 is amended to read as follows:

- (1) The commissioner may suspend; revoke; place on probation; condition; refuse to issue or renew a license, registration, or exemption; or accept surrender of a license, registration, or exemption in lieu of revocation or suspension; or issue a cease and desist order if the commissioner finds that the person, applicant, licensee, or registrant:
  - (a) Does not meet, no longer meets, or has failed to comply with the requirements of this subtitle;
  - (b) Is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company or mortgage loan broker, as the case may be;
  - (c) Does not conduct his business in accordance with the law or the method of business includes or would include activities which are illegal where performed;

- (d) Collects interest at a usurious rate;
- (e) Is in such financial condition that he cannot continue in business with safety to his customers;
- (f) Is guilty of fraud in connection with any transaction governed by this subtitle, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act;
- (g) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the mortgage lending process, or has engaged in a course of business that has worked or tended to work a fraud upon any person or would so operate;
- (h) Has made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information that the person possesses and which, if submitted to the commissioner, would have rendered the person ineligible to be licensed, registered, or exempted from licensing or registration under this subtitle;
- (i) Has failed to account to persons interest for all funds received for the escrow account required under KRS 286.8-130;
- (j) Has refused to permit an examination or investigation by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under the provisions of this subtitle;
- (k) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty, or any felony, or has pending against him any felony charge;
- (l) Has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of

- this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action;
- (m) Has employed or contracted with a person who has failed to register or has had a license or registration denied, revoked, or suspended in this Commonwealth or another state;
  - (n) Has demonstrated incompetence or untrustworthiness to act as a licensee or registrant or to continue a claim of exemption granted by application under this subtitle;
  - (o) Has failed to pay any required fee under this subtitle;
  - (p) Has abandoned an application by failing to provide the commissioner any information required under this subtitle, or requested by the commissioner, to complete an application;
  - (q) Has influenced, or attempted to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan;
  - (r) Has failed to comply with an administrative or court order imposing child support obligations;
  - (s) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
  - (t) Has improperly used notes or other resources to complete an examination for a license or registration;
  - (u) Has violated any provision of KRS 360.100; or
  - (v) Has violated any provision of this subtitle, administrative regulation promulgated hereunder, or order issued by the commissioner.
- (2) Any person whose license, registration, or claim of exemption has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this

section is prohibited from participating in any business activity of a registrant or licensee under this subtitle and from engaging in any business activity on the premises where a licensee or registrant under this subtitle is conducting its business.

- (3) The commissioner shall execute a written order whenever a license, registration, or claim of exemption issued pursuant to this subtitle is suspended or revoked. The commissioner shall serve the written order upon the licensee, registrant, or person claiming the exemption. The written order shall be sent by certified mail, return receipt requested, postage prepaid, to the last known principal business address of such licensee, registrant, or person claiming the exemption, as set forth in the records of the commissioner. The written order shall be deemed to have been received by the licensee, registrant, or person claiming the exemption three (3) business days following the mailing thereof.
- (4) Any person who continues to participate in any business activity covered by this subtitle after such person's license, registration, or claim of exemption has been revoked, suspended, or denied shall be subject to the penalties in this section, KRS 286.8-046, and KRS 286.8-990 and shall be in violation of KRS 367.170.
- (5) Any person who has had a license, registration, or claim of exemption denied by the commissioner shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of one (1) year from the date of denial.
- (6) Any person who has had a license, registration, or claim of exemption revoked by the commissioner shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license, registration, or claim of exemption has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license, registration, or claim of exemption under this subtitle.
- (7) The provisions of this section shall be in addition to any other penalties or remedies

available, including the penalties of KRS 286.8-046.

- (8) The commissioner may notify the Department of Revenue which may institute an action in the name of the Commonwealth of Kentucky in ~~the Franklin Circuit Court, or~~ any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.
- (9) The commissioner may file a complaint in ~~the Franklin Circuit Court, or~~ any court of competent jurisdiction, for a temporary restraining order or injunction, against any person, where the commissioner has reason to believe from evidence satisfactory to the commissioner that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief that is proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court.
- (10) The surrender or expiration of a license, registration, or exemption shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender or expiration. No revocation, suspension, refusal to renew, surrender, or expiration of any license, registration, or exemption shall impair or affect the obligation of any preexisting lawful contract between the licensee and the borrower. The surrender or expiration of a license, registration, or exemption shall not affect a proceeding to suspend or revoke a license or registration.

➔Section 147. KRS 286.8-180 is amended to read as follows:

- (1) In the conduct of any examination, investigation, or hearing, the commissioner or an officer designated by the commissioner may compel the attendance of any person or obtain any documents by subpoenas; administer oaths or affirmations in the

examination of the directors, officers, agents, employees of any mortgage loan company, or mortgage loan broker or any other person concerning the business and conduct of affairs or any person subject to the provisions of this subtitle, and in connection therewith may require and compel the production of any books, records, papers, or other documents relevant to the inquiry.

- (2) In the contumacy by, or refusal to obey a subpoena issued to, any person, ~~any~~<sup>Franklin</sup> Circuit Court ***of competent jurisdiction***, upon application by the commissioner, may issue to the person an order requiring him or her to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
- (3) The cost of any investigation or hearing conducted under KRS 286.8-190 may be assessed to and collected from the mortgage loan company or mortgage loan broker in question by the commissioner.

➔Section 148. KRS 286.8-190 is amended to read as follows:

- (1) The commissioner may investigate either upon complaint or otherwise when it appears that any person is conducting business in an unsafe and injurious manner or otherwise is in violation of this subtitle, or any rule or order hereunder, or when it appears that any person is engaging in the mortgage loan business without being licensed or registered, or legally exempted from licensing or registration, under the provisions of this subtitle.
- (2) If it appears to the commissioner upon sufficient grounds or evidence satisfactory to the commissioner that any person has engaged in or is about to engage in any practice in violation of this subtitle or any rule or order hereunder, or that person's mortgage loan business affairs are in an unsafe condition, the commissioner may:
  - (a) Order the person to cease and desist from the acts or practices by a formal

written order delivered to the person stating any alleged violation. The order shall specify the effective date thereof, and notice of entry shall be served personally or sent by certified mail to the last known address of the person affected. The person, upon written application, shall be entitled to a hearing; but if a written application for a hearing is not timely received by the commissioner within twenty (20) days after the certified mailing or personal delivery of the order, it shall be made final and shall remain in effect until withdrawn by the commissioner or terminated by a court order; and

- (b) Apply directly to the Franklin Circuit Court or the Circuit Court of the county where the defendant may be located, or any court of competent jurisdiction, to enjoin any acts or practices in violation of this subtitle and to enforce compliance with this subtitle or any rule or order hereunder. Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond.

➔Section 149. KRS 286.8-210 is amended to read as follows:

Any person aggrieved by final order of the commissioner may obtain a review of the order in the Franklin Circuit Court or the Circuit Court of any county where the mortgage loan company or broker is located, by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order in whole or in part. No objection to the order may be considered by the court unless it was urged before the commissioner or there were reasonable grounds for failure

to do so. The findings of the commissioner as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The commissioner may modify his or her findings as to the facts, by reason of additional evidence so taken, and the commissioner shall file any modified or new findings, which if supported by substantial evidence shall be conclusive. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order. An appeal may be taken from the judgment of the ~~Franklin~~ Circuit Court upon any such appeal to the court of appeals on the same terms and conditions as an appeal is taken in civil actions.

➔Section 150. KRS 286.9-110 is amended to read as follows:

- (1) The commissioner may suspend, revoke, place on probation, condition, restrict, refuse to issue or renew a license, accept the surrender of a license in lieu of revocation or suspension, order that refunds to customers be made, or issue a cease-and-desist order, if the commissioner finds that the person, licensee, or a person in control of a licensee:
  - (a) Has committed any fraud, engaged in any dishonest activities, or made any misrepresentation;
  - (b) Does not meet, has failed to comply with, or has violated any provisions of this subtitle or any administrative regulation issued pursuant thereto, or any order of the commissioner issued pursuant thereto, or has violated any other law in the course of its or his or her dealings as a licensee;
  - (c) Has made a false statement in the application for the license or failed to give a

- truthful reply to a question in the application;
- (d) Has demonstrated his or her incompetence or untrustworthiness to act as a licensee;
  - (e) Is unfit, through lack of financial responsibility or experience, to conduct the business of a check-cashing or deferred deposit service business, as the case may be;
  - (f) Does not conduct his or her business in accordance with the law or conducts business by a method that includes, or would include, activities that are illegal where performed, or has willfully violated any provision of this subtitle; or any administrative regulation promulgated or order of the commissioner issued hereunder;
  - (g) Is insolvent;
  - (h) Is the subject of an administrative cease-and-desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the person, applicant, or licensee;
  - (i) Has made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information that the applicant or licensee possesses and which, if submitted by him or her, would have rendered the applicant or licensee ineligible to be licensed under this subtitle;
  - (j) Has refused to permit an examination or investigation by the commissioner of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or records, or make any report that may be required or requested by the commissioner;
  - (k) Has been convicted of a felony;
  - (l) Has been convicted of any misdemeanor of which an essential element is

- fraud, breach of trust, or dishonesty;
- (m) Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, any other state, or the United States, or has surrendered, withdrawn, or terminated any license, registration, or claim of exemption issued or registration granted by this state or any other jurisdiction under threat of administrative action;
  - (n) Has employed or contracted with a person who has failed to license or has had a license, registration, or claim of exemption denied, revoked, suspended, conditioned, restricted, or probated in this Commonwealth or another state;
  - (o) Has failed to pay any required fee under this subtitle;
  - (p) Has abandoned an application or renewal application by failing to provide the commissioner any information required under this subtitle, or requested by the commissioner, to complete an application;
  - (q) Has failed to comply with an administrative or court order imposing child support obligations;
  - (r) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
  - (s) Has failed to properly verify a customer's eligibility for a deferred deposit transaction;
  - (t) Has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110;
  - (u) Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;
  - (v) Has violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31

C.F.R. pt. 103; or

- (w) No longer meets the requirements under this subtitle to hold a license.
- (2) If the reason for revocation, suspension, restriction, condition, or probation of a licensee's license at any one location is of general application to all locations operated by a licensee, the commissioner may revoke, suspend, restrict, condition, or probate all licenses issued to a licensee.
- (3) Any person who has had a license denied by the commissioner shall not be eligible to apply for a license under this subtitle until after expiration of one (1) year from the date of denial.
- (4) Any person who has had a license revoked by the commissioner shall not be eligible to apply for a license under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.
- (5) Any person whose license has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a licensee under this subtitle and from engaging in any business activity on the premises where a licensee under this subtitle is conducting its business.
- (6) The surrender or expiration of a license shall not affect the person's civil or criminal liability for acts committed prior to the license surrender or expiration. Revocation, suspension, refusal to renew, surrender, or expiration of a license shall not impair or affect the obligation of any preexisting contract between a licensee and a customer. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.
- (7) The commissioner may notify the Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky~~[,] in[ the Franklin Circuit~~

~~Court, or~~ any court of competent jurisdiction~~[,]~~ for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.

- (8) The commissioner may file a complaint in~~[the Franklin Circuit Court, or]~~ any court of competent jurisdiction, for a temporary restraining order or injunction against any person, where the commissioner has reason to believe from evidence satisfactory to the commissioner that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court and the court may assess a civil penalty in an amount equivalent to the amounts found in KRS 286.9-991.

➔Section 151. KRS 286.11-013 is amended to read as follows:

- (1) Each application shall be accompanied by a surety bond or other similar security acceptable to the commissioner, in the amount of at least five hundred thousand dollars (\$500,000). The commissioner may increase the amount of the surety bond, or other similar security, to a maximum of five million dollars (\$5,000,000), upon the basis of the financial condition of an applicant, as evidenced by net worth, transaction volume, or other relevant criteria that the commissioner may establish by order or rule.
- (2) The surety bond, or other similar security acceptable to the commissioner, shall be in a form satisfactory to the commissioner and shall hold and bind the principal and surety to the Commonwealth of Kentucky for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection

with the sale and issuance of payment instruments or money transmissions by the licensee and its agent. The aggregate liability of the surety bond or other similar security accepted shall not exceed the principal sum of the bond.

- (3) A claimant may maintain a civil action on the surety bond, or other similar security acceptable to the commissioner, against a licensee, or the commissioner may maintain an action on behalf of the claimant, in ~~the Franklin Circuit Court, or in~~ any ~~other~~ court of competent jurisdiction, either in one (1) action or in successive actions.
- (4) A licensee shall at all times maintain a surety bond, or other similar security acceptable to the commissioner, in the amount and type required under subsections (1) and (2) of this section. The commissioner may, at any time, accept a substitute or replacement surety bond, or other acceptable similar security, from the licensee, provided that the requirements of subsections (1) and (2) are met.
- (5) The surety bond, or other similar security acceptable to the commissioner, shall be continuous and remain in effect until canceled. The licensee shall provide the commissioner with at least a thirty (30) day written notice of the intent to cancel the surety bond or other similar security accepted by the commissioner. The cancellation of the surety bond or other acceptable security shall not affect any liability incurred or accrued during the thirty (30) day notice of cancellation period.
- (6) A surety bond, or other security acceptable to the commissioner, shall remain in place and cover claims for at least five (5) years after the date of any violation of this subtitle by the licensee or its agent, or the date the licensee ceases providing money transmission services in this state, whichever date occurs last. The commissioner may permit the licensee to reduce or eliminate the surety bond, or other similar security approved by the commissioner, prior to the expiration of the five (5) years, to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced.

➔Section 152. KRS 286.11-043 is amended to read as follows:

- (1) If the commissioner has reason to believe or determines that a violation of this subtitle, regulation adopted, or an order issued under this subtitle, by any person, licensee, or agent has occurred or will occur, then the commissioner may issue an order to show cause why an order to cease and desist should not be issued requiring the person, licensee, or agent to cease and desist from the violation.
- (2) The commissioner may enter an order to cease and desist if the person, licensee, or agent fails to show cause for the violation of the subtitle, regulation, or order within ten (10) days of the date of the receipt of the order of show cause.
- (3) The commissioner may petition~~[ the Franklin Circuit Court, or ]~~ any court of competent jurisdiction~~[, ]~~ for an issuance of a temporary or permanent injunction, or any other appropriate judicial order, against any person, licensee, or agent that violates this subtitle, regulation adopted, or order issued.
- (4) An order issued under this section becomes effective when signed by the commissioner. The order shall be delivered by certified mail to the last known address of the person, licensee, or agent. The order shall be deemed received by the person, licensee, or agent within three (3) days of its mailing with the United States Postal Service.
- (5) The commissioner may issue an order against a licensee to cease and desist from providing money transmission through an agent that is subject of a separate order from the commissioner.
- (6) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding.

➔Section 153. KRS 286.11-053 is amended to read as follows:

- (1) Any person aggrieved by the entry of an order by the commissioner under this subtitle may file written application for an administrative hearing.
- (2) The written application for a hearing under this subtitle shall be made in good faith

and shall state the reasons or grounds the person is so aggrieved and the remedy sought at the hearing.

- (3) Any application for a hearing under this subtitle shall be filed with the commissioner within twenty (20) days of the date of the order.
- (4) If the commissioner finds that the application for a hearing is made in good faith, and that the applicant would be aggrieved as claimed if his or her grounds are established, then a hearing shall be held in accordance with KRS Chapter 13B.
- (5) An appeal from the commissioner shall be taken only from a final order.
- (6) The appeal from a final order issued by the commissioner shall be granted as a matter of right to ~~any~~<sup>the</sup> ~~Franklin~~ Circuit Court **of competent jurisdiction.**

➔Section 154. KRS 286.11-055 is amended to read as follows:

- (1) Any person aggrieved by the conduct of a licensee or agent under this subtitle in connection with the licensee's or agent's regulated activities may file a written complaint with the commissioner, who may investigate the complaint.
- (2) In the course of the investigation initiated by a complaint or by the commissioner, the commissioner may:
  - (a) Subpoena witnesses;
  - (b) Administer oaths;
  - (c) Examine any individual under oath; and
  - (d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.
- (3) If any person fails to testify or to comply with a subpoena from the commissioner under this section, then the commissioner may petition ~~the Franklin Circuit Court or~~ any court of competent jurisdiction for enforcement.
- (4) The license of any licensee or the designation of an agent under this subtitle who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(5) The commissioner may investigate all complaints filed by any person.

➔Section 155. KRS 292.470 is amended to read as follows:

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

- (1) Issue a cease and desist order, with or without a prior hearing, appealable to *the* Franklin Circuit Court *or the Circuit Court of the county where the person resides*, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without a prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public;
- (2) An action in the ~~Franklin~~ Circuit Court ~~or any other court of competent jurisdiction~~ to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. Upon a proper showing by the commissioner, the court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act constituting a violation of this chapter or any rule or order under this chapter. The commissioner may not be required to post a bond; or
- (3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:
  - (a) To cease and desist from the activity;
  - (b) To perform any other reasonable mandates directed by the commissioner

pursuant to an appropriate remedy fashioned by the commissioner and reasonably calculated to carry out the provisions of this chapter; or

- (c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

→Section 156. KRS 292.490 is amended to read as follows:

Any person aggrieved by a final order of the commissioner may obtain a review of the order by filing in accordance with KRS Chapter 13B in the Franklin Circuit Court *or the Circuit Court of the county where the person resides*, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the commissioner or there were reasonable grounds for failure to do so. The findings of the commissioner as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The commissioner may modify his or her findings as to the facts, by reason of the additional evidence so taken; and the commissioner shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

An appeal may be taken from the judgment of the ~~Franklin~~ Circuit Court on any such appeal to the Court of Appeals on the same terms and conditions as an appeal is taken in civil actions.

➔Section 157. KRS 292.500 is amended to read as follows:

- (1) The administration of the provisions of this chapter shall be under the Department of Financial Institutions.
- (2) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. Except as provided in subsection (19) of this section, no provision of this chapter authorizes the commissioner or any of the department's officers or employees to disclose any confidential information except among themselves or when necessary or appropriate in an administrative hearing or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of the department's officers or employees.
- (3) The commissioner may promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, notice filings, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of administrative regulations and forms, the commissioner may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.
- (4) No administrative regulation, form, or order may be promulgated, amended, or repealed unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes

fairly intended by the policy and provision of this chapter. In promulgating administrative regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, notice filings, and reports whenever practicable.

- (5) The commissioner may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting standards.
- (6) All administrative regulations and forms of the commissioner shall be published.
- (7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any administrative regulation, form, or order of the commissioner, notwithstanding that the administrative regulation, form, or order may later be amended or repealed or be determined by judicial or other authority to be invalid for any reason.
- (8) A document is filed when it is received by the commissioner or when the commissioner receives confirmation that a document has been filed. The commissioner may accept electronic filings of any documents required to be filed under this chapter, either in conjunction with paper filings or in place of paper filings in whole or in part.
- (9) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.
- (10) The commissioner shall keep a record of all applications for registration and

registration statements and notice filings which are or have been effective under this chapter and a record of all denial, suspension, or revocation final orders which have been entered under this chapter.

- (11) The information contained in or filed with any registration statement, application, or notice filing is a public record subject to the provisions of the Kentucky Open Records Act.
- (12) Upon request and at reasonable charges as the commissioner prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any administrative hearing or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.
- (13) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions.
- (14) The commissioner may impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter. The fine shall not exceed twenty thousand dollars (\$20,000) per violation, except when the violation is directed at or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the commissioner may impose an additional fine not to exceed twenty thousand dollars (\$20,000) per violation. Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.
- (15) The commissioner is authorized to designate that the fines imposed for violations of this chapter or administrative regulation, or any order or voluntary agreement

entered into pursuant to this chapter, be deposited into the securities fraud prosecution and prevention fund established in KRS 292.322.

- (16) In addition to any fines imposed under subsection (14) of this section, the commissioner may also assess the costs of any investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and costs of holding any hearing as a result of an enforcement action. Costs and attorney's fees may only be imposed if there has been a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation and enforcement for those violations only. Costs and attorney's fees may be included as part of an agreement in settlement of an enforcement action.
- (17) If fines, fees, or costs imposed under this section are not paid, then the commissioner may notify the Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky in any~~[the Franklin]~~ Circuit Court~~], or any other court]~~ of competent jurisdiction, for the recovery of the fines, fees, or costs.
- (18) The remedies provided by this section are not exclusive and may be sought and employed in any combination to enforce the provisions of this chapter. The remedies set forth in this section shall not prohibit or restrict the commissioner from participating in any way whatsoever with respect to any joint examination, investigation, enforcement action, settlement, or other legal or regulatory action with securities administrators of other jurisdictions, the Securities and Exchange Commission, any self-regulatory organization, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq. Accordingly, the commissioner may, at any time and in his or her sole discretion, share or cause to be shared by any employee of the department any information gained pursuant to an examination, investigation, filing, or from any other source, with other governmental agencies, jurisdictions, or

governmental or self-regulating organizations or entities, to the extent the commissioner, in his or her sole discretion, deems that the sharing of information is or will be reasonably necessary or useful to the department or other agency in carrying out its regulatory responsibilities.

- (19) The following materials, documentation, and other information are deemed to have been confidentially disclosed to the department and to be confidential information under the Kentucky Open Records Act and, specifically, the provisions of KRS 61.878(1)(b), to the extent described in this subsection and except as provided further in administrative regulation:
- (a) Any materials, documentation, or other information provided to or otherwise obtained by the department during the course of a routine compliance examination of any broker-dealer, agent, investment adviser, or investment adviser representative;
  - (b) Any materials, documentation, or other information that is part of an ongoing investigation; and
  - (c) Any materials, documentation, or other information provided to or otherwise obtained by the department from any other regulatory or governmental body, including but not limited to any other state securities regulator, the Securities and Exchange Commission, any self-regulatory organization, any state or federal criminal agency, and any criminal prosecutorial body, and which the other body expressly deems to be confidential.
- (20) (a) The confidential information specified in subsection (19)(a) and (b) of this section may be released when required in a proper legal proceeding in which a subpoena and protective order ensuring confidentiality has been issued by the tribunal.
- (b) The confidential information specified in subsection (19)(c) of this section must be obtained from the entity which provided the information.

➔Section 158. KRS 304.2-370 is amended to read as follows:

- (1) An appeal from the commissioner shall be taken only from a final order on hearing and in accordance with KRS Chapter 13B.
- (2) The appeal shall be granted as a matter of right, and shall be taken to the Franklin Circuit Court *or the Circuit Court of any county where a party resides or has a principal place of business.*

➔Section 159. KRS 304.2-440 is amended to read as follows:

- (1) As used in this section, "insurer" means assessment or cooperative insurers, insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, and prepaid dental plan organizations.
- (2) If the commissioner finds that there are insufficient funds for operations of the department, the commissioner may make an assessment on all insurers not to exceed .000235 of net direct written premium from Kentucky as reported in insurers' annual statements for the immediately preceding calendar year. In making each assessment, the commissioner may establish a minimum assessment. Assessments made pursuant to this section shall be in addition to all other taxes, assessments, and fees.
- (3) Overdue payment of any assessments shall bear interest at the tax interest rate as set forth in KRS 131.010(6) from the date due until paid. Any unpaid assessment may be recovered in an action brought thereon in the name of the department in ~~the Franklin Circuit Court or in~~ any ~~other~~ court of competent~~appropriate~~ jurisdiction. Such interest penalty is separate from other penalties applicable to violations of KRS Chapter 299 and this chapter and such an action is separate from any other means of collecting an assessment under KRS Chapter 299 or this chapter.
- (4) All funds derived from assessments made pursuant to this section shall be deposited

in the insurance regulatory trust fund. However, funds derived from assessments made pursuant to this section shall not lapse to the general fund, but shall at all times be available to defray expenses of the department in discharge of its administrative and regulatory powers.

➔Section 160. KRS 304.11-030 is amended to read as follows:

- (1) It shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state, as set forth in subsection (2) of this section without a certificate of authority from the commissioner; provided, that this subsection shall not apply to:
  - (a) The lawful transaction of surplus lines insurance;
  - (b) The lawful transaction of reinsurance by insurers;
  - (c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy;
  - (d) Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid;
  - (e) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
  - (f) Transactions in this state involving group life and group health or blanket health insurance or group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business;
  - (g) Transactions in this state involving any policy of insurance issued prior to July 1, 1968; and
  - (h) Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine

protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

(2) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships, and individuals, engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies:

- (a) The making of or proposing to make, as an insurer, an insurance contract;
- (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;
- (c) The taking or receiving of any application for insurance;
- (d) The receiving or collection of any premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof;
- (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
- (f) Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident,

located or to be performed in this state. The provisions of this subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

- (g) The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;
  - (h) The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this code; and
  - (i) Any other transactions of business in this state by an insurer.
- (3) (a) The failure of a company transacting insurance business in Kentucky to obtain a certificate of authority shall not impair the validity of any act or contract of such company and shall not prevent such company from defending any action at law or suit in equity in any court of this state.
- (b) In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.
- (4) Whenever the commissioner believes, from evidence satisfactory to him or her, that any company is violating or about to violate the provisions of these sections, the commissioner may, through the Attorney General of this state, cause a complaint to be filed in the Circuit Court of Franklin County ***or the Circuit Court of any county where the defendant may be found or where a violation has occurred or is about to occur*** to enjoin and restrain such company from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have

jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

➔Section 161. KRS 304.13-365 is amended to read as follows:

- (1) Within thirty (30) days of the filing of an appeal, the commissioner shall hold an administrative hearing to be conducted in accordance with KRS 304.2-310. Whenever the commissioner determines that a fire protection classification is unreasonable, he or she shall by final order prescribe a reasonable classification to be followed for a period not to exceed one (1) year. A subsequent evaluation by the advisory organization or insurer shall not be permitted until the expiration of the period set by the commissioner.
- (2) The commissioner may compel obedience to its final orders by proper proceedings in ~~the Franklin Circuit Court or~~ any ~~other~~ court of competent jurisdiction, and these proceedings shall have priority over all pending cases.

➔Section 162. KRS 304.29-301 is amended to read as follows:

- (1) If the commissioner, upon investigation, finds that a domestic society:
  - (a) Has exceeded its powers;
  - (b) Has failed to comply with any provision of this subtitle;
  - (c) Is not fulfilling its contracts in good faith;
  - (d) Has a membership of less than four hundred (400) after an existence of one (1) year or more; or
  - (e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business,

the commissioner shall notify the society of the deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The commissioner shall issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After the notice, the society shall have a thirty (30) day period in

which to comply with the commissioner's request for correction; and if the society fails to comply, the commissioner shall notify the society of the findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in ~~Franklin~~ Circuit Court should not be commenced against the society.

- (2) If on that date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts to the Attorney General who shall, if he or she deems the circumstances warrant, commence an action to enjoin the society from transacting business.
- (3) The court shall notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until:
  - (a) The commissioner finds that the violation complained of has been corrected;
  - (b) The costs of the action shall have been paid by the society, if the court finds that the society was in default as charged;
  - (c) The court has dissolved its injunction; and
  - (d) The commissioner has reinstated the certificate of authority.
- (4) If the court orders the society liquidated, it shall be enjoined from carrying on any further business. The receiver of the society shall take possession of the books, papers, money and other assets of the society, and, under the direction of the court, close the affairs of the society and distribute its funds to those entitled to them.
- (5) No action under this section shall be recognized in any court of this state unless brought by the Attorney General upon request of the commissioner. If a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as

receiver.

- (6) The provisions of this section relating to hearing by the commissioner, action by the Attorney General at the request of the commissioner of insurance, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business.

➔Section 163. KRS 304.30-050 is amended to read as follows:

- (1) The commissioner may revoke or suspend the license of any premium finance company when and if, after investigation, it appears to the commissioner that:
- (a) Any license issued to the company was obtained by fraud;
  - (b) There was any misrepresentation in the application for the license;
  - (c) The holder of the license has otherwise shown himself or herself untrustworthy or incompetent to act as a premium finance company;
  - (d) The company has violated any of the provisions of this chapter; or
  - (e) The company has been rebating part of the service charge as allowed and permitted by KRS 304.30-090 to any insurance agent or any employee of an insurance agent or to any other person as an inducement to the financing of any insurance policy with the premium finance company.
- (2) Before the commissioner shall revoke, suspend, or refuse to renew the license of any premium finance company, he or she shall give to the person an opportunity for a hearing to be conducted in accordance with KRS Chapter 13B. In lieu of or in addition to revoking or suspending the license for any of the causes enumerated in the section, after hearing as provided in this subsection, the commissioner may subject the company to a penalty specified in Subtitle 99 of this chapter when the commissioner determines that the public interest would not be harmed by the continued operation of the company. The amount of any penalty shall be paid by the company through the department of the commissioner to the State Treasurer.
- (3) If any applicant or licensee is aggrieved by any final order of the commissioner, the

applicant or licensee shall have the right to appeal to the Franklin Circuit Court or the Circuit Court of any county where the person resides or conducts business in accordance with KRS Chapter 13B.

➔Section 164. KRS 304.33-030 is amended to read as follows:

For the purposes of this subtitle:

- (1) "Agent" means all persons who have collected or are holding premiums or other assets of the insurer, including but not limited to brokers, intermediaries, managing general agents, underwriting managers, and reinsurance managers, and any other persons who have entered into a fiduciary relationship with the insurer subject to delinquency proceedings, including but not limited to persons holding licenses under Subtitles 9, 32, 38, and 43 of KRS Chapter 304;
- (2) "Commissioner" means the commissioner of the Department of Insurance of this state;
- (3) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context requires;
- (4) "Insurer" has the meaning defined in Subtitle 1 of this chapter. For purposes of this subtitle, all other persons included under KRS 304.33-020 shall be deemed to be insurers;
- (5) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under KRS 304.33-110 to 304.33-130, inclusive;
- (6) "State" has the meaning defined in Subtitle 1 of this chapter;
- (7) "Foreign country" means territory not in any state;
- (8) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state in which the insurer has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and on deposit for the benefit of policyholders and creditors in the United

States;

- (9) "Ancillary state" means any state other than a domiciliary state;
- (10) "Reciprocal state" means any state other than this state in which in substance and effect subsection (1) of KRS 304.33-200, subsections (1) and (3) of KRS 304.33-530, KRS 304.33-540, and KRS 304.33-560 to 304.33-590, inclusive, are in force, and in which provisions are in force requiring that the commissioner be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;
- (11) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or limited classes of persons, and as to specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby, except as otherwise expressly provided in this subtitle. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets;
- (12) "Reinsurance intermediary" means any person who acts as a broker in soliciting, negotiating, or procuring the making of any reinsurance contract or binder, or acts as an agent in accepting any reinsurance contract or binder on behalf of an insurer;
- (13) "Court" means the ~~Franklin~~ Circuit Court **having competent jurisdiction**;
- (14) "Preferred claim" means any claim with respect to which the law accords priority of payment from the general assets of the insurer;
- (15) "Special deposit claim" means any claim secured by a deposit made pursuant to law for the security or benefit of one (1) or more limited classes of persons, but not including any claim secured by general assets;
- (16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims

against general assets including, but not limited to, claims of setoff, counterclaim, or recoupment against obligations to pay premiums to the insurer. The term also includes claims which have become liens upon specific assets by reason of judicial process, except where they have been invalidated;

- (17) "Premium" has the meaning set forth in Subtitle 14 of this chapter;
- (18) "Insolvency" means that the insurer is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of:
- (a) Any capital and surplus required by law to be constantly maintained; or
  - (b) Its authorized and issued capital stock. For purposes of this subsection, "assets" includes one-half (1/2) of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, shall be deemed to be that amount that could be obtained if there were one hundred percent (100%) collection of an assessment at the rate of ten (10) mills;
- (19) "Fair consideration" is given for property or an obligation:
- (a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or obligation is incurred or an antecedent debt is satisfied; or
  - (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained;
- (20) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent;
- (21) "Transfer" includes the sale and every other method, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or

conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor;

- (22) "Doing business" has the meaning designated in Subtitle 1 of this chapter; and
- (23) "Guaranty association" means the Kentucky Insurance Guaranty Association, the Kentucky Life and Health Insurance Guaranty Association and any other similar entity now or hereafter created by the Legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in, or hereafter created by the legislature of, any other state.

➔Section 165. KRS 304.33-510 is amended to read as follows:

- (1) Grounds for petition. If a domiciliary liquidator has not been appointed, the commissioner may apply to the ~~Franklin Circuit~~ court by petition for an order directing him or her to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one (1) or more of the following grounds:
- (a) Any of the grounds in KRS 304.33-140;
  - (b) Any of the grounds in KRS 304.33-190;
  - (c) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;
  - (d) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;
  - (e) That:
    - 1. Its certificate of authority to do business in this state has been revoked or that none was ever issued; and
    - 2. There are residents of this state with outstanding claims or outstanding policies.
- (2) Terms of order. The court may issue the order in whatever terms it deems

appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.

- (3) Transformation to liquidation or ancillary receivership. The conservator may at any time petition for and the court may grant an order under KRS 304.33-520 to liquidate the assets of a foreign or alien insurer under conservation or, if appropriate, for an order under KRS 304.33-540 to be appointed ancillary receiver.
- (4) Order to return to insurer. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon its own motion.

➔Section 166. KRS 304.33-520 is amended to read as follows:

- (1) Ground for petition. If no domiciliary receiver has been appointed, the commissioner may apply to the ~~Franklin Circuit~~ court by petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:
  - (a) Any of the grounds in KRS 304.33-140;
  - (b) Any of the grounds in KRS 304.33-190; and
  - (c) Any of the grounds in KRS 304.33-510.
- (2) Terms of order. If it appears to the court that the best interests of creditors, policyholders and the public so require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that county clerk.
- (3) Conversion to ancillary proceeding. If a domiciliary liquidator is appointed in a

reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under KRS 304.33-540. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under KRS 304.33-540.

- (4) Federal receivership. On the same grounds as are specified in subsection (1) of this section, the commissioner may petition any appropriate federal District Court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction; or any lesser part thereof that the commissioner deems desirable for the protection of the policyholders and creditors in this state. The commissioner may accept appointment as federal receiver if another person files a petition.

➔Section 167. KRS 304.33-530 is amended to read as follows:

- (1) Property rights and title: reciprocal state. The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state; otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts and other records of the insurer located in this state. The domiciliary liquidator also shall have the right to recover the other assets of the insurer located in this state, subject to subsection (3) of KRS 304.33-540.
- (2) Property rights and title: state not a reciprocal state. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of

this state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domiciling state. The commissioner of this state may petition for a conservation or liquidation order under KRS 304.33-510 or 304.33-520, or for an ancillary receivership under KRS 304.33-540, or after approval by the ~~Franklin County~~ Circuit Court, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

- (3) Filing claims. Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

➔Section 168. KRS 304.33-540 is amended to read as follows:

- (1) Appointment of ancillary receiver in this state. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner shall file a petition with the ~~Franklin Circuit~~ court requesting appointment as ancillary receiver in this state:
  - (a) If the commissioner finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;
  - (b) If ten (10) or more persons resident in this state having claims against the insurer file a petition with the commissioner requesting appointment of an ancillary receiver; or
  - (c) If the protection of creditors or policyholders in this state so requires.
- (2) Terms of order. The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.

(3) Property rights and title: ancillary receivers in this state. When a domiciliary liquidator has been appointed in a reciprocal state the ancillary receiver appointed in this state under subsection (1) of this section shall have the sole right to recover all the assets of the insurer in this state not already recovered by the domiciliary liquidator, except that the domiciliary liquidator shall be entitled to and have the sole right to recover balances due from agents and the books, accounts and other records of the insurer. The ancillary receiver shall have the right to recover balances due from agents and books, accounts and other records of the insurer, if such action is necessary to protect the assets because of inaction by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets to the domiciliary liquidator. Subject to this section, the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) Property rights and title: foreign ancillary receivers. When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts and other records located in their respective states, corresponding rights and powers to those prescribed in subsection (3) of this section for ancillary receivers appointed in this state.

➔Section 169. KRS 304.37-100 is amended to read as follows:

(1) Any person aggrieved by any act, determination, rule, regulation, order, or any other action of the commissioner pursuant to this subtitle, may file appropriate proceedings in any~~the Franklin~~ Circuit Court ~~or other court~~ of competent jurisdiction for proper relief.

- (2) The filing of an appeal pursuant to this section or other court proceeding shall not stay the application of such order or other action of the commissioner unless the court, after giving notice to the parties and an opportunity to be heard, determines that such a stay would not be detrimental to the interest of policyholders, shareholders, creditors, or the public.
- (3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this subtitle may petition ~~any~~<sup>any</sup> ~~the Franklin~~ Circuit Court **of competent jurisdiction** for a mandatory injunction or other injunctive relief directing the commissioner to act or make such determination forthwith.

➔Section 170. KRS 304.40-100 is amended to read as follows:

- (1) Any applicant to the association, any person insured pursuant to KRS 304.40-030 to 304.40-140, or their representatives, or any affected insurer, may appeal to the commissioner within thirty (30) days after any rule, action, or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) All final orders of the commissioner made pursuant to this subtitle are subject to appeal to ~~any~~<sup>any</sup> ~~the Franklin~~ Circuit Court **of competent jurisdiction** in accordance with KRS Chapter 13B.

➔Section 171. KRS 304.41-100 is amended to read as follows:

- (1) Any applicant to the association, any person insured pursuant to this subtitle, or their representatives, or any affected insurer, may appeal to the commissioner within thirty (30) days after any rule, action, or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) All final orders of the commissioner made pursuant to this subtitle are subject to

appeal to ~~any~~<sup>the Franklin</sup> Circuit Court of competent jurisdiction in accordance with KRS Chapter 13B.

➔Section 172. KRS 304.50-135 is amended to read as follows:

- (1) If a workers' compensation self-insured group has a members' fund balance that is less than the minimum amount required by this subtitle of one million dollars (\$1,000,000) and not a negative members' fund balance reported on an annual financial filing or by a report on examination, then within thirty (30) days of the filing or report, the self-insured group shall file with the commissioner a written report that identifies the cause of the decrease in the fund balance, describes a plan for remedying the decrease in the fund balance, and identifies measures to be implemented to avoid similar future decreases in the fund balance. A report filed with the commissioner under this subsection may be approved, disapproved, or modified by the commissioner. A self-insured group may cease operating under a report filed with the commissioner under this subsection after the self-insured group's members' fund balance is one million dollars (\$1,000,000) or greater and the commissioner has approved in writing the lifting of the terms of the report. A report filed with the commissioner under this subsection shall be deemed part of the self-insured group's organizational documents for purposes of KRS 304.50-060.
- (2) A workers' compensation self-insured group shall report any deficiency to the commissioner as soon as it is identified. A deficiency reported on an annual financial filing or by a report on examination shall be deemed a verified deficiency. If a workers' compensation self-insured group has a verified deficiency, the deficit amount shall be made up immediately from the following:
  - (a) Surplus funds from a fund year other than the current fund year after prior notice of the transfer has been given to the commissioner;
  - (b) Implementation of the previously approved assessment plan; or
  - (c) Alternative methods as the commissioner may direct or approve that provide

financial security in the form of surety, deposit, letter of credit, guarantee, or other assets or obligation.

- (3) If a workers' compensation self-insured group fails to remedy a deficit as required in subsection (2) of this section, the commissioner shall order the group to do so.
- (4) If a workers' compensation self-insured group fails to remedy a deficit or make the required assessment of its members within thirty (30) days after the commissioner orders the group to do so, the group shall be deemed to be in hazardous financial condition and insolvent, under Subtitle 33 of this chapter, and the commissioner may file a petition for delinquency proceedings, as defined in Subtitle 33 of this chapter, in the Franklin Circuit Court or the Circuit Court of any county in which a party may be found.
- (5) The commissioner shall place a workers' compensation self-insured group into delinquency proceedings in accordance with the provisions of Subtitle 33 of this chapter if the workers' compensation self-insured group is in hazardous financial condition, insolvent or about to become insolvent, no longer financially responsible and may reasonably be expected to be unable to meet its obligations to members or prospective members, has failed to remedy a deficiency in a reasonable and timely manner, or any other grounds that are provided in Subtitle 33 of this chapter. A self-insured group shall be placed in delinquency proceedings as an insurer, pursuant to Subtitle 33 of this chapter.
- (6) The commissioner may approve bulk reinsurance or any other transfer of the book of business if he or she finds that it is in the best interests of the members and their employees.

➔Section 173. KRS 304.50-140 is amended to read as follows:

- (1) After a hearing or upon agreement by the workers' compensation self-insured group, the commissioner may suspend or revoke the certificate of filing of a self-insured group, impose a civil penalty of up to ten thousand dollars (\$10,000) per violation,

or both if the group:

- (a) Operates significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, or administrative regulations relating to this subtitle, unless amendments to the submissions have been filed with and approved by the commissioner or there has been a significant and adverse change in the management of the self-insured group;
  - (b) Or any person at the direction of the group advertises or merchandises its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner, or engages in unfair or deceptive practices as defined in Subtitle 12 of this chapter;
  - (c) Violates the provisions of this subtitle or administrative regulations adopted thereunder;
  - (d) Obtains a certificate of filing by unfair or deceptive means;
  - (e) Misappropriates, converts illegally, withholds, or refuses to pay upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled to such moneys by the group or its administrator; or
  - (f) Violated or failed to correct a violation of this subtitle or administrative regulations promulgated under this subtitle within a reasonable time period established by the commissioner in administrative regulations.
- (2) In addition, the commissioner may impose a civil penalty of up to ten thousand dollars (\$10,000) per day for continuing violations.
  - (3) The commissioner shall conduct a hearing under this section in accordance with Subtitle 2 of this chapter. The ruling of the commissioner may be appealed to any~~Franklin~~ Circuit Court of competent jurisdiction in accordance with KRS 304.2-370. The commissioner, during the pendency of an appeal or request for a hearing, may utilize the security deposit provided by the self-insured group to make

payments of any workers' compensation benefits currently due.

- (4) If the commissioner revokes a self-insured group's certification, the commissioner shall immediately notify the Kentucky group self-insurance guaranty fund as established in KRS 342.906(2).
- (5) When a certificate of filing of a self-insured group is suspended, the group shall not, during the period of suspension, enroll any new participants or engage in any advertising or solicitation.
- (6) If the certificate of filing of a self-insured group is revoked for reasons other than hazardous financial condition, the group shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs and shall conduct no further business, except as may be essential to the orderly conclusion of the affairs of the group. The group shall engage in no further advertising or solicitation. The commissioner may, by written order, prevent further operation of the self-insured group if further operation is not deemed to be in the best interest of the members, and the self-insured group's members will be afforded the greatest practical opportunity to obtain workers' compensation coverage elsewhere. If the commissioner permits further operation, the workers' compensation self-insured group shall continue to collect the premiums and assessments required of its members.
- (7) The commissioner, in his or her discretion and without advance notice or a hearing, may suspend or revoke the certificate of filing of any workers' compensation self-insured group upon commencement of the following proceedings:
  - (a) Receivership;
  - (b) Conservatorship;
  - (c) Rehabilitation; or
  - (d) Other delinquency proceedings.

➔Section 174. KRS 304.99-110 is amended to read as follows:

Any person violating KRS 304.12-140 shall be punished by a fine of not more than two hundred fifty dollars (\$250) or by imprisonment of not more than ninety (90) days, or both; and if he or she holds a license from the commissioner, he or she shall forfeit the same. The Circuit Court of Franklin County or the Circuit Court of any county where a violation has occurred on complaint by any person that KRS 304.12-140 is being violated, may issue an injunction against such violation and may hold in contempt and punish therefor in case of disregard of such injunction.

➔Section 175. KRS 309.304 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure and the issuance of licenses.
- (2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter.
- (3) The board shall promulgate necessary and reasonable administrative regulations in accordance with KRS Chapter 13A and this chapter to effectively carry out and enforce the provisions of KRS 309.300 to 309.319, including regulations to establish authorized fees. Fees shall not exceed amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of KRS 309.300 to 309.319.
- (4) The board may conduct hearings in accordance with KRS Chapter 13B and keep records and minutes necessary to carry out the functions of KRS 309.300 to 309.319.
- (5) The board may renew licenses and require continuing education as a condition for renewal.
- (6) The board may suspend or revoke licenses, or impose supervisory or probationary conditions upon licensees, or impose administrative disciplinary fines, issue written

reprimands, or any combination thereof.

- (7) The board may seek injunctive relief in the Franklin Circuit Court or the Circuit Court of any county where the unlicensed person may be found to stop the unlawful practice of interpreting by unlicensed persons.
- (8) The board may employ any persons it deems necessary to carry on the work of the board, and shall define their duties and fix their compensation.
- (9) Beginning in 1999, on October 1 of each year, the board shall submit a report to the Legislative Research Commission indicating:
  - (a) The current number of licensed interpreters; and
  - (b) The number of complaints received against interpreters and any disciplinary action taken within the previous calendar year.

➔Section 176. KRS 309.318 is amended to read as follows:

- (1) The board may refuse to issue a license or suspend, revoke, impose probationary conditions upon, impose an administrative fine, issue a written reprimand, or any combination thereof regarding any licensee upon proof that the licensee has:
  - (a) Been convicted of a crime as described in KRS 335B.010(4) or an offense that otherwise directly relates to the occupation of interpreter. A plea of "no contest" may be treated as a conviction for purposes of disciplinary action;
  - (b) Knowingly misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;
  - (c) Committed any fraudulent act or practice;
  - (d) Been incompetent or negligent in the practice of interpreting;
  - (e) Violated any state statute or administrative regulation governing the practice of interpreting;
  - (f) Violated the code of ethics of the national organization issuing the licensee's certification as incorporated in administrative regulation; or
  - (g) Violated any federal or state law considered by the board to be applicable to

the practice of interpreting.

- (2) When the board issues a written reprimand to the licensee, a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.
- (3) At any time during the investigative or hearing processes, the board may accept an assurance of voluntary compliance from the licensee which effectively deals with the complaint.
- (4) The board may reconsider, modify, or reverse its probation, suspensions, or other disciplinary action.
- (5) Five (5) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board and is again able to competently engage in the practice of interpreting.
- (6) Any party aggrieved by a disciplinary action of the board may bring an action in *the* Franklin Circuit Court *or the Circuit Court of the county where the person resides* in accordance with the provisions of KRS Chapter 13B.

➔Section 177. KRS 311.605 is amended to read as follows:

- (1) The county boards of health shall report to the board and to the county and Commonwealth's attorneys of their respective counties all violations of KRS 311.550 to 311.620 and shall assist in the enforcement thereof.
- (2) (a) For the purpose of enforcing the provisions of KRS 311.550 to 311.620, agents of the board shall have the power and authority:
  1. To administer oaths;
  2. To enter upon professional premises during periods when those premises are otherwise open to patients or the public;

3. To obtain evidence, including but not limited to psychiatric or nonpsychiatric records, by consent or pursuant to a subpoena or search warrant;
  4. To interview all persons; and
  5. To require the production of books, papers, documents, or other evidence, either by consent or pursuant to a subpoena or search warrant.
- (b) The term "premises" as used in this subsection shall mean physician offices, or a physician's primary place of practice, and all pharmacies and health care facilities licensed or regulated by the Commonwealth. Agents of the board may only require pharmacies to produce prescription records and health care facilities to produce records of patients or physician peer reviews. Such inspection or seizure of peer review records shall not affect the confidential nature of those records as provided in KRS 311.377, and the board shall maintain such peer review records so as to protect the confidentiality thereof.
- (3) The board may institute, in its own name, proceedings to temporarily or permanently restrain and enjoin the practice of medicine by:
- (a) An individual who is not licensed to practice medicine or who is not involved in conduct specifically exempted from the requirements of this chapter by KRS 311.550(11); or
  - (b) An individual who was previously licensed by the board to practice medicine but is currently practicing medicine in violation of an emergency order of restriction or suspension, regardless of whether the respondent has been convicted for violation of the penal provisions thereof.
- (4) A petition for injunction filed under subsection (3) of this section may be filed in the Circuit Court of the respondent's~~Jefferson Circuit Court, in the~~ county of residence~~of the respondent,~~ or in the Circuit Court of the county in which the acts are alleged to have been committed, and the board shall not be required to pay

any costs or filing fees or furnish any bond in connection therewith.

- (a) In the petition it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of medicine in violation of subsection (3)(a) or (b) of this section. No showing of damage or injury shall be required.
- (b) Issuance of an injunction shall enjoin any act specified under subsection (3)(a) or (b) of this section and shall remain in place as long as necessary to prevent the unlawful practice of medicine.
- (c) Issuance of an injunction shall not relieve the respondent from being subject to any other proceeding under law provided by this chapter or otherwise.
- (d) Violation of injunctions and restraining orders shall be punished as a contempt without the intervention of a jury.

➔Section 178. KRS 311A.055 is amended to read as follows:

- (1) In accordance with the provisions of KRS Chapter 13B, all discipline for which the board is authorized to conduct investigations, hold hearings, and impose punishments is delegated to the executive director, state medical advisor, board attorney, and hearing panels as provided herein.
- (2) Any person may make a complaint to the executive director that an entity licensed or certified by the board, first responder, emergency medical technician, paramedic, emergency medical services medical advisor or other person licensed or certified by the board has violated a provision of this chapter, an administrative regulation promulgated pursuant to this chapter, protocol, practice standard, or order of the board.
- (3) Each complaint shall:
  - (a) Be in writing;
  - (b) Identify specifically the person or organization against whom the complaint is made;

- (c) Set forth the facts relating to the violation alleged and any other supporting information which may have a bearing on the matter;
  - (d) Contain the name, address, telephone number, facsimile number, and e-mail address, if available, of the complainant;
  - (e) Be subscribed and sworn to as to the truth of the statements contained in the complaint by the complainant; and
  - (f) Be notarized.
- (4) A complaint which is unsigned shall not be acted upon by the executive director. A complaint which is not subscribed and sworn in the manner specified in subsection (3) of this section shall be returned to the complainant for completion.
- (5) The executive director of the board may, on behalf of the board, based on knowledge available to the office of the board, make a complaint against any person or organization regulated by the board in the same manner as provided in subsection (3) of this section.
- (6) Upon receipt of a properly completed complaint, the executive director shall assign the complaint to a staff investigator who shall investigate the complaint and shall make findings of fact and recommendations to the executive director who shall then convene a preliminary inquiry board.
- (7) When the executive director assigns a complaint to a staff investigator, he or she shall notify the person or organization against whom the complaint has been filed and shall notify the employer of a first responder, emergency medical technician, or paramedic and the emergency medical services medical director for the organization and for any paramedic against whom the complaint is filed and any other person or organization specified in this chapter.
- (8) The notification shall name the person or organization complained against, the complainant, the violations alleged, and the facts presented in the complaint and shall notify the person or organization complained against, the employer, and the

emergency medical services medical director of:

- (a) The fact that the complaint shall be answered, the steps for answering the complaint, and the action to be taken if the complaint is not answered;
  - (b) The time frame and steps in the proceedings of a complaint;
  - (c) The rights of the parties, including the right to counsel; and
  - (d) The right to testify at any hearing.
- (9) Upon the failure of a license or certificate holder to respond to a written accusation or to request a hearing within twenty (20) days after the sending of the accusation, the accused shall be considered to have admitted the truth of the facts and the circumstances in the allegation and appropriate discipline may be imposed.
- (10) The preliminary inquiry board shall consist of one (1) member of the board selected by the chair, and two (2) persons representing the same category of certification or licensure as the defendant who are not members of the board appointed by the chairman of the board.
- (11) After reviewing the complaint and results of any investigation conducted on behalf of the board, the preliminary inquiry board shall consider whether the accusation is sufficient to remand the matter for a hearing as provided in this section and KRS Chapter 13B. A majority vote of the members of the preliminary inquiry board shall be necessary for action to either remand the matter for hearing or dismiss the complaint without hearing.
- (12) If the preliminary inquiry board dismisses the complaint, all parties notified previously shall be notified of the action. If the preliminary inquiry board remands the matter for a hearing, all parties notified previously shall be notified of the action.
- (13) Each proceeding to consider the imposition of a penalty which the board is authorized to impose pursuant to this chapter shall be conducted in accordance with KRS Chapter 13B.

- (14) A hearing panel for purposes of making a decision in any disciplinary matter shall consist of one (1) physician who may be a member of the board or who meets the qualifications of an emergency medical services medical director; one (1) person from the category of persons or organizations of the same class as the defendant; and the hearing officer, who shall not be involved in emergency medical services.
- (15) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by any Circuit Court for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.
- (16) At all hearings the board attorney or, on request of the board, the Attorney General of this state or one (1) of the assistant attorneys general designated shall appear and represent the board.
- (17) The emergency medical services provider or related employer of a person licensed or certified by the board and the emergency medical services medical director of such a person who is the defendant in a hearing shall be parties to the action and may appear and testify in the matter at any deposition or hearing on the matter and may propose conclusions of law, findings of fact, and penalties to the hearing panel.
- (18) To make a finding or recommend discipline, the two (2) members of the hearing panel who are not the hearing officer shall agree on the finding or discipline. In the event of a tie vote, the hearing officer shall cast the deciding vote.
- (19) The final order in any disciplinary proceeding shall be prepared by the executive director and sent to all parties in the manner prescribed by law.
- (20) Any person or entity aggrieved by a final order of the board may appeal to the Franklin Circuit Court *or the Circuit Court of any county where the person resides or conducts business* in accordance with the provisions of KRS Chapter 13B.
- (21) The only discipline that the board may impose against an emergency medical

services medical director is denial, suspension or withdrawal of the board's approval for that person to serve as an emergency medical services medical director.

- (22) If the executive director substantiates that sexual contact occurred between a licensee or certificate holder and a patient while the patient was under the care of or in a professional relationship with the licensee or certificate holder, the license or certification may be revoked or suspended with mandatory treatment of the person as prescribed by the executive director. The executive director may require the licensee or certificate holder to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

➔Section 179. KRS 311A.180 is amended to read as follows:

- (1) Each emergency medical services medical director for an ambulance service, or other emergency medical services provider, shall submit:
- (a) His or her protocols, including the pre-hospital care protocols related to the assessment, treatment, and transport of stroke patients;
  - (b) His or her standing orders; and
  - (c) Similar medical control documents to the board for approval prior to placing the document in use.
- (2) The medical advisor for the board shall review each document submitted to ascertain if it is in accordance with accepted standards of medical care and in accordance with the provisions of this chapter and administrative regulations promulgated thereunder. If the protocol, standing order, or other medical control document clearly violates the accepted standards of medical care, this chapter, or an administrative regulation, the medical advisor shall notify the emergency medical services medical director of the exact violation and recommend a correction thereof.
- (3) Following review of protocol, standing order, and medical control documents and giving the emergency medical services medical director who submitted the documents an opportunity to review the medical advisor's comments, the medical

advisor shall submit the documents together with his or her comments to the board for approval or disapproval.

- (4) The board shall approve, disapprove, or approve with modifications protocol, standing order, and medical control documents submitted by the emergency medical services medical director at its next regular or special meeting following the submission of the documents.
- (5) If a protocol, standing order, or other medical control document is disapproved by the board, the emergency medical services medical director who submitted it may appeal the decision to the Franklin Circuit Court or the Circuit Court of the county where the service or provider is located. If the decision of the board is appealed ~~to the Franklin Circuit Court~~, the board shall bear the burden of proving that the protocol, standing order, or other medical control document violates the accepted standards of medical care, or an administrative regulation.
- (6) The board shall, by administrative regulation, specify a schedule for submission and prompt review and decision making with regard to protocols, standing orders, and medical control documents submitted to the board.

➔Section 180. KRS 311B.040 is amended to read as follows:

- (1) The board shall meet at least two (2) times annually and may meet at other times as needed. Special meetings shall be called by the chair, or by written petition of three (3) board members to the chair of the board.
- (2) At the first meeting each year, the board shall elect by majority a chair to preside at the meetings for a one (1) year term. A vice chair shall be elected by the board to preside over board meetings in the chair's absence.
- (3) The board chair shall establish an agenda to conduct business for each meeting. The agenda shall be distributed to board members at least two (2) weeks prior to the scheduled meeting. Specific items for consideration shall be submitted at least thirty (30) days prior to the next board meeting.

- (4) A majority of the board members shall constitute a quorum for the transaction of necessary business.
- (5) Vacancies shall be filled in the manner of the original appointment for the length of the unexpired portion of the term only. Appointment to a vacancy for more than two (2) years shall constitute a full term of appointment.
- (6) Upon recommendation by a majority of the board members and after notice and a hearing, the Governor may remove any member for failure to maintain the qualifications as a board member, incompetence, neglect of duty, or malfeasance in office. Any board member removed under this subsection shall be entitled to appeal the removal in any~~[the Franklin]~~ Circuit Court of competent jurisdiction.
- (7) There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is acting with ordinary care, is functioning within the scope of board duties, is acting without malice, and has the reasonable belief that the actions taken by him or her are warranted by law.
- (8) Each member of the board shall receive, in addition to travel, hotel, and other necessary expenses, a reasonable amount as determined by the board through the promulgation of administrative regulations for each day the member is engaged in the discharge of official duties at scheduled or called meetings of the board.

➔Section 181. KRS 312.152 is amended to read as follows:

- (1) Subpoenas for witnesses, whose evidence is deemed material to an investigation or hearing authorized by KRS 312.150 and this section, may be issued by the board or any officer of the board and under the seal of the board, commanding the witness to appear before the board at a time and place to be named, and to bring books, records, and documents that may be specified, or to submit books, records, and documents for inspection. Subpoenas may be served by any sheriff or deputy.
- (2) When any witness who has been served with a subpoena fails or refuses to appear at

the time and place named; or fails or refuses to answer any lawful question propounded; or fails to produce the books, records, or documents required; or is guilty of disorderly or contumacious conduct at the hearing, the board may invoke the aid of ~~any~~<sup>the</sup> Franklin Circuit Court ***of competent jurisdiction*** and any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in the state.

- (3) Witnesses shall be entitled to the same fees and mileage as they may be entitled to by law for attending as witnesses in a Circuit Court.
- (4) Witnesses who testify under subpoena shall be entitled to the same protection and immunities as witnesses in judicial proceedings.

➔Section 182. KRS 312.160 is amended to read as follows:

- (1) Any licensed person who has been disciplined after a hearing shall have the right to appeal to the Franklin Circuit Court ***or the Circuit Court of the county of the person's residence*** in accordance with KRS Chapter 13B. If the person who has been disciplined fails to appeal within thirty (30) days after the final order is mailed or personally served, the final order of the board shall be final.
- (2) Any disciplinary matter shall be reported to the Healthcare Integrity and Protection Data Bank or to the board's authorized agent.

➔Section 183. KRS 312.163 is amended to read as follows:

- (1) In addition to the other powers granted to the board under this chapter, the board may, in connection with any person whom the board, after a hearing adjudges unqualified or whom the board, after a hearing, finds to have performed one (1) or more of the acts described in KRS 312.150:
  - (a) Revoke the license to practice;
  - (b) Suspend the license to practice;
  - (c) Publicly reprimand or censure the person;

- (d) Place the person on probation for a period and upon the terms and conditions that the board may establish;
  - (e) Require payment of all costs of proceedings resulting from the disciplinary action; and
  - (f) Limit the license to practice.
- (2) The board may also impose a penalty not exceeding five thousand dollars (\$5,000) for each separate violation.
- (3) A licensee subject to any disciplinary proceeding under this chapter shall be afforded an administrative hearing conducted in accordance with KRS Chapter 13B and may appeal any final order of the board to the Franklin Circuit Court *or the Circuit Court of any county where the person resides or conducts business.*

➔Section 184. KRS 312.991 is amended to read as follows:

- (1) Any person who shall practice or attempt to practice chiropractic in violation of the provisions of this chapter, or any person who shall buy, sell or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not; or any person who shall use the title to induce the public to believe that he is engaged in the practice of chiropractic, without first complying with the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than six (6) months or both. Each adjustment or treatment shall constitute a separate offense.
- (2) Any advertisement or sign of whatsoever nature to induce the public to believe that one is a chiropractor or practices chiropractic shall be prima facie evidence of a violation of this chapter, provided the person displaying such sign or causing such advertisement has not been licensed to practice chiropractic as provided in this chapter.
- (3) Whenever in the judgment of the board any person has engaged or is about to

engage in the acts or practices that constitute, or will constitute, a violation of any of the provisions of this chapter or the rules and regulations adopted by the board, the board may make application to the Franklin Circuit Court *or the Circuit Court of any county where the person resides or conducts business* for an order enjoining such acts or practices. Upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court. Any order of the ~~Franklin~~ Circuit Court shall be enforceable and shall be valid anywhere in this state and the order of the court shall be reviewable as provided in the Rules of Civil Procedure in the case of other injunctions and restraining orders.

➔Section 185. KRS 313.100 is amended to read as follows:

- (1) If it is determined that an entity regulated by the board, a dentist, dental hygienist, dental specialist, or dental assistant has violated a statute, administrative regulation, or practice standard relating to serving as an entity regulated by the board, a dentist, dental hygienist, dental specialist, or dental assistant, the Office of the Board may impose any of the sanctions provided in subsection (2) of this section. Any party to the complaint shall have the right to propose findings of fact and conclusions of law, and to recommend sanctions.
- (2) The Office of the Board shall require an acceptable plan of correction and may use any one (1) or more of the following sanctions when disciplining a dentist, dental hygienist, dental specialist, or dental assistant or any entity regulated by the board:
  - (a) Private admonishment;
  - (b) Public reprimand;
  - (c) Fines;
  - (d) Revocation of licensure or registration;
  - (e) Suspension of licensure or registration until a time certain;
  - (f) Suspension until a certain act or acts are performed;

- (g) Limitation of practice permanently;
  - (h) Limitation of practice until a time certain;
  - (i) Limitation of practice until a certain act or acts are performed;
  - (j) Repassing a portion of the clinical examination;
  - (k) Probation for a specified time and conditions of probation; or
  - (l) Costs of the disciplinary action as defined by administrative regulation.
- (3) A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.
- (4) The filing of criminal charges or a criminal conviction for violation of the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the Office of the Board from instituting or imposing board disciplinary action authorized by this chapter against any person or organization violating this chapter or the administrative regulations promulgated thereunder.
- (5) The institution or imposition of disciplinary action by the Office of the Board against any person or organization violating the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the filing of criminal charges against or a criminal conviction of any person or organization for violation of the provisions of this chapter or the administrative regulations promulgated thereunder.
- (6) The board may maintain an action to enjoin the practice of or the attempt to practice as a dentist, dental hygienist, or dental assistant without a license or registration to do so.
- (7) In case of a violation of any injunction granted under this section, the court may use its inherent powers for adequate relief.
- (8) (a) Any licensee or certificate holder who has received a private admonishment

may request in writing for the board to expunge the private admonishment from the licensee or certificate holder's permanent record.

- (b) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee or certificate holder has completed disciplinary sanctions imposed and if the licensee or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.
  - (c) No person may have his record expunged under this chapter more than once.
- (9) If it is found the person who is licensed or registered by the board has been convicted of, pled guilty to, or entered an Alford plea to a Class A, B, or C felony offense, or has completed a diversion program for a Class A, B, or C felony offense, the license or registration shall be revoked.
- (10) A licensee subject to any disciplinary proceeding under this chapter shall be afforded an administrative hearing conducted in accordance with KRS Chapter 13B and may appeal any final order of the board to any~~the Franklin~~ Circuit Court of competent jurisdiction.

➔Section 186. KRS 314A.210 is amended to read as follows:

Any person aggrieved by a final order of the board may obtain a review of the order by filing a petition in the Franklin Circuit Court or the Circuit Court of the county where the person resides in accordance with KRS Chapter 13B. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the board's order.

➔Section 187. KRS 314A.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000), or by both.
- (2) When any person other than a respiratory care practitioner holding a valid

mandatory certificate has engaged in any act or practice which constitutes an offense against this chapter, the Franklin Circuit Court or the Circuit Court of the county where the person resides, on application of the board, may issue an injunction or other appropriate order restraining such conduct.

➔Section 188. KRS 315.131 is amended to read as follows:

- (1) Every proceeding imposing a fine or for probation, suspension, or revocation of a license, permit, or certificate issued pursuant to this chapter shall be conducted in accordance with KRS Chapter 13B. Upon failure of the licensee, permit holder, or certificate holder to respond to the complaint at or before the time of the hearing, the allegations set forth in the complaint shall be taken by the board as confessed.
- (2) All decisions revoking or suspending a license, permit, or certificate or placing a licensee, permit holder, or certificate holder on probation or imposing a fine shall be made by the board.
- (3) The board may when in its opinion the continued practice of the licensee or certificate holder or the continued operation of the permit holder would be dangerous to the health, welfare, and safety of the general public, issue an emergency order as provided in KRS 13B.125.
- (4) A licensee, permit holder, or certificate holder aggrieved by a final order of the board may within ten (10) days after notice thereof move the board to reconsider this order. A motion to reconsider based on newly-discovered material evidence must be made within one (1) year of the entry of the order.
- (5) A licensee, permit holder, or certificate holder aggrieved by a final order of the board may appeal to the Franklin Circuit Court or the Circuit Court of any county where the person resides or conducts business in accordance with KRS Chapter 13B.
- (6) The board may, without benefit of a hearing, temporarily suspend a license, certificate, or permit for not more than sixty (60) days if the president of the board

finds on the basis of reasonable evidence that a licensee, certificate holder, or permit holder:

- (a) Has violated a statute or administrative regulation the board is empowered to enforce, and continued practice or operation by the licensee, certificate holder, or permit holder would create imminent risk of harm to the public; or
- (b) Suffers a mental or physical condition that through continued practice or operation could create an imminent risk of harm to the public.

The emergency suspension shall take effect upon receipt by the licensee, certificate holder, or permit holder of written notice, delivered by certified mail or in person, specifying the statute or administrative regulation violated. At the time the emergency suspension order issues, the board shall schedule a disciplinary hearing to be held in accordance with the provisions of KRS Chapter 13B within sixty (60) days thereafter.

➔Section 189. KRS 315.155 is amended to read as follows:

- (1) The Governor may remove a member of the board for any of the following reasons:
  - (a) Refusal or inability of a board member to perform his duties as a member of the board in an efficient, responsible and professional manner;
  - (b) Misuse of the office by a member of the board to obtain personal, pecuniary, or material gain or advantage for himself or another;
  - (c) Willful violation of any provision of KRS Chapter 315 or any rule or regulation promulgated thereunder.
- (2) Any person may file a complaint with the executive director of the board against a board member alleging specific facts which constitute grounds for removal from the board. The executive director shall transmit a copy of any such complaint to the Governor, the president of the board and the accused board member. Upon a written recommendation of the Governor or two-thirds (2/3) of the members of the board, a hearing shall be conducted before an impartial hearing officer pursuant to KRS

Chapter 13B.

- (3) The hearing officer shall submit a transcript of the hearing to the Governor with a recommendation based on evidence presented in the hearing. The Governor shall review the transcript to determine if the evidence supports the recommendation, and he shall enter a finding in accordance with such determination.
- (4) In the event a board member is removed, his removal shall be effective as of the date of the Governor's finding and a vacancy shall be deemed to exist. Any board member so removed shall be entitled to appeal the removal in the Franklin Circuit Court or the Circuit Court of the county where the member resides.

➔Section 190. KRS 316.155 is amended to read as follows:

- (1) The board shall, before revoking, suspending, or imposing probationary conditions on any license or registration issued pursuant to this chapter, or before issuing a written reprimand or imposing a fine, set the matter for a hearing to be conducted in accordance with KRS Chapter 13B.
- (2) After denying an application for a license or a registration for an apprentice, the board shall set the matter for a hearing in accordance with KRS Chapter 13B upon written request of the applicant if the request is made within thirty (30) days of the mailing of a letter of denial.
- (3) Any final order of the board may be appealed to any~~Franklin~~ Circuit Court of competent jurisdiction in accordance with KRS Chapter 13B.

➔Section 191. KRS 316.210 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of this chapter and may promulgate administrative regulations pursuant to KRS Chapter 13A to carry out and enforce the provisions of this chapter.
- (2) The board shall keep records and minutes necessary to carry out the provisions of this chapter.
- (3) The board may administer oaths and may issue subpoenas to compel the attendance

of witnesses and the production of documents.

- (4) The board may seek injunctive relief in any~~Franklin~~ Circuit Court ***of competent jurisdiction*** to restrain or enjoin a violation of this chapter.
- (5) The board may employ persons as necessary to carry out the requirements of this chapter.

➔Section 192. KRS 317.460 is amended to read as follows:

- (1) The barber board shall hold hearings upon the request of any person directly affected by the board's decision to refuse a license; deny or revoke a license; or suspend or place a licensee on probation. Hearings shall be conducted in accordance with KRS Chapter 13B.
- (2) Final orders of the barber board as a result of any hearing may be appealed to the Franklin Circuit Court ***or the Circuit Court of any county where the aggrieved party resides or conducts business*** in accordance with KRS Chapter 13B.

➔Section 193. KRS 317A.070 is amended to read as follows:

- (1) The cosmetologist board shall hold hearings upon the request of any person directly affected by the board's decision to refuse to issue or renew a license or to deny, suspend, probate, fine, or revoke a license. A licensee or applicant shall request a hearing within thirty (30) days of the board's notice that it seeks to refuse to issue or renew a license, or to deny, suspend, probate, fine, or revoke a license. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) Rulings of the board as a result of any hearing may be appealed to the Franklin Circuit Court ***or the Circuit Court of any county where the aggrieved party resides or conducts business*** in accordance with KRS Chapter 13B.

➔Section 194. KRS 317B.055 is amended to read as follows:

- (1) The board, before suspending, revoking, imposing probationary or supervisory conditions upon, imposing an administrative fine, issuing a written reprimand, or any combination of actions regarding any license under this chapter, shall set the

matter for hearing pursuant to the provisions of KRS Chapter 13B.

- (2) After denying an application under this chapter, the board shall grant a hearing pursuant to the provisions of KRS Chapter 13B.
- (3) A licensee or applicant aggrieved by a disciplinary action of the board may bring an action in the Franklin Circuit Court or the Circuit Court of any county where the aggrieved party resides or conducts business pursuant to the provisions of KRS Chapter 13B.

➔Section 195. KRS 319.092 is amended to read as follows:

- (1) In every proceeding for probation, suspension, or revocation of a license, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The board or a hearing officer appointed by the board shall conduct the hearing.
- (2) All decisions revoking or suspending a license or placing a credential holder on probation shall be made by the board.
- (3) If, after a hearing, a majority of the board finds that a credential holder has violated any provision of this chapter, the board may:
  - (a) Revoke or suspend the license;
  - (b) Impose a monetary penalty not to exceed two thousand dollars (\$2,000) per violation;
  - (c) Revoke or suspend the license or impose a monetary penalty, but suspend enforcement thereof by placing the credential holder on probation, which shall be revocable if the board finds the conditions of the probation order are not being followed by the credential holder;
  - (d) Require the credential holder, as a condition of probation, to submit to care, counseling, or treatment by a professional designated by the board, or require the credential holder to be supervised by a licensed psychologist designated by the board. The expense of this action shall be borne by the credential holder on probation;

- (e) Modify the conditions of the probation, with good cause, and may include among them any reasonable condition for the purpose of the protection of the public, or for the purpose of the rehabilitation of the probationer, or both;
  - (f) Require restitution; and
  - (g) Assess the costs of the disciplinary proceeding.
- (4) If the board substantiates that sexual contact occurred between a credential holder and a patient while the patient was under the care or in a professional relationship with the credential holder, the credential holder's license may be revoked or suspended with mandatory treatment of that individual as prescribed by the board. The board may require the credential holder to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.
- (5) Final orders of the board suspending or revoking a license or placing a credential holder on probation shall become effective immediately after written notice is served on the credential holder and the credential holder shall not, after notice of same, engage or continue to engage in the practice of psychology unless the board's final order is revoked or modified by the court after judicial review.
- (6) The board shall make public its final order in all disciplinary actions.
- (7) Any person aggrieved by a final order of the board may appeal to the Franklin Circuit Court *or the Circuit Court of any county where the aggrieved party resides or conducts business* in accordance with KRS Chapter 13B.

➔Section 196. KRS 319A.070 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure.
- (2) The board may issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter.
- (3) The board may:
  - (a) Promulgate administrative regulations, pursuant to KRS Chapter 13A, relating

- to professional conduct to carry out the provisions of this chapter, including but not limited to administrative regulations relating to professional licensure and holding a license to practice occupational therapy or assist in the practice of occupational therapy in the Commonwealth;
- (b) Conduct administrative hearings in accordance with KRS Chapter 13B;
  - (c) Evaluate the qualifications and authorize the issuance of licenses to qualified occupational therapists and occupational therapy assistants;
  - (d) Issue and renew licenses based on evidence of initial and continued competence of persons subject to this chapter;
  - (e) Suspend or revoke licenses;
  - (f) Require the continuing professional education of persons subject to this chapter;
  - (g) Keep a record of its proceedings and a register of all persons licensed as occupational therapists or occupational therapy assistants. The register shall show the name of every licensee, the licensee's last known place of business and last known place of residence, and the date and number of the license of each licensed occupational therapist or occupational therapy assistant. The board shall, during the month of January of every year, compile and make available a list of licensed occupational therapists and occupational therapy assistants authorized to practice in the Commonwealth. Any citizen of the Commonwealth may obtain a copy of the list upon application to the board and payment of an amount to be fixed by the board, which shall not exceed its cost;
  - (h) Make an annual report to the Governor and the General Assembly which shall contain an account of duties performed, actions taken, and appropriate recommendations;
  - (i) Institute and maintain actions to restrain or enjoin any violation of this chapter

and administrative regulations notwithstanding the existence or pursuit of other civil or criminal penalties;

- (j) Approve an examination for occupational therapists and occupational therapy assistants and establish standards for acceptable performance;
- (k) Seek an injunction in ~~any~~<sup>Franklin</sup> Circuit Court **of competent jurisdiction** against any individual who practices occupational therapy in the Commonwealth without a license; and
- (l) Promulgate administrative regulations to define appropriate supervision of assistants, aides, and unlicensed personnel that are delivering occupational therapy services.

➔Section 197. KRS 319A.200 is amended to read as follows:

Any person aggrieved by an order of the board denying, suspending or revoking his license may appeal to the Franklin Circuit Court **or the Circuit Court of any county where the aggrieved party resides or conducts business** within thirty (30) days after entry of said order, for appropriate relief. On such appeal the scope of review shall be limited to an examination of the record of the board's action for the purpose of determining whether the board abused its discretion. The appellant shall furnish the court with a properly certified transcript of any evidence heard by the board, and the court may refuse to review any findings of fact made by the board unless such a transcript is filed within sixty (60) days after the filing of the appeal.

➔Section 198. KRS 319C.050 is amended to read as follows:

- (1) It shall be the duty of the board to establish requirements for licensure to practice applied behavior analysis in the state in accordance with KRS 319C.060, to receive applications for licensure from persons desiring to become a behavior analyst, an assistant behavior analyst, or a temporary licensee from persons seeking to obtain supervised experience in the state, and to determine whether those applicants meet the qualifications and standards required by this chapter of all behavior analysts,

assistant behavior analysts, or temporary licensees.

- (2) The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter brought to the board's notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.
- (3) All meetings shall be held at the call of the chair or at a call of a majority of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.
- (4) The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence. In case of disobedience to a subpoena, the board may invoke the aid of any~~the Franklin~~ Circuit Court *of competent jurisdiction*. Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.
- (5) The board shall keep a minute book containing a record of all meetings of the board.
- (6) The board shall maintain a register of all persons licensed under this chapter. This register shall show the name of every licensee in this state, his or her current business and residence address and telephone numbers, and the date and number of

his or her license. A licensee shall notify the board of a change of name, address, or telephone number, within thirty (30) days of the change.

- (7) The board's records shall be updated annually.
- (8) The board shall publish annually and make available a current directory of all licensed behavior analysts, licensed assistant behavior analysts, and temporary licensees obtaining supervised experience.
- (9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.

➔Section 199. KRS 319C.120 is amended to read as follows:

- (1) The board may, within three (3) years, reinstate a license which has lapsed, upon payment of the prescribed renewal fee and, in addition, the payment of a reinstatement fee to be established by the board by administrative regulation.
- (2) The board may reinstate a license which has been lapsed for more than three (3) years, upon showing that the applicant is certified and upon payment of a reinstatement fee.
- (3) The board may reinstate a license which has been suspended or revoked under KRS 319C.110 if, after a hearing conducted in accordance with KRS Chapter 13B, the board determines that the applicant is able to practice his or her profession with reasonable competency and is able to maintain the ethical code and standards of practice promulgated by administrative regulation. As a condition of reinstatement, the board may impose reasonable restrictions under which the licensee shall practice.
- (4) Any person aggrieved by a final order of the board denying, suspending, or revoking his or her license may appeal to any~~the Franklin~~ Circuit Court ***of competent jurisdiction*** in accordance with KRS Chapter 13B.

➔Section 200. KRS 320.372 is amended to read as follows:

- (1) The board may institute, in its own name, proceedings to temporarily or

permanently restrain and enjoin the practice of optometry by the following:

- (a) An individual who is not licensed to practice optometry pursuant to this chapter, or who is involved in conduct not specifically exempted from the requirements of this chapter by KRS 320.220; or
  - (b) An individual who was previously licensed by the board to practice optometry but is currently practicing optometry in violation of this chapter, regardless of whether the respondent has been convicted of violating the penal provisions thereof.
- (2) A petition for injunction filed under subsection (1) of this section may be filed in ~~any~~Franklin Circuit Court ***of competent jurisdiction***, and the board shall not be required to pay any costs or filing fees or furnish any bond in connection therewith.
- (a) In the petition, it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of optometry in violation of this chapter. No showing of damage or injury shall be required.
  - (b) Issuance of an injunction shall enjoin any act specified under this chapter and shall remain in place as long as necessary to prevent the unlawful practice of optometry.
  - (c) Issuance of an injunction shall not relieve the respondent from being subject to any other proceeding under law provided by this chapter or otherwise.
  - (d) Violation of an injunction or restraining order shall be punished as a contempt without the intervention of a jury.

➔Section 201. KRS 321.235 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure and certification.
- (2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of

this chapter.

- (3) The board may promulgate administrative regulations pursuant to Chapter 13A and this chapter to carry out the provisions of this chapter.
- (4) The board may conduct hearings and keep records and minutes necessary to carry out the function of this chapter.
- (5) The board may evaluate the qualifications and authorize the issuance of licenses, registration, or certification to qualified candidates.
- (6) The board may renew licenses, registrations, and certifications and require continuing education as a condition for renewal.
- (7) The board may suspend, or revoke licenses or certifications, or impose supervisory or probationary conditions upon licensees or certificate holders, or impose administrative disciplinary fines, issue written reprimands, or any combination thereof.
- (8) The board may seek injunctive relief in any~~Franklin~~ Circuit Court ***of competent jurisdiction*** to stop the unlawful practice of veterinary medicine by unlicensed persons.

➔Section 202. KRS 321.360 is amended to read as follows:

- (1) The board, before suspending, revoking, imposing probationary or supervisory conditions upon, imposing an administrative fine, or any combination of actions regarding any license under the provisions of this chapter, shall set the matter for hearing in accordance with KRS Chapter 13B. After denying an application under the provisions of this chapter, or issuing a written reprimand, the board shall grant a hearing in accordance with KRS Chapter 13B to the denied applicant only upon written request of the applicant made within thirty (30) days of the date of the letter advising of the denial or the reprimand.
- (2) Any party aggrieved by a final order of the board may appeal to ***the*** Franklin Circuit Court ***or the Circuit Court of any county in which the aggrieved party resides or***

*conducts business* in accordance with KRS Chapter 13B.

→Section 203. KRS 322.190 is amended to read as follows:

Any person or organization, including the board upon its own volition, may file with the executive director of the board a written complaint alleging violation of any provision of this chapter. The executive director shall cause the complaint to be investigated.

- (1) If the investigation reveals that the alleged violation did occur but was not of a serious nature, the board may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing in accordance with the provisions of KRS Chapter 13B.
- (2) If the investigation reveals evidence supporting the complaint, the executive director shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before refusing to renew, suspending, revoking, reprimanding, imposing probation or an administrative fine, or any combination of actions regarding any license under the provisions of this chapter.
  - (a) At any time during the investigation or hearing process, the board may accept a written assurance of voluntary compliance from the licensee which effectively deals with the complaint.
  - (b) When the board issues a written reprimand to the licensee, a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.
- (3) After denying an application under the provisions of this chapter, the board may

grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.

- (4) The board may reconsider, modify, or reverse its decision on any disciplinary action.
- (5) Any party aggrieved by a disciplinary action of the board may bring an action in *the Franklin Circuit Court or the Circuit Court of any county in which the aggrieved party resides or conducts business* in accordance with the provisions of KRS Chapter 13B.

➔Section 204. KRS 322.290 is amended to read as follows:

The board shall:

- (1) Administer this chapter;
- (2) Adopt an official seal;
- (3) Provide suitable office quarters at its own expense;
- (4) Adopt and amend all bylaws and rules of procedure, and promulgate administrative regulations, consistent with the Constitution and laws of the state and reasonably necessary for the proper performance of its duties and the regulation and fair conduct of the proceedings before it;
- (5) Appoint an executive director and assistant executive directors and fix their compensation;
- (6) Employ any clerk or other assistants necessary for the proper performance of its work;
- (7) Appoint a general counsel and any assistant general counsel as it deems necessary and fix their compensation;
- (8) Appoint investigatory personnel, as it deems necessary, and fix their compensation;
- (9) Appoint committees of licensees, as it deems necessary, to review issues before the board and make recommendations to the board;
- (10) Make expenditures, as it deems necessary, for any purpose that it considers

reasonably necessary for the proper performance of its duties, including paying the expenses of the board's delegates to national conventions of and membership dues to the National Council of Examiners for Engineering and Surveying or other affiliated national boards or societies;

- (11) Adopt and promulgate by administrative regulation a code of professional practice and conduct, which shall be based upon generally recognized principles of professional ethical conduct and binding upon persons licensed under this chapter. A code of professional practice and conduct shall be made known to all licensees and applicants and shall include but not be limited to the following objectives:
  - (a) The protection of the public health, safety, and welfare;
  - (b) The maintenance of standards of objectivity, truthfulness, and reliability in public statements;
  - (c) The avoidance of conflicts of interest;
  - (d) The prohibition of solicitation or acceptance of engineering or land surveying work on any basis other than qualifications for the work offered;
  - (e) The prohibition of association with any person engaging in illegal or dishonest activities; and
  - (f) The limitation of professional service to the area of competence of the licensee;
- (12) Adopt appropriate standards of practice;
- (13) Promulgate administrative regulations in accordance with KRS Chapter 13A to establish rules for the use of stamps, seals, and signatures in electronic transactions;
- (14) Bring, in its name, injunctive proceedings in any~~the Franklin~~ Circuit Court ***of competent jurisdiction*** to enjoin any person, business entity, or combination thereof in violation of KRS 322.020 or KRS 322.060;
- (15) Adopt a program for continuing education for its individual land surveyor licensees. No individual land surveyor licensee shall be permitted to renew his or her license

unless the minimum annual continuing education requirements are met, in addition to any other requirement for renewal. The program for continuing education shall not exceed a total of eight (8) credit clock hours per year and shall not include testing or examination of the licensee in any manner; and

- (16) Adopt a program for continuing education for its individual engineer licensees.
- (a) The program for continuing education shall not exceed a total of fifteen (15) credit clock hours per year and shall not include testing or examination of the licensee in any manner.
  - (b) No individual engineer licensee shall be permitted to renew his or her license unless the minimum annual continuing education requirements are met, except as provided in paragraph (c) of this subsection, in addition to any other requirement for renewal.
  - (c) Any person licensed under this chapter as a professional engineer prior to January 1, 1972, who has maintained his or her license in good standing since becoming licensed shall not be subject to any continuing education requirements.

➔Section 205. KRS 322A.030 is amended to read as follows:

- (1) The board shall meet at least once each calendar year and at other times deemed necessary by the chair or a quorum of the board upon being given ten (10) days' notice.
- (2) A roster showing the names and places of business of all registered professional geologists shall be published by the secretary of the board each year. Copies of this roster shall be made available to each person registered, placed on file with the secretary of the board, and furnished to the public upon request.
- (3) The board shall pass upon the qualifications of applicants for registration.
- (4) The board shall require from applicants for registration evidence of their qualifications and shall judge each applicant on evidence of the applicant's

- professional competency and integrity in accordance with administrative regulations promulgated by the board.
- (5) The board may promulgate administrative regulations consistent with the provisions of this chapter appropriate and necessary to the conduct of its responsibilities and duties.
  - (6) The board shall promulgate by administrative regulation a code of professional conduct, a copy of which shall be distributed to every registered geologist. Mailing of a copy of this code to persons listed in the roster maintained under subsection (2) of this section shall constitute due notice to all registrants. The board may revise and amend the code of ethics from time to time, subject to the consent of the majority of the registrants, and shall notify each registrant in writing of any revisions or amendments.
  - (7) The board may take appropriate disciplinary action as provided for in KRS 322A.100, but only after written notice has been given the person concerned and the person is afforded an opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.
  - (8) Any person or organization may prefer charges of fraud, deceit, gross negligence, or misconduct against any registrant. The charges shall be in writing, shall be sworn to by the person or officer of the organization making them, and shall then be filed with the board.
  - (9) Any Kentucky resident who feels aggrieved by any final order of the board may appeal to the Circuit Court of the county where the person resides or where the person has his or her principal office in accordance with KRS Chapter 13B. Any out-of-state resident who feels aggrieved by any final order of the board may appeal to any~~the Franklin~~ Circuit Court of competent jurisdiction in accordance with KRS Chapter 13B.
  - (10) The Attorney General or any assistants designated by him or her shall act as legal

advisers to the board and render legal assistance as the board may from time to time require. The board may employ private counsel at its discretion. The cost of private counsel shall be paid exclusively from funds of the board.

- (11) The board shall establish and maintain necessary offices within this Commonwealth, employ personnel as necessary, and prescribe their duties and compensation.
- (12) For the purposes of enforcing the provisions of this chapter, investigating complaints or suspected violations of this chapter, and notifying proper law enforcement authorities, the board may:
  - (a) Administer oaths;
  - (b) Receive evidence;
  - (c) Interview persons;
  - (d) Issue subpoenas; and
  - (e) Require production of books, papers, documents, or other evidence.

➔Section 206. KRS 323.130 is amended to read as follows:

- (1) In any action taken pursuant to KRS 323.120, the board shall conduct a hearing in accordance with the provisions of this chapter and KRS Chapter 13B. The hearing may be conducted by the full board or at its designation, a member thereof, a panel of the board, a hearing officer, or a combination of the foregoing;
- (2) If the hearing is conducted by less than a majority of the full board, or by a hearing officer, the board members or hearing officer, as the case may be, may only issue a recommended order, and the recommended order shall be subject to review by a majority of the full board, which shall issue a final order; and
- (3) The board may proceed against a licensee on its own initiative, on the basis of either information contained in its own records or information obtained through its informal investigation. If a formal complaint verified by affidavit is filed with the board by a responsible citizen or organization, containing allegations that if true

would warrant action pursuant to KRS 323.120, the board may proceed against the licensee.

- (4) Any final order of the board may be appealed to the Franklin Circuit Court or the Circuit Court of any county where the aggrieved party resides or conducts business in accordance with KRS Chapter 13B.

➔Section 207. KRS 323.250 is amended to read as follows:

Whenever in the judgment of the board any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of KRS 323.020 or KRS 323.230, the board may inform the Attorney General, who may make application to any~~the Franklin~~ Circuit Court of competent jurisdiction for an order enjoining such acts or practices, or the board may inform the Commonwealth's attorney of the county in which the acts or practices are occurring or will occur who may make application to the Circuit Court of that county for an order enjoining such acts or practices. Upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court. Any order of the ~~Franklin~~ Circuit Court shall be enforceable and shall be valid anywhere in this state and the order of either court shall be reviewable as provided in the Rules of Civil Procedure in the case of other injunctions and restraining orders.

➔Section 208. KRS 323A.120 is amended to read as follows:

- (1) No licensee shall be disciplined without an opportunity for a hearing. Hearings of the board shall be conducted in accordance with KRS Chapter 13B.
- (2) Any disciplined licensee may appeal the final order to the Franklin Circuit Court or the Circuit Court of the county where the person resides or conducts business in accordance with KRS Chapter 13B.

➔Section 209. KRS 323A.230 is amended to read as follows:

Whenever in the judgment of the board any person has engaged, or is about to engage, in

any acts or practices that constitute, or will constitute, a violation of KRS 323A.020, the board may make application to ~~any~~~~the Franklin~~ Circuit Court **of competent jurisdiction** for an order enjoining such acts or practices, or the board may inform the prosecuting attorney of the county in which the acts or practices are occurring or will occur who may make application to the Circuit Court of that county for an order enjoining such acts or practices. Upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court. Any order of the ~~Franklin~~ Circuit Court shall be enforceable and shall be valid anywhere in this Commonwealth and the order of either court shall be reviewable as provided in the Rules of Civil Procedure, in the case of other injunctions and restraining orders.

➔Section 210. KRS 324A.052 is amended to read as follows:

- (1) Any person or organization, including the board upon its own volition, may file with the board a written complaint alleging a violation of any provision of this chapter. The board shall investigate each complaint.
- (2) If the investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before fining, reprimanding, suspending, revoking, refusing to renew, or any combination thereof.
- (3) If the investigation reveals that the alleged violation did occur but was not of a serious nature, the board may issue a written admonishment to the certificate holder or licensee. A copy of the admonishment shall be placed in the recipient's permanent file with the board. The recipient shall have the right to file a response to the admonishment within thirty (30) days of its receipt and have the response placed in the permanent file. The recipient may, alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing in

accordance with the provisions of KRS Chapter 13B.

- (4) After denying an application for a certificate or license or issuing an admonishment, the board shall grant an administrative hearing in accordance with KRS Chapter 13B only upon written request of the applicant made within thirty (30) days of the mailing of the letter of denial or admonishment.
- (5) Any party aggrieved by a final order of the board may appeal to the Franklin Circuit Court or the Circuit Court of any county where the party resides or conducts business as provided by KRS Chapter 13B.

➔Section 211. KRS 325.360 is amended to read as follows:

- (1) The board may conduct investigations of suspected violations of this chapter or the administrative regulations promulgated by the board to determine whether there is probable cause to institute proceedings against any person or firm for any violation under this chapter, but an investigation under this section shall not be a prerequisite to proceedings. In aid of these investigations, the board or its designee may issue subpoenas to compel witnesses to testify and to produce evidence. Subpoenas may be served in person or by certified mail, return receipt requested.
- (2) The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall report to the board. The board shall then find probable cause or lack of probable cause, or it shall request that the investigating officer investigate further. Until there has been a determination of probable cause, the findings of the investigating officer, the testimony and documents gathered in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the

course of the investigation.

- (3) Upon a finding of probable cause, the board shall direct that a complaint be issued pursuant to this section setting forth appropriate charges and a date for a hearing that shall be conducted in accordance with KRS Chapter 13B. Upon a finding of a lack of probable cause, the board shall dismiss the matter either with or without prejudice.
- (4) In any case where probable cause has been determined pursuant to this section, the board may request the affected party to informally resolve the matter through mediation or otherwise.
- (5) A person or firm, after having been served with the notice of hearing and complaint as provided for in subsection (3) of this section, shall file a written response within twenty (20) days from the date of service. If the respondent licensee fails to file a timely response or fails to appear at the hearing, the board may hear evidence against the respondent and may enter a final order as shall be justified by the evidence.
- (6) In a hearing under this section, the respondent may appear in person or, in the case of a firm, through a partner, shareholder, or other person with an ownership interest.
- (7) The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence, or who has conducted the investigation of the matter under this section, shall not participate in the board's decision of the matter.
- (8) In a hearing under this section before the board or in acting upon the recommended order of a hearing officer, a vote of a majority of all members of the board then in office, other than a member disqualified by reason of subsection (7) of this section, shall be required to sustain any charge and to impose any penalty with respect thereto.
- (9) Any person adversely affected by any order of the board may obtain a review

thereof by filing a written petition for review with the Franklin Circuit Court or the Circuit Court of any county where the person resides or conducts business in accordance with KRS Chapter 13B.

- (10) On rendering a final order, the board shall examine its records to determine whether the respondent is authorized or licensed to practice as a certified public accountant in any other state. If the board determines that the respondent is authorized or licensed to practice in any other state, the board shall notify the board of accountancy of the other state of its action by mail within thirty (30) days of rendering the final order.
- (11) The board may exchange information relating to proceedings resulting in disciplinary action against licensees with the boards of accountancy of other states and with other public authorities or private organizations having an interest in the information.

→Section 212. KRS 325.400 is amended to read as follows:

Whenever in the judgment of the board any person or firm has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this chapter, the board may make application to any~~the Franklin~~ Circuit Court of competent jurisdiction for an order enjoining such acts or practices, and upon a showing by the board that such person or firm has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court. The same shall be enforceable and shall be valid anywhere in this state and shall be reviewable as provided in the Rules of Civil Procedure in the case of other injunctions and restraining orders.

→Section 213. KRS 326.020 is amended to read as follows:

- (1) There is hereby created a board of ophthalmic dispensers to be known as the "Kentucky Board of Ophthalmic Dispensers." It shall consist of five (5) members to be appointed by the Governor, one (1) member of which shall be a licensed medical

physician or osteopath experienced in the treatment and examination of eyes and one (1) member of which shall be a licensed optometrist. Two (2) members shall be licensed ophthalmic dispensers. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. They shall not pass upon their own qualifications. The board shall elect one (1) of its members chairman and one (1) member secretary-treasurer. These officers shall serve at the pleasure of the board.

- (2) Members shall serve for a period of four (4) years from the date of their appointment and qualification. At the expiration of the term of office of any member, the Governor shall appoint a successor for a term of four (4) years.
- (3)
  - (a) The board may promulgate administrative regulations to carry out the purposes and provisions of this chapter, including the licensing of apprentice ophthalmic dispensers and the adoption of a program for continuing education for all licensees.
  - (b) No licensee shall be permitted to renew his or her license, unless the minimum annual continuing education requirements have been completed. No program for continuing education shall contain, as a prerequisite for license renewal, a requirement for more than a total of six (6) credit hours per year for ophthalmic dispenser licensees, or four (4) credit hours per year for apprentice ophthalmic dispenser licensees.
- (4) Board members shall receive fifty dollars (\$50) per day for attending board meetings. Board members shall also be reimbursed for reasonable and necessary expenses incurred in the performance of their duties.
- (5) The board may:
  - (a) Revoke, suspend, or refuse to issue or renew licenses; impose probationary or supervisory conditions upon licensee; or issue written reprimands to licensees, in accordance with KRS 326.090;

- (b) Impose administrative fines in accordance with KRS 326.100; or
  - (c) Take any other action or combination of actions regarding licenses, licensees, or apprenticeships authorized by this chapter.
- (6) For the purpose of enforcing the provisions of this chapter, the board may administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence.
- (7) The board may seek injunctive relief in any~~Franklin~~ Circuit Court of competent jurisdiction to enjoin violation of KRS 326.030.

➔Section 214. KRS 327.040 is amended to read as follows:

- (1) It shall be the duty of the State Board of Physical Therapy to receive applications from persons desiring to become physical therapists and to determine whether said applicants meet the qualifications and standards required by this chapter of all physical therapists. The board shall also be charged with enforcement of the provisions of this chapter.
- (2) The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter coming to its notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.
- (3) The board shall meet at least once each quarter at such place in this state as may be selected by the board. Four (4) members of the board shall constitute a quorum for the transaction of business. All meetings shall be held at the call of the chairman or at a call of a quorum of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.

- (4) The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B, to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence. In case of disobedience to a subpoena, the board may invoke the aid of ~~any~~the Franklin Circuit Court *of competent jurisdiction*. Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.
- (5) The board shall keep a minute book containing a record of all meetings of the board.
- (6) The board shall maintain a register of all persons licensed or certified under this chapter. This register shall show the name of every licensee or certificate holder in this state, his current business and residence address and telephone numbers, and the date and number of his license or certificate. A licensee or certificate holder shall notify the board of a change of name, address, or telephone number, within thirty (30) days of the change.
- (7) The board's records shall be updated annually.
- (8) The board shall publish annually and make available, a current directory of all licensed physical therapists and certified physical therapists' assistants.
- (9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.
- (10) The board may promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal.
- (11) The board may promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of this chapter pursuant to the provisions of KRS

Chapter 13A.

- (12) The board shall promulgate by administrative regulation a code of ethical standards and standards of practice.
- (13) The board shall have the right to regulate physical therapists' assistants and may promulgate reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapists' assistants. The board may establish reasonable fees for the certification, renewal, and endorsement of physical therapists' assistants. The fees shall not exceed corresponding fees for physical therapists.
- (14) The board shall promulgate administrative regulations governing the physical and mental examination of physical therapists, physical therapists' assistants, or applicants, who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a physical therapist, physical therapist's assistant, or applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.

➔Section 215. KRS 327.075 is amended to read as follows:

- (1) The board may reinstate within three (3) years a license or certificate which has lapsed, upon payment of the prescribed renewal fee and, in addition, the payment of a reinstatement fee to be promulgated by the board by administrative regulations.
- (2) The board may reinstate a license or certificate which has been lapsed for more than three (3) years, upon showing that the applicant is able to practice with reasonable competency. In determining competency, the board may require the applicant to successfully complete all or any part of the required examination.
- (3) The board may reinstate a license which has been suspended or revoked under

provisions of this chapter if, after a hearing conducted in accordance with KRS Chapter 13B, the board determines the applicant is able to practice the profession with reasonable competency and is able to maintain the ethical code and standards of practice promulgated by administrative regulation. As a condition of reinstatement, the board may impose reasonable restrictions under which the licensee or certificate holder shall practice.

- (4) Any person aggrieved by a final order of the board denying, suspending, or revoking his license or certificate may appeal to the Franklin Circuit Court or the Circuit Court of the county where the person resides in accordance with KRS Chapter 13B.

➔Section 216. KRS 329.130 is amended to read as follows:

Any person affected by a final administrative decision of the cabinet may have such decision reviewed judicially by any~~the~~ Circuit Court of competent jurisdiction~~Franklin County~~.

➔Section 217. KRS 329A.065 is amended to read as follows:

- (1) The board may refuse to issue a license, or suspend, revoke, impose probationary conditions, impose an administrative fine, issue a written reprimand, or any combination thereof regarding any licensee upon proof that the licensee or applicant has:
- (a) Violated any provision of KRS 329A.010 to 329A.090 or any administrative regulation promulgated by the board;
  - (b) Knowingly and willfully made a material misstatement in connection with an application for license or renewal;
  - (c) Been convicted of a felony;
  - (d) Practiced fraud, deceit, or misrepresentation;
  - (e) Committed any act that would have been cause for refusal to issue the license had it existed and been known to the board at the time of issuance;

- (f) Been incompetent or negligent in the practice of private investigating; or
  - (g) Violated the code of ethics promulgated by administrative regulation by the board.
- (2) In addition to or in lieu of any other lawful disciplinary action under this section, the board may assess a civil penalty not exceeding two thousand dollars (\$2,000).
  - (3) When the board issues a written reprimand to the licensee a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.
  - (4) At any time during the investigative or hearing processes, the board may accept an assurance of voluntary compliance from the licensee if the assurance effectively deals with the complaint.
  - (5) The board may reconsider, modify, or reverse its probation, suspension, or other disciplinary action.
  - (6) Any party aggrieved by a disciplinary action of the board may bring an action in *the Franklin Circuit Court or the Circuit Court of any county where the party resides or conducts business* pursuant to the provisions of KRS Chapter 13B.
  - (7) A license shall be subject to expiration and renewal during any period in which the license is suspended.

➔Section 218. KRS 332.212 is amended to read as follows:

Any person whose license to conduct a driver training school or act as a driver training instructor has been suspended or revoked, or whose application for issue or renewal of a license is refused, may request a hearing. The hearing request shall be in writing addressed to the commissioner who shall conduct a hearing thereon as soon as possible. The hearing shall be conducted in accordance with KRS Chapter 13B. Any person may appeal from the final order of the commissioner in the Franklin Circuit Court *or the Circuit Court of any county where the person resides or conducts business* in

accordance with KRS Chapter 13B.

➔Section 219. KRS 333.200 is amended to read as follows:

- (1) In every proceeding for suspension or revocation of a license, the cabinet shall afford the medical laboratory director the opportunity for an administrative hearing to be conducted in accordance with KRS Chapter 13B. A license may be temporarily suspended through the issuance of an emergency order pursuant to KRS 13B.125 for a period not in excess of twenty (20) days upon notice to the medical laboratory director following a finding by the cabinet that the public health, safety, or welfare is in imminent danger.
- (2) Except as otherwise provided in this subsection, every final order of the cabinet suspending or revoking a license shall become effective thirty (30) days after notice is given to the medical laboratory director, unless the director within thirty (30) days from the giving of the notice, appeals therefrom in the manner provided by subsection (3) of this section. Provided, however, that the cabinet may, when in its opinion the continued operation of the medical laboratory during the time allowed for appeal would be dangerous to the health, welfare, and safety of the public, provide in its final order of suspension or revocation that the order shall become effective forthwith; and in this event the cabinet's order of suspension or revocation shall become effective as of the date specified therein, and the medical laboratory shall not, after notice of same, continue to operate under the license after revocation or during the period of suspension, unless and until the cabinet order is reversed or modified by a final and unappealable order or judgment of a court made pursuant to the provisions of subsection (3) of this section.
- (3) Any medical laboratory which is aggrieved by a final order of the cabinet placing it on probation, or suspending or revoking its license may procure judicial review by filing a petition in the Circuit Court of Franklin County ***or the Circuit Court of any county where the laboratory transacts business***~~[, Kentucky]~~, in accordance with

KRS Chapter 13B.

➔Section 220. KRS 334.180 is amended to read as follows:

- (1) A licensee whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon finding that the individual has complied with any terms prescribed by the board and is again able to engage in the practice of fitting hearing instruments.
- (2) A licensee or applicant aggrieved by an order of the board refusing, suspending, or revoking a license may within thirty (30) days after notice thereof appeal ~~thereupon~~ to the Franklin Circuit Court or the Circuit Court of any county where the licensee or applicant resides or conducts business. The appeal shall be determined by the court upon the certified record and no new or additional evidence shall be heard or considered by the court. Either party aggrieved by a final order entered by the court may appeal to the Court of Appeals as in a civil action.

➔Section 221. KRS 334A.080 is amended to read as follows:

- (1) The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, supervise the examination of applicants, and may issue subpoenas, examine witnesses, and administer oaths, and shall investigate persons engaging in practices which violate the provisions of this chapter.
- (2) The board shall conduct administrative hearings in accordance with KRS Chapter 13B. Any person aggrieved by a final order of the board may appeal to the Franklin Circuit Court or the Circuit Court of any county where the person resides or conducts business.
- (3) The board shall keep records and minutes as necessary and shall promulgate responsible administrative regulations, including but not limited to, administrative regulations which delineate qualifications for licensure and renewal of licensure and which establish ethical standards of practice, and may amend or repeal the same.

- (4) Every person who holds a license to practice speech-language pathology or audiology in this state shall be governed and controlled by the rules of professional conduct adopted by the board.
- (5) The conferral or enumeration of specific powers elsewhere in this chapter shall not be construed as a limitation of the general powers conferred by this section.
- (6) The board shall fix appropriate and reasonable fees for licensing, and shall periodically review and modify these fees as necessary.

➔Section 222. KRS 334A.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000) or by both.
- (2) When any person other than a licensed speech-language pathologist, speech-language pathology assistant, or audiologist has engaged in any act or practice which constitutes an offense against this chapter, ~~any~~the Franklin Circuit Court of competent jurisdiction, on application of the board, may issue an injunction or other appropriate order restraining the conduct.

➔Section 223. KRS 335.070 is amended to read as follows:

- (1) (a) The board shall administer and enforce the provisions of KRS 335.010 to 335.160 and KRS 335.990, and shall evaluate applications and issue licenses to qualified applicants within forty-five (45) days of submission of the complete application packet and receipt of the official passing score report and the licensure fee.
- (b) Within fifteen (15) days of accepting an applicant's payment and application packet, the board shall:
  1. Notify the applicant that the application packet is complete, approve the applicant to sit for the national examination, and issue a temporary permit to engage in the practice of social work; or

2. Notify the applicant that the application packet is incomplete and, when all omitted application items are received, notify the applicant of receipt of the complete application packet, approve the applicant to sit for the national examination, and issue a temporary permit to engage in the practice of social work.
- (c) The board shall evaluate the complete application packet and, within forty-five (45) days, notify a qualified applicant of the issuance of the permanent license pursuant to KRS 335.080, 335.090, or 335.100.
  - (d) If the board deems an applicant unqualified, the license may be denied and the temporary permit to practice social work may be revoked.
  - (e) In order to be issued a temporary permit, an applicant shall have submitted:
    1. A complete application packet as provided in this subsection, with the exception of a passing score on the required examination; and
    2. If applying for licensure as a certified social worker or as a licensed clinical social worker, a letter from a licensed clinical social worker, or equivalent, who will supervise the applicant while under temporary permit in accordance with administrative regulations.
- (2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provision of KRS 335.010 to 335.160 and KRS 335.990.
  - (3) The board may promulgate administrative regulations pursuant to KRS Chapter 13A to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990.
  - (4) The board may conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the functions of KRS 335.010 to 335.160 and KRS 335.990.
  - (5) The board may employ any other persons it deems necessary to carry on the work of the board, and shall define their duties and fix their compensation.

- (6) The board may renew licenses and require continuing education as a condition for license renewals, and shall authorize organizations to provide continuing education programs, including but not limited to:
  - (a) Schools of social work accredited by the Council on Social Work Education;
  - (b) The National Association of Social Workers-Kentucky Chapter; and
  - (c) The Kentucky Society of Clinical Social Workers.
- (7) The board may, after a hearing conducted in accordance with KRS Chapter 13B, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; impose administrative fines; issue written reprimands and admonishments; or any combination of actions regarding licenses and licensees.
- (8) The board may seek injunctive relief in any~~Franklin~~ Circuit Court ***of competent jurisdiction*** to stop the unlawful practice of social work by unlicensed persons.
- (9) The board may establish, by promulgation of administrative regulations, the requirements for temporary permits to practice social work.
- (10) The board may enter into agreements with any organization for the creation and implementation of a social work impairment program, as specified in the agreement.
- (11) The board shall refund any levied administrative assessments that it has received for practice by unlicensed individuals employed by organizations exempted from the application of KRS 335.010 to 335.160 and 335.990 by KRS 335.010(5).

➔Section 224. KRS 335.155 is amended to read as follows:

- (1) Before revoking, suspending, imposing probationary or supervisory conditions upon, imposing an administrative fine, issuing a written reprimand, or any combination of these actions regarding any license or licensee under the provisions of KRS 335.010 to 335.160 and 335.990, the board shall set the matter for hearing as provided by KRS Chapter 13B.
- (2) After denying an application, refusing to renew a license, or issuing a written

admonishment regarding any applicant, license, or licensee under the provisions of KRS 335.010 to 335.160 and 335.990, the board shall set the matter for hearing upon written request filed by the applicant or licensee within thirty (30) days of the date of the letter advising of the denial, refusal, or admonishment.

- (3) Any party aggrieved by a final order of the board may appeal to the Franklin Circuit Court or the Circuit Court of any county where the party resides or conducts business as provided by KRS Chapter 13B.

→Section 225. KRS 335.160 is amended to read as follows:

If it appears to the board that a person is violating any provision of KRS 335.010 to 335.160 and KRS 335.990, the board may institute, in its own name, in any[Franklin] Circuit Court of competent jurisdiction, a proceeding to restrain and enjoin the violation without regard to whether proceedings have been, or may be instituted under other provisions of KRS 335.010 to 335.160 and KRS 335.990. The board or any member thereof, shall not be required to furnish bond for any costs or filing fees in connection with the proceeding.

→Section 226. KRS 335.325 is amended to read as follows:

The board may:

- (1) Employ needed personnel;
- (2) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter;
- (3) Seek injunctive relief in any[Franklin] Circuit Court of competent jurisdiction to stop the unlawful practice of marriage and family therapy by unlicensed persons;
- (4) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the functions of this chapter;
- (5) Suspend or revoke licenses or permits or impose supervisory or probationary conditions upon licensees or permit holders, or impose administrative disciplinary fines, issue written reprimands or admonishments, or any combination thereof;

- (6) Grant retired or inactive licensure status under conditions set forth by the board by the promulgation of administrative regulations;
- (7) Enter into reciprocal agreements with boards of marriage and family therapy in other states having licensure qualifications and requirements that meet or exceed those provided in this chapter;
- (8) Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B; and
- (9) Utilize mediation as a technique to resolve disciplinary matters.
  - ➔Section 227. KRS 335.515 is amended to read as follows:
    - (1) The board shall administer and enforce the provisions of KRS 335.500 to 335.599 and shall evaluate the qualifications of applicants for licensure.
    - (2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 335.500 to 335.599.
    - (3) The board shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to carry out and enforce the provisions of KRS 335.500 to 335.599, including the establishment of fees.
    - (4) The board shall conduct hearings as necessary pursuant to KRS Chapter 13B and shall keep records and minutes necessary to carry out the function of KRS 335.500 to 335.599.
    - (5) The board shall issue credentials to qualified candidates.
    - (6) The board shall renew credentials subject to the provisions of KRS 335.535 and shall require ten (10) continuing education hours as a condition for renewal each

year.

- (7) The board may suspend or revoke credentials, impose supervisory or probationary conditions upon certificate holders, impose administrative disciplinary fines, issue written reprimands and admonishments, or perform any combination thereof.
- (8) The board may seek injunctive relief in any~~Franklin~~ Circuit Court ***of competent jurisdiction*** to enjoin violation of KRS 335.505(1).
- (9) The board may grant retired status or inactive status to a credential holder under conditions set out in administrative regulations promulgated by the board.
- (10) The board may employ persons as necessary to carry on its work and shall define those persons' duties and fix their compensation.
- (11) The board shall promulgate by administrative regulation a code of ethics for and standards of practice for all credential holders.
- (12) The board may enter into reciprocal agreements with certified or licensed professional counseling boards.

→Section 228. KRS 335.550 is amended to read as follows:

Any party aggrieved by a disciplinary action of the board may bring an action in ***the*** Franklin Circuit Court ***or the Circuit Court of any county where the party resides or conducts business*** pursuant to the provisions of KRS Chapter 13B.

→Section 229. KRS 335.635 is amended to read as follows:

Any person or organization, including the board upon its own volition, may file with the board a written complaint alleging violation of any provision of KRS 335.600 to 335.699. The board shall cause the complaint to be investigated.

- (1) If the investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before refusing to renew, revoking, reprimanding, imposing probation or an administrative fine, or any combination of actions regarding any license holder.
- (2) After denying an application for licensure under KRS 335.600 to 335.699, the board

may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.

- (3) The board may reconsider, modify, or reverse its decision on any disciplinary action.
- (4) Any party aggrieved by a disciplinary action of the board may bring an action in the Franklin Circuit Court or the Circuit Court of any county where the party resides or conducts business in accordance with the provisions of KRS Chapter 13B.

➔Section 230. KRS 335B.030 is amended to read as follows:

- (1) If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:
  - (a) The grounds and reasons for the denial or disqualification;
  - (b) That the individual has the right to a hearing conducted in accordance with KRS Chapter 13B, if written request for hearing is made within ten (10) days after service of notice;
  - (c) The earliest date the person may reapply for a position of public employment or a license; and
  - (d) That evidence of rehabilitation may be considered upon reapplication.
- (2) Any party aggrieved by a final order issued by a hiring or licensing authority after a hearing may appeal to the Franklin Circuit Court or the Circuit Court of any county where the party resides or conducts business in accordance with KRS Chapter 13B.

➔Section 231. KRS 337.525 is amended to read as follows:

- (1) Any person or party claiming to be aggrieved by any final determination of prevailing wages by the prevailing wage review board may appeal to the Franklin

Circuit Court or the Circuit Court of any county where the person resides or conducts business. The appeal shall state fully the grounds upon which an appeal is sought and assign all errors relied upon. A copy of the appeal and summons shall be served upon the Department of Workplace Standards and the members of the prevailing wage review board and within thirty (30) days after such service, or within such further time as the court may allow, the department on behalf of the prevailing wage review board shall submit to the court a certified copy of all matters considered by the prevailing wage review board from which it made its final wage determination.

- (2) No new or additional evidence may be introduced in the ~~Franklin~~ Circuit Court except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling, or award. The court shall otherwise hear the appeal upon the record as certified by the Department of Workplace Standards and shall dispose of same in summary manner. The court shall not substitute its judgment for that of the prevailing wage review board, the court's review being limited to determining whether or not:
  - (a) The prevailing wage review board acted without or in excess of its powers;
  - (b) The prevailing wage review board's final wage determination was procured by fraud;
  - (c) The determination is not in conformity with the provisions of this chapter;
  - (d) The determination is clearly erroneous on the basis of the information contained in the record; or
  - (e) The final wage determination is arbitrary or capricious.
- (3) The ~~Franklin~~ Circuit Court thereafter shall enter an order affirming or setting aside the prevailing wage review board's wage determination. The court may also remand the case to the prevailing wage review board for further proceedings.
- (4) An appeal may be taken to the Court of Appeals from any decision of the ~~Franklin~~

Circuit Court under this section.

➔Section 232. KRS 338.091 is amended to read as follows:

- (1) Any party adversely affected or aggrieved by a final order of the review commission may appeal within thirty (30) days to the Franklin Circuit Court **or the Circuit Court of any county where the party resides or conducts business** on the record for a review of such order. No new evidence may be introduced in the Circuit Court. An appeal may be taken to the Court of Appeals from any decision of the Circuit Court under this section.
- (2) The commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of an order of the review commission.

➔Section 233. KRS 338.101 is amended to read as follows:

- (1) In order to carry out the purposes of this chapter, the commissioner or the commissioner's authorized representative shall have the authority:
  - (a) To enter without delay and advance notice any place of employment during regular working hours and at other reasonable times in order to inspect such places, question privately any such employer, owner, operator, agent, employee, or employee's representative, and investigate such facts, conditions, practices, or matters deemed appropriate to determine the cause of, or to prevent the occurrence of, any occupational injury or illness.
  - (b) To administer oaths, take depositions, conduct hearings, take photographs, review any and all accident and illness records, and secure any other evidence deemed necessary to evaluate any occupational safety and health hazard in order to ascertain whether any person has violated any provision of this chapter or regulations issued pursuant thereto.
- (2) If an employer refuses such entry, then the commissioner may apply to ~~any~~**the** ~~Franklin~~ Circuit Court **of competent jurisdiction** for an order to enforce the right of entry.

➔Section 234. KRS 338.131 is amended to read as follows:

- (1) Whenever an authorized representative of the commissioner determines that conditions in any place of employment are of an imminent danger which reasonably could be expected to cause death or serious physical harm, then he or she shall order the danger to be immediately abated. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.
- (2) In the event the danger is not abated immediately, the commissioner shall apply to any~~[the Franklin]~~ Circuit Court of competent jurisdiction for an order to restrain such condition or practice.

➔Section 235. KRS 341.265 is amended to read as follows:

- (1) Any employing unit refusing to make reports required under this chapter within ten (10) days after written notice sent by the cabinet to such employing unit's last known address by certified mail, notifying such employing unit that this section will be invoked unless such reports are filed, may be restrained or enjoined from continuing in business in this state or employing persons herein until such reports have been made.
- (2) Any employing unit actively engaged in business in this state which is found delinquent in the payment of contributions by the cabinet, may, after ten (10) days' written notice by the cabinet sent to such employing unit's last known address by certified mail notifying such employing unit that this section will be invoked unless

such delinquency is satisfied, be restrained or enjoined from continuing in business in this state or employing persons herein until such delinquency has been satisfied or until such employing unit shall have furnished bond with surety approved by the court in a sum equal to the amount of such delinquency, plus any other unpaid contributions due under this chapter and such further sum as the court shall deem adequate to protect the cabinet in the collection of contributions which may become due for the next ensuing six (6) months, said bond to be conditioned upon payment of such judgment and contributions upon such terms and at such time as the court may fix.

- (3) Proceedings under the provisions of this section may be instituted upon complaint filed by the cabinet in ~~the Franklin Circuit Court or any other~~ court of competent jurisdiction in accordance with Kentucky Rules of Civil Procedure, except that no bond shall be required of the Commonwealth or the cabinet.

➔Section 236. KRS 341.300 is amended to read as follows:

- (1) Contributions unpaid on the date on which they are due and payable, as prescribed by the secretary, shall be subject to interest at the rate of one and five-tenths percent (1.5%) per month or fraction thereof, not to exceed ninety percent (90%) of the amount of such contributions, from and after such date until payment is received by the Office of Employment and Training, Department of Workforce Investment, irrespective of whether such delinquency has been reduced to a judgment or not as provided in subsection (2) of this section or is the subject of an administrative appeal or court action. Such interest shall be paid into the unemployment compensation administration fund.
- (2) If, after due notice, any subject employer defaults in any payment of contributions, interest or penalties thereon, the amount due shall be collected by a civil action instituted in any~~the Franklin~~ Circuit Court or~~the Franklin~~ District Court ***of competent jurisdiction*** depending upon the jurisdictional amount in controversy

including interest and penalties in the name of the state, and the subject employer adjudged in default shall pay the costs of the action. Civil actions brought under this section shall be heard by the court, without the intervention of a jury, at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law.

- (3) At or after the commencement of an action under subsection (2) of this section, attachment may be had against the property of the liable subject employer for such contributions, interest, and penalties, without the execution of a bond, or after judgment has been entered an execution may be issued against the property of such employer without the execution of a bond.
- (4) An action for the recovery of contributions, interest, or penalties under this section shall be barred and any lien therefor shall be canceled and extinguished unless collected or suit for collection has been filed within ten (10) years from the due date of such contributions, except, in the case of the filing of a false or fraudulent report, the contributions due shall not be barred and may at any time be collected by the methods set out in this chapter, including action in a court of competent jurisdiction.

➔Section 237. KRS 341.310 is amended to read as follows:

- (1) A lien on a parity with state, county, and municipal ad valorem tax liens, and superior to the lien of any mortgage or other encumbrance heretofore or hereafter created is hereby created in favor of the cabinet upon all property of any subject employer from whom contributions, interest or penalties are or may hereafter become due. The lien shall commence from such time as any assessment becomes delinquent and it shall continue until the amount of the original assessment and any subsequent assessments of liability for contributions, interest, penalties or fees are fully paid. The lien shall attach to all interest in property, either real or personal, then owned or subsequently acquired by the person against whom the assessment is

made. The cabinet may file notice of the lien with the county clerk of any county or counties in which the subject employer's business or residence is located, or in any county in which the subject employer has interest in property and such notice shall be recorded in the same manner as notices of lis pendens are and the file shall be designated "miscellaneous state tax liens." Such recordation shall constitute notice of both the original assessment and all subsequent assessments of liability against the same subject employer. Upon request, the cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to such information. The notice, when so filed, shall be conclusive notice to all persons of the lien on the property having legal situs in that county, except that nothing in this chapter shall be construed to alter or change in any way the law relative to the rights and duties of a holder in due course as provided in KRS Chapter 355, Art. 3, or affect the rights of any person taking the property or a lien thereon for value without actual or constructive notice. The clerk shall be entitled to a fee pursuant to KRS 64.012 for filing the lien and the subsequent release or partial release, and said fee shall become a part of the lien as an added cost of the delinquent subject employer to be paid by him as a part of the amount necessary to release the lien and shall not be the responsibility of the Commonwealth.

- (2) In addition and as an alternative to any other remedy, the secretary may enforce the lien by petition in the name of this state to any~~the Franklin~~ Circuit Court of competent jurisdiction~~, if the ministerial acts necessary to enforce the lien by the sale of the lien property or any part of it are performed by the appropriate officers of the Circuit Court of the county in which the property is situated under the direction of and reporting to the Franklin Circuit Court~~. The manner of enforcement shall be the same as that provided for the enforcement of other tax liens.
- (3) (a) The secretary may issue a certificate of release of lien upon the furnishing of a

corporate surety bond satisfactory to the secretary by such employing unit in the amount of one hundred twenty-five percent (125%) of the sum of such contributions, interest and penalty, for which lien is claimed, conditioned upon the prompt payment of such contribution, together with interest and penalty thereon, by such employing unit to the cabinet in accordance with the provisions set forth in such bond.

- (b) The secretary may issue a certificate of partial release of any part of the property subject to the lien if he finds that the fair market value of that part of such property remaining subject to the lien is at least equal to the amount of all other liens upon such property plus double the amount of the liability for contributions, interest and penalties thereon remaining unsatisfied.
- (c) The secretary may issue a certificate of partial release of any part of the property or individual piece of property subject to the lien if he finds that the interest of the Commonwealth in the property to be so released has no value.

➔Section 238. KRS 341.460 is amended to read as follows:

- (1) In all cases of appeals arising under KRS 341.360(1)(a) or KRS 341.430(2) court review may be had as provided in KRS 341.450 except that review shall be had to the Franklin Circuit Court *or the Circuit Court of the county where the employer is located.*
- (2) A claimant who has been denied benefits under KRS 341.360(1)(a) may appeal for himself and for and on behalf of all other claimants similarly situated within that establishment or other establishments whose claims were denied by reason of the same alleged labor dispute or strike. An employer may appeal to the Franklin Circuit Court *or the Circuit Court of the county where the employer is located* from the decision of the commission allowing benefits under KRS 341.360(1)(a) and all the workers in his establishment may be joined in such appeal.

➔Section 239. KRS 341.614 is amended to read as follows:

- (1) Effective January 1, 2014, there shall be a surcharge upon all subject contributing employers for any year there are insufficient funds in the unemployment compensation administration fund for the payment of interest on advances under Title XII of the Social Security Act or for the repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances.
- (2)
  - (a) The surcharge shall be twenty-two hundredths of one percent (0.22%) of the first nine thousand six hundred dollars (\$9,600) in wages paid to each worker by a subject contributing employer or his predecessor with respect to covered employment during any calendar year.
  - (b) Effective January 1, 2015, and each calendar year thereafter, the secretary shall adjust the surcharge percentage rate based on any increase to the taxable wage base for that calendar year as provided in KRS 341.030(7). The purpose of the adjustment shall be to maintain costs per worker comparable to the original surcharge. Any reduction in the surcharge percentage rate shall correspond to the increase to the taxable wage base for that calendar year and shall be rounded up to the nearest one-hundredth of one percent (0.01%).
  - (c) Notwithstanding paragraph (b) of this subsection, the secretary may reduce the surcharge percentage rate or suspend the surcharge for any calendar year based on the balance of the unemployment insurance interest payment fund and the projected amount due for interest on advances under Title XII of the Social Security Act and for repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances.
- (3) The surcharge established in this section shall be due and payable at the same time and in the same manner as employer contributions. Any surcharge collected shall be deposited in the unemployment insurance interest payment fund.
- (4) Any surcharge unpaid on the date on which it is due and payable, pursuant to

subsection (3) of this section, shall be subject to interest at the rate of one and one-half percent (1.5%) per month or fraction thereof, not to exceed ninety percent (90%) of the amount of such surcharge, from and after such date until payment is received by the cabinet, regardless of whether such delinquency has been reduced to a judgment or not as provided in subsection (6) of this section or is the subject of an administrative appeal or court action. The interest collected shall be deposited in the unemployment insurance interest payment fund.

- (5) A lien of the same nature and having the same force, effect, and priority as provided in KRS 341.310 shall commence on all property of a subject contributing employer delinquent in the payment of any surcharge or interest thereon.
- (6) If, after due notice, any subject contributing employer defaults in payment of any surcharge or interest thereon, the amount due may be collected by a civil action instituted in any~~the Franklin~~ Circuit Court or~~the Franklin~~ District Court ***of competent jurisdiction*** depending on the jurisdictional amount in controversy, including interest and penalties, in the name of the state, and the subject contributing employer adjudged in default shall pay the costs of the action. Civil actions brought under this section shall be heard by the court, without the intervention of a jury, at the earliest possible date and shall be entitled to preference on the calendar of the court over all other civil actions, except petitions for judicial review under this chapter and cases arising under the Kentucky workers' compensation law.
- (7) At or after the commencement of an action under subsection (6) of this section, attachment may be had against the property of the liable subject contributing employer for such surcharge and interest without execution of a bond, or, after judgment has been entered, an execution may be issued against the property of such employer without the execution of a bond.
- (8) An action for the recovery of a surcharge or interest thereon under this section shall

be barred, and any lien therefor shall be canceled and extinguished, unless collected or suit for collection has been filed within ten (10) years from the due date of such surcharge.

- (9) Notwithstanding subsection (6) of this section, any delinquent surcharge or interest thereon may be collected in accordance with the levy and distraint provisions of this chapter.

➔Section 240. KRS 342.380 is amended to read as follows:

No policy of insurance or rider to be used therewith shall be issued or delivered until a copy of its form has been filed with the commissioner of the Department of Insurance at least thirty (30) days before such issue or delivery, unless before the expiration of thirty (30) days the commissioner of the Department of Insurance has approved the form thereof in writing; nor if the commissioner of the Department of Insurance notifies the company in writing that in his opinion the form of the policy or rider does not comply with the laws of this state, specifying fully the reasons for his opinion. Upon petition of the company, the decision of the commissioner of the Department of Insurance shall be subject to review by the Franklin Circuit Court or the Circuit Court of the county where the company is located and to appeal therefrom to the Court of Appeals.

➔Section 241. KRS 342.402 is amended to read as follows:

The commissioner, upon showing a certification of noncompliance, may temporarily restrain or temporarily or permanently enjoin the further operation of any employer covered by this chapter. The action shall be brought in any~~Franklin~~ Circuit Court of competent jurisdiction.

➔Section 242. KRS 342.447 is amended to read as follows:

- (1) All funds collected by insurance companies from their insureds, prior to October 26, 1987, for assessments of the Kentucky Reinsurance Association or special fund taxes and assessments of the Kentucky Department of Revenue not previously paid, shall be paid in full by January 1, 1988, to the Kentucky Workers' Compensation

Funding Commission.

- (2) To ensure compliance with the provisions of subsection (1) of this section, the Department of Revenue shall conduct audits of insurance companies. The costs of such audits shall be borne by the Kentucky Workers' Compensation Funding Commission. The Department of Revenue may enter an agreement with the Department of Insurance for assistance in conducting such audits or it may hire additional auditors on a temporary basis. The audits shall commence within sixty (60) days from October 26, 1987, and shall be completed within six (6) months. The aggregate findings of such audits shall be presented to the commissioner of revenue, the commissioner of insurance, the Kentucky Workers' Compensation Funding Commission, and the Governor.
- (3) If the audits reveal noncompliance with subsection (1) of this section, the Department of Revenue shall notify the affected party of such fact. The affected party shall remit the amount in question not later than thirty (30) days following notification and the Department of Revenue shall institute a civil action in any~~Franklin~~ Circuit Court *of competent jurisdiction* if remittance is not made within such thirty (30) day period.
- (4) The failure of an insurance company to comply with the provisions of this section shall constitute grounds for the revocation by the commissioner of insurance of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (5) The Department of Revenue shall report to the commissioner of insurance the failure of any insurance company to comply with the provisions of this section and the commissioner of insurance shall institute revocation procedures of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (6) "Funds collected" as used in subsection (1) of this section shall mean all funds collected without reduction for credits, refund, or returns of any type made to insureds or group members after September 1, 1987.

➔Section 243. KRS 342.843 is amended to read as follows:

- (1) The Attorney General and the Auditor of Public Accounts shall monitor the operations of the authority.
- (2) Either the Attorney General or the Auditor of Public Accounts, or both, may make at any time any examinations or investigations, jointly or severally, of the operations, practices, management, or other matters relating to the authority as they deem necessary. Either of them shall have the power to subpoena witnesses and records for these purposes, and otherwise to compel the giving of evidence for any matter under study. The Attorney General, the Auditor of Public Accounts, or any employee authorized by either of them may require the giving of this evidence under oath and may administer the oath. Any person voluntarily providing information or evidence may be required to do so under oath administered by the Attorney General, the Auditor of Public Accounts, or any employee authorized by either of them. If any person fails or refuses to testify or furnish documentary evidence concerning any matter requested, any~~[the Franklin]~~ Circuit Court ***of competent jurisdiction***, on application of either the Attorney General or the Auditor of Public Accounts or both, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or of a refusal to testify in the Circuit Court.
- (3) The Attorney General and the Auditor of Public Accounts shall have without restriction:
  - (a) Full access to all records of the authority, except that confidential medical records of employees of insureds are available only by subpoena;
  - (b) Full access to all financial transactions and investigations of the authority; and
  - (c) The right to attend all meetings of the board and its committees.
- (4) If fraud, mismanagement, illegal activity, imprudent practices, or other deficiencies are found in the operations or other practices of the authority, the Attorney General

or Auditor of Public Accounts, or both shall:

- (a) Recommend internal corrective action;
  - (b) Institute a civil action or action for injunctive relief to compel corrective action;
  - (c) Institute criminal proceedings against any officer or employee of the authority or any other person, as defined in KRS 446.010, as may be necessary; or
  - (d) Any combination of the above listed actions or any other form of action reasonably calculated to assure efficient and honest operations of the authority and those involved with it.
- (5) The Attorney General and the Auditor of Public Accounts shall report jointly to the General Assembly in January of each year in which the General Assembly convenes in an even-numbered-year regular session the results of the monitoring activities required by this section.

➔Section 244. KRS 342.990 is amended to read as follows:

- (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.
- (2) When the commissioner receives information that he or she deems sufficient to determine that a violation of this chapter has occurred, he or she shall seek civil penalties pursuant to subsections (3) to (7) of this section, criminal penalties pursuant to subsections (8) and (9) of this section, or both.
- (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.
- (4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he or she intends to contest the citation, then the citation shall be deemed final.
- (5) If a cited party notifies the commissioner that he or she intends to challenge a citation issued under this section, the commissioner shall cause the matter to be

heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

- (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court or the Circuit Court of the county where the party resides or conducts business in conformity with KRS 13B.140.
- (7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:
  - (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense;
  - (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense;
  - (c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of

workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice;

- (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense;
- (e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation;
- (f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars (\$300) shall be fined per occurrence not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation, or twice the amount of gain received as a

result of the violation, whichever is greater;

- (g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per occurrence not more than five thousand dollars (\$5,000) per individual nor ten thousand dollars (\$10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;
  - (h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation;
  - (i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per occurrence, or both; and
  - (j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court, ~~and~~ the Franklin Circuit Court, or *the Circuit or District Court of the county where the violator resides or conducts business.*
- (8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.
- (9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:
- (a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400,

342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both;

- (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both;
- (c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense; and
- (d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally,

for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.

(11) In addition to the penalties provided in this section, the commissioner and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

➔Section 245. KRS 343.070 is amended to read as follows:

(1) Upon the complaint of either party to the agreement, or upon his or her own initiative, the supervisor may investigate or determine if there has been a violation of the terms of the apprenticeship or on-the-job training agreement approved under this chapter. He may conduct inquiries and other proceedings necessary to any investigation and determination. The parties to the agreement shall, after reasonable notice, be given an informal hearing before the supervisor.

(2) The determination of the supervisor shall be filed with the commissioner. If no appeal therefrom is filed with the commissioner within fifteen (15) days, the determination shall become final. Any party aggrieved by any determination or action of the supervisor may appeal to the commissioner, who shall hold an administrative hearing in accordance with KRS Chapter 13B.

(3) Any party to an apprenticeship or on-the-job training agreement aggrieved by a final order of the commissioner may appeal to the Franklin Circuit Court *or the Circuit Court of the county where the party resides or where the agreement was carried out.*

➔Section 246. KRS 344.565 is amended to read as follows:

Any final action taken by a department or agency pursuant to KRS 344.560 shall be

subject to such judicial review as may otherwise be provided by law for similar action taken by the department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to KRS 344.560, any funding recipient aggrieved may obtain judicial review of the action in the Franklin Circuit Court *or the Circuit Court of any county where the aggrieved recipient is located.*

➔Section 247. KRS 345.100 is amended to read as follows:

- (1) Any agreement reached by the negotiators shall be reduced to writing and shall be executed by both parties.
- (2) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the political subdivision or his representative. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between a political subdivision and a labor organization provided by this chapter shall be the exclusive method of making a valid agreement for firefighters represented by a labor organization.
- (3) Suits for violation of agreements between a public employer and a labor organization representing firefighters may be brought by the parties to such agreement in the Circuit Court of the county of the employer or in cases where the state is the employer in the Franklin Circuit Court *or the Circuit Court of the county where the person is employed.*

➔Section 248. KRS 346.080 is amended to read as follows:

- (1) A claim, when accepted for filing, shall be assigned by the clerk of the board to an investigator for investigation. All claims arising from the death of an individual as a direct result of a crime shall be considered together.
- (2) The investigator to whom such claim is assigned shall examine the papers filed in

support of the claim and the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court, and official records and reports concerning the crime.

- (3) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the board may order the victim or claimant to submit to a mental or physical examination by a physician or psychiatrist, and may order an autopsy of a deceased victim. A report upon an examination shall be filed with the investigator setting out findings, including results of all tests made, diagnosis, prognosis, and other conclusions.
- (4) For purposes of this chapter, there is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under this chapter in which that condition is an element.
- (5) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.
- (6) Upon completion of the investigator's report, the claim shall be assigned to a board member who may decide the claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of the claim within thirty (30) days of the assignment of the claim. If the board member is unable to decide the claim upon the basis of the papers and the report, he shall order a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (7) After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the board member to whom the claim was assigned shall issue a recommended order either granting an award pursuant to KRS

346.130 or deny the claim. The board shall review the recommended order and any exceptions filed to it, and shall by majority vote issue a final order.

- (8) A final order of the board may be appealed by the Attorney General or a claimant by filing a petition for judicial review in the Franklin Circuit Court or the Circuit Court of the county in which the claimant resides in accordance with KRS Chapter 13B.

→Section 249. KRS 350.0305 is amended to read as follows:

Any party aggrieved by a final order resulting from the hearing conducted pursuant to KRS 350.0301(1) on cabinet determinations may appeal to the Franklin Circuit Court or the Circuit Court of any county in which the party is located; except that judicial review of a final order resulting from a hearing on the issuance of a notice of noncompliance, the issuance of an order for cessation and immediate compliance, the assessment of civil penalties, or a bond forfeiture shall be in accordance with KRS 350.032. The appeal shall be taken within thirty (30) days from the rendition of the final order. The party or parties affected by the final order shall file in the Circuit Court a petition which states fully the grounds upon which a review is sought and shall assign all errors relied on. The cabinet shall be named respondent, and service shall be had on the cabinet. Summons shall issue upon the petition directing the cabinet to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that the record is its entire original record or a true copy. The record, when filed, shall become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal, may, upon notice to the parties, upon proper showing, and in the discretion of the court, be permitted to intervene. The court shall review the entire record and the findings and final order of the cabinet. No objection to the final order shall be considered by the court unless it was raised before the cabinet or there were reasonable grounds for failure to do so. The findings of the cabinet as to the facts, if supported by substantial evidence, shall be conclusive. The commencement of the

proceedings under this section shall not operate as a stay of the cabinet's final order unless specifically ordered by the court. Appeals to the Court of Appeals from orders of the Circuit Court shall be taken in the manner provided in the Kentucky Rules of Civil Procedure.

➔Section 250. KRS 350.255 is amended to read as follows:

Any person may petition the secretary of the Energy and Environment Cabinet to initiate a proceeding for the issuance, amendment, or repeal of any regulation under this chapter.

- (1) Notice and an opportunity shall be provided for the petitioner and any person wishing to participate to be heard at a public hearing within thirty (30) days following the filing of the petition on the facts, technical justification, and law alleged in the petition.
- (2) The secretary shall render a final order in writing within thirty (30) days after the hearing granting or denying the petition on grounds that there is a reasonable basis for the petitioned rule change, or is not, or that it is required or prohibited by law and setting forth the reasons for the decision.
- (3) The secretary shall initiate a rulemaking proceeding pursuant to KRS Chapter 13A within thirty (30) days after a petition is granted proposing the issuance, amendment, or repeal of the petitioned regulations in conformity with the final order.
- (4) Any participant in the petition proceedings may seek review in any~~the~~ Circuit Court of competent jurisdiction~~Franklin County~~ of a final order of the secretary denying all or any portion of the action requested in a petition.

➔Section 251. KRS 350.465 is amended to read as follows:

- (1) The provisions of this section and regulations promulgated pursuant thereto, except with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone, and rock asphalt, shall apply to the regulation of all surface coal mining and reclamation operations in the Commonwealth in the event that the Commonwealth receives

from the United States Department of Interior and pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, approval of a permanent state regulatory program, and the Commonwealth has promulgated regulations pursuant to this section.

- (2) The Energy and Environment Cabinet is hereby authorized and directed to prepare, develop and promulgate a comprehensive permanent regulatory program for the implementation of the Surface Mining Control and Reclamation Act of 1977, PL 95-87, for the purpose of accepting and administering primary enforcement responsibilities pursuant to that act. The implementation of this section shall contain procedures similar to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, and shall require surface coal mining operation performance standards no more stringent than provided for in that act. Nothing in this section shall be construed to empower the cabinet to adopt a regulatory program in conflict with the policy and purposes of the Surface Mining Control and Reclamation Act of 1977, PL 95-87. To that end, the Energy and Environment Cabinet shall include in its permanent regulatory program:
  - (a) Environmental protection performance standards to prevent or minimize the adverse environmental effects of surface coal mining and reclamation operations on the land and water resources of the Commonwealth;
  - (b) A procedure for designating as being unsuitable for mining certain lands because of their topographical, geological, hydrological, climatological, biological, or chemical characteristics or historical, cultural, scientific, or aesthetic values;
  - (c) Procedures and regulations for the allowance of those persons having an interest which is or may be adversely affected to have the opportunity to be heard at every significant or critical part of the administrative and judicial process, including, but not limited to, the permit review and issuance process,

the general enforcement process and hearings incident thereto, and the rulemaking procedures conducted by the cabinet; and procedures and regulations for persons having a valid legal interest which is or may be adversely affected by the setting, release, and inspection of bonds to have an opportunity to be heard at every significant or critical part of the administrative and judicial process relating to bonds. The regulations shall provide reasonable procedures for notice and an opportunity to be heard, access to minesites, access to records, and other reasonable procedures to accomplish the purposes of this chapter;

- (d) Procedures for the administrative and judicial review of all actions of the cabinet to administer and enforce the provisions of this chapter, including the award of costs and expenses, including attorney's fees and expert witness fees, by the cabinet or the court;
  - (e) Plans and procedures for the reclamation and restoration of land and water resources affected by mining which have been abandoned or inadequately reclaimed to the standards imposed by this section and for which no bond is held or legal obligation to reclaim continues. The plan shall include provisions for the imposition of liens for necessary reclamation expenditures made on private property; and
  - (f) Procedures for the assumption of the small operator assistance program pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87. The cabinet shall assume and implement that program and apply for and administer funds as may be provided pursuant to that act and such state funds as may be provided for the program.
- (3) In addition to any other authority, power, and duty vested in it by law, the cabinet shall have and exercise broad authority, power, and duty to:
- (a) Require those persons who wish to engage in surface coal mining and

- reclamation operations to submit application for a permit from the cabinet to conduct the operations, and to include in that application all information required by the cabinet pertaining to that operation;
- (b) Issue, deny, or modify under such conditions as the cabinet may prescribe, permits to conduct surface coal mining and reclamation operations within the Commonwealth;
  - (c) Enter and inspect any permitted surface coal mining and reclamation operation or any known or suspected unpermitted mining operation for the purpose of ascertaining compliance with any provision of this chapter or of the permit;
  - (d) Order the cessation of mining activities, and if necessary impose affirmative abatement obligations, upon the permittee, operator, or person when, upon inspection, the cabinet determines that this section or any permit condition is being or has been violated so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth;
  - (e) Order a person, permittee, or an operator to comply with the requirements of this section or his permit if inspection reveals a violation of the conditions of his permit or of any provision of this section;
  - (f) Order a permittee to appear and show cause why his permit should not be suspended or revoked and his bond forfeited if the cabinet determines that the permittee or operator or the permitted operation has a pattern of violations of this section or permit conditions, and has willfully violated this section or permit conditions or a pattern of violations exists and that the violations are caused by the operator's or permittee's unwarranted failure to comply with this section or permit conditions;
  - (g) Require, increase, release, or decrease, under such conditions as the cabinet may prescribe, reclamation performance bonds and cause the forfeiture and

- collection of those bonds where the permittee has abandoned the operation or for which the permit under which the bond was given has been revoked or has expired without the required reclamation;
- (h) To administratively impose, in lieu of those civil penalties provided for in KRS 350.990, civil penalties of up to five thousand dollars (\$5,000) per day for violations of permit conditions, this section, or any orders of the cabinet and enforce the administrative assessment of the penalties by initiating civil action in ~~the Franklin Circuit Court or in~~ any court having jurisdiction of the defendant;
  - (i) Conduct hearings and make investigations of any matter relating to the regulation of surface coal mining and reclamation operations, and provide for the assessment and payment of civil penalties including the placement of proposed civil penalty assessments into an escrow account prior to a contest on the amount of the assessment, consistent with the process of law;
  - (j) Provide for variances or exceptions consistent with KRS 350.450 from or in addition to mining performance standards, recognizing the specific characteristics inherent in:
    - 1. Steep slope mining;
    - 2. Mountaintop removal;
    - 3. Relatively low acreage disturbance or annual coal production;
    - 4. Prime farmland mining as defined by the United States Department of Agriculture, and to provide for other variances where land uses and watersheds will be improved; and
    - 5. Postmining uses different from and as beneficial as the premining uses;
  - (k) Receive and expend funds or aid from whatever source to accomplish the purposes of this chapter; and
  - (l) Propose and promulgate regulations to accomplish the purposes of this

section.

- (4) The cabinet shall not promulgate regulations which are inconsistent with the Surface Mining Control and Reclamation Act of 1977, PL 95-87.
- (5) Any person who violates a provision of this section or the regulations promulgated pursuant thereto shall be subject to those penalties and remedies set forth in KRS 350.990 except as provided for in subsection (3)(h) of this section.

➔Section 252. KRS 350.509 is amended to read as follows:

The commission shall be attached to the cabinet for administrative purposes and staffed by the Office of the Reclamation Guaranty Fund established pursuant to KRS 350.512.

The commission shall:

- (1) Review, recommend, and promulgate administrative regulations pursuant to KRS Chapter 13A, which are necessary to:
  - (a) Monitor and maintain the fund;
  - (b) Establish a structure for the administration of processing claims and making payments;
  - (c) Establish mechanisms for review of the viability of the fund and criteria for determining when a recommendation shall be made to the secretary of the cabinet to close the fund for failure to maintain actuarial soundness;
  - (d) Set the schedule of penalties consistent with this chapter associated with late payment, failure to pay, and defrauding the commission through the submission of fraudulent information or withholding requested documentation;
  - (e) Review, in accordance with the applicable administrative regulations of the cabinet and KRS 350.515 and 350.518, all assignments of permittee classification of mine type and assessment of established fees; and
  - (f) Establish a structure for the payment of the assessments required in KRS 350.515(2)(b) and 350.518;

- (2) Notify permittees of suspension or reinstatement of the fees required by KRS 350.518(2);
- (3) Employ, in accordance with KRS 45A.690 to 45A.725, a certified public accountant in good standing to perform an annual audit of the fund for the first five (5) years of the operations of the fund. Thereafter, the commission shall have audits performed every two (2) years or more frequently as determined necessary by the commission. Audit results shall be reported to the commission and to the Governor;
- (4) Employ, in accordance with KRS 45A.690 to 45A.725, a qualified actuary to perform an actuarial study annually for the first three (3) years of the operations of the fund. Thereafter, the commission shall have actuarial studies performed every two (2) years or more frequently as determined necessary by the commission. Results of these studies shall be reported to the commission and to the Governor;
- (5) Perform all functions necessary and authorize expenditures from the fund necessary to carry out the provisions of law and the administrative regulations of the commission;
- (6) Report to the Governor and the Interim Joint Committee on Natural Resources and Environment no later than December 31 of each year as to the financial status of the reclamation guaranty fund;
- (7) Conduct investigations and issue subpoenas on behalf of the commission to verify reporting, payment, and other activities of permittees related to the fund. All documents produced in response to investigations and subpoenas by the commission shall remain confidential and not subject to the provisions of KRS 61.870 to 61.882; and
- (8) Bring an action in any~~Franklin~~ Circuit Court ***of competent jurisdiction*** against any permittee for the recovery of funds spent by the commission by reason of forfeiture of that permittee. The commission may utilize the legal department of the cabinet for this purpose.

➔Section 253. KRS 350.610 is amended to read as follows:

- (1) The secretary of the Energy and Environment Cabinet is hereby authorized to establish a planning process enabling objective decisions based upon competent and scientifically sound data as to which, if any, lands of the Commonwealth are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in this chapter; provided, that any such designation shall not prevent coal or other mineral exploration of any area so designated.
- (2) Upon petition and hearing pursuant to subsection (6) of this section, the secretary shall designate an area as unsuitable for all or certain types of surface coal mining operations, if the secretary determines that reclamation pursuant to this chapter is not technologically and economically feasible.
- (3) Upon petition and hearing pursuant to subsection (6) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:
  - (a) Be incompatible with existing state and local land use plans; or
  - (b) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values, and natural systems; or
  - (c) Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, and such lands to include aquifers and aquifer recharge areas; or
  - (d) Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.
- (4) Determinations of the unsuitability of land for surface coal mining shall be integrated as closely as possible with present and future land use planning and

regulation processes at any appropriate level of government, including but not limited to any valid exercise of authority of a municipality or county, acting independently or jointly, pursuant to KRS Chapter 100.

- (5) The requirements of this section shall not apply to lands on which coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this chapter or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.
- (6) Other provisions of this chapter relating to hearings to the contrary notwithstanding, any person having an interest which is or may be adversely affected shall have the right to petition the cabinet to the extent such a petition would be consistent with subsections (2) and (3) of this section, to have a specific and well-defined area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts which shall be specific as to the petitioner's designated area, including a justification that the criteria alleged occur throughout and form a significant feature, and shall be based upon objective evidence which would tend to establish the allegations. The cabinet shall make a determination or finding whether the petition is complete, incomplete, or frivolous. Within ten (10) months after the receipt of the petition, the cabinet shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing, pursuant to regulations promulgated by the cabinet to implement this section, provided that when a permit application is pending before the cabinet and such application involves an area in a designation petition, the cabinet shall hold the hearing on the petition within ninety (90) days of its receipt. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after such a

hearing, the cabinet shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held. Within thirty (30) days after receipt of an order, determination, finding, or decision by the cabinet or the secretary hereunder, any applicant, or any person with an interest which is or may be adversely affected and who is aggrieved by the order, determination, finding, or decision of the cabinet or secretary, may obtain judicial review thereof by appealing to the Circuit Court of Franklin County or the Circuit Court of the county where the land is located pursuant to the provisions of KRS 224.10-470.

- (7) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement on:
  - (a) The potential coal resources of the area;
  - (b) The demand for coal resources;
  - (c) The impact of such designation on the environment, the economy, and the supply of coal; and
  - (d) The characteristics of the petition area including a justification that the criteria alleged occur throughout the petition area and form a significant feature.
- (8) Subject to subsection (5) of this section, the cabinet shall not issue a permit to conduct surface coal mining and reclamation operations in contravention of any designation or any decision on any petition pursuant to subsection (6) of this section regarding any surface area designated unsuitable for mining; nor shall the cabinet issue a permit to conduct surface coal mining and reclamation operations in an area under study for such designation in an administrative proceeding already commenced under subsection (6) of this section.

➔Section 254. KRS 351.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:

- (a) "Adulterated specimen" means a specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration;
- (b) "Approved" means that a device, apparatus, equipment, or machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
- (c) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
- (d) "Board" means the Mining Board created in KRS 351.105;
- (e) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
- (f) "Commission" means the Mine Safety Review Commission created by KRS 351.1041;
- (g) "Commissioner" means commissioner of the Department for Natural Resources;
- (h) "Department" means the Department for Natural Resources;
- (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
- (j) "Excavations and workings" means the excavated portions of a mine;
- (k) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;

- (l) "Gassy mine." All mines shall be classified as gassy or gaseous;
- (m) "Illicit substances" includes prescription drugs used illegally or in excess of therapeutic levels as well as illegal drugs;
- (n) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- (o) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (p) "Medical review officer" or "MRO" means a licensed physician with knowledge of substance abuse disorders, laboratory testing, chain of custody, collection procedures, and the ability to verify positive, confirmed test results. The MRO shall possess the necessary medical training to interpret and evaluate a positive test result in relation to the person's medical history or any other relevant biomedical information;
- (q) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, but which are administered as distinct units, shall be considered a separate mine;
- (r) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the persons employed therein;
- (s) "Mine manager" means a certified or noncertified person whom the licensee

- places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
- (t) "Open-pit mine" shall include open excavations and open-cut workings, including but not limited to auger operations and highwall mining systems for the extraction of coal;
  - (u) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
  - (v) "Permissible" refers to any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration and that meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the approving agency;
  - (w) "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any oncoming shift;
  - (x) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
  - (y) "Serious physical injury" means an injury which has a reasonable potential to cause death;
  - (z) "Shaft" means a vertical opening through the strata that is used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
  - (aa) "Slope" means an inclined opening used for the same purpose as a shaft;
  - (ab) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;

- (ac) "Supervisory personnel" means a person certified under the provisions of this chapter to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
  - (ad) "Division" means the Division of Mine Safety;
  - (ae) "Director" means the director of the Division of Mine Safety;
  - (af) "Probation" means the status of a certification or license issued by the Division of Mine Safety that conditions the validity of the certification or license upon compliance with orders of the Mine Safety Review Commission; and
  - (ag) "Final order of the commission" means an order which has not been appealed to ~~a~~the Franklin Circuit Court *of competent jurisdiction* within thirty (30) days of entry, or an order affirming the commission's order that has been entered by any court within the Commonwealth and for which all appeals have been exhausted.
- (2) Except as the context otherwise requires, this chapter applies only to commercial coal mines.
- (3) The definitions in KRS 352.010 apply also to this chapter, unless the context requires otherwise.
- ➔Section 255. KRS 351.102 is amended to read as follows:
- (1) No person shall be assigned mining duties by a licensee as a laborer or supervisor unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section.
  - (2) The division shall require that all applicants for certified miner and initial applicants for other mining certifications pursuant to this chapter shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183.
  - (3) A permit as trainee miner shall be issued by the commissioner to any person who

has submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183, and has completed a program of education of a minimum of forty (40) hours for underground mining or twenty-four (24) hours for surface mining comprised of sixteen (16) hours of classroom training and eight (8) hours of mine specifics or who has completed a certified mine technology program and has passed an examination approved by the commissioner. An additional eight (8) hours of mine-specific training shall be administered to the trainee miner by the licensee, which training shall be documented on a form approved by the commissioner. This education and training program shall be determined and established by the board, as provided in KRS 351.106. A requirement for a permit as a trainee miner shall be one (1) hour of classroom training dedicated to alcohol and substance abuse education.

- (4) Trainee miners shall work within the sight and sound of a certified miner.
- (5) Any miner holding a certificate of competency and qualification may have one (1) person working with him and under his direction as a trainee miner. Any person certified as a mine foreman or assistant mine foreman shall have no more than five (5) persons working under his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining.
- (6) A certificate of competency and qualification as a miner shall be issued by the commissioner to any person who has a minimum of forty-five (45) working days' experience within a thirty-six (36) month period as a trainee miner and demonstrated competence as a miner. Any trainee miner who exceeds six (6) months in obtaining the forty-five (45) working days of experience required in this section, shall submit proof of alcohol- and drug-free status in accordance with the provisions of KRS 351.182 and 351.183.
- (7) All examinations for the certification of a miner shall be of a practical nature and shall determine the competency and qualification of the applicant to engage in the

mining of coal with reasonable safety to himself and his fellow employees. The examination may be given orally, upon approval by the commissioner, if the miner is unable to read or comprehend a written examination.

- (8) Examinations shall be held in any regional office during regular business hours.
- (9) If the commissioner or his authorized representative finds that an applicant is not qualified and competent, he shall notify the applicant as soon as possible, but in no case more than thirty (30) days after the date of examination.
- (10) Any applicant aggrieved by an action of the commissioner or his authorized representative in failing or refusing to issue a certificate of qualification and competency shall, within ten (10) days of notice of the action complained of, appeal to the commissioner who shall either affirm the action or issue the certificate to the applicant.
- (11) If the applicant is aggrieved by the action of the commissioner, he may appeal to the commission which shall hold a hearing on the matter in accordance with KRS Chapter 13B.
- (12) The applicant may appeal from the final order of the commission by filing in the Franklin Circuit Court or the Circuit Court of the county where the applicant resides a petition for appeal in accordance with KRS Chapter 13B.

➔Section 256. KRS 351.175 is amended to read as follows:

- (1) The operation of a coal mine in Kentucky is a privilege granted by the Commonwealth of Kentucky to a licensee who satisfies the requirements of this section and demonstrates that the mine is or will be operated in a safe manner and in accordance with the laws of this Commonwealth.
- (2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the owner, operator, lessee, or licensee of each mine shall procure from the department a license to operate the mine, and the license shall not be transferable. Any owner, operator, lessee, or licensee who assumes control of a mine, opens a new mine, or

reopens an abandoned mine during any calendar year shall procure a license before mining operations are begun.

- (3) The license shall be in printed form as the commissioner may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.
- (4) Requests for a license shall be made to the department and shall be accompanied by a United States postal money order or cashier's check drawn in favor of the State Treasurer in an amount established by administrative regulations of a minimum of one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The license shall be issued when the following are properly submitted to the commissioner:
  - (a) The annual report of the licensee and the annual mine map required in KRS 351.170 and 352.450;
  - (b) A certification from the commissioner of the Department of Workers' Claims that the licensee has provided positive proof of compliance with the provisions of KRS Chapter 342;
  - (c) A certification from the commissioner of the Department of Revenue that the licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
  - (d) Mine seal construction plan filed with the state and approved by MSHA;
  - (e) Roof control plan filed with the state and approved by MSHA;
  - (f) The ventilation plan required in KRS 352.020; and
  - (g) An approved emergency action plan required by KRS 352.640.
- (5) The department shall immediately revoke any license if the department receives:
  - (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued by the commissioner of the Department of Workers' Claims; or
  - (b) Notice from the commissioner of the Department of Revenue that the licensee is a "delinquent taxpayer" as defined in KRS Chapter 131.

- (6) The commissioner, the director of the Division of Mine Safety, or the mine safety specialist shall have the authority to stop production or close any mine whose operator fails to procure a license or fails to furnish a certification of workers' compensation coverage as required under this section.
- (7) The department shall be authorized to seek injunctive relief for any violation of this section. Revocation of a license by the department shall be an administrative function of the department. Appeals from revocation by the department shall be brought in the Franklin Circuit Court or the Circuit Court of the county of the mine's licensed location.
- (8) A license which has been revoked under the "delinquent taxpayer" provision shall not be reissued until a written tax clearance has been received from the commissioner of revenue.
- (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-thirds (2/3) of the governing body of that cemetery vote in approval of the operation. The application for a license shall contain an affidavit setting forth the approval of the cemetery's governing body. This subsection applies only to those cemeteries with governing bodies.

➔Section 257. KRS 351.194 is amended to read as follows:

- (1) The Mine Safety Review Commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish administrative hearings procedures to be followed in determining if violations of mine safety laws, including, but not limited to, violations that meet the criteria established in KRS 351.025(1) or (2), have occurred and to establish a process to review recommended orders from any hearing officers acting on behalf of the commission. The procedures shall follow the requirements of KRS Chapter 13B and this chapter.
- (2) The chair or a majority of the Mine Safety Review Commission may convene a meeting of the commission at which it shall consider whether to schedule a hearing

regarding any licensee, coal operation, or other person involved in the mining of coal.

- (3) If the commission determines that there is probable cause to believe that the licensee, coal operation, or other person against whom the department has made allegations of unsafe work practices or other violation of applicable law is guilty of an alleged violation, the commission shall schedule a hearing at which the department shall offer evidence in support of the allegations made by it. The licensee, coal operation, or other person against whom the allegations are made shall be given not less than twenty (20) days' written notice of the charges against him, together with the date, time, and place at which the charges shall be heard, and of his opportunity to be represented by counsel, produce evidence and witnesses on his behalf, and examine the evidence and documents that may be produced against him. The commission may also be represented by counsel and shall not be bound by the technical rules of evidence, but its order shall be based upon competent evidence. Any licensee or other person summoned to appear at a hearing in the manner established in this subsection may, in writing, waive the notice required to be given to him.
- (4) The commission may proceed with its hearing of charges made by the department against any licensee, coal operation, or other person who, after being duly notified in accordance with the requirements of this section, fails to appear at or participate in the hearing and who fails to assert any legitimate basis for the failure.
- (5) Within ninety (90) days after hearing, the commission shall issue an order in which it sets out its determinations concerning each matter coming before it. Copies of the order shall be provided to all parties to the hearing. The department shall carry out or enforce, as appropriate, the order of the commission, which may include, though not be limited to, the imposition of civil penalties, revocation, suspension, or probation of the mine license or the miner's certification.

- (6) The commission may modify a civil penalty or fine established under this chapter, under criteria established by the commission by administrative regulations.
- (7) In assessing monetary penalties within the limits provided in KRS 351.025, the commission shall consider the operator's history of previous violations, the appropriateness of the penalty to the size of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation, and whether a penalty has been imposed by the Federal Mine Safety and Health Act for a violation that arose out of the same set of facts or circumstances.
- (8) An appeal of an order of the commission shall be filed in the Franklin Circuit Court or the Circuit Court of the county where the mine operation is located within thirty (30) days of entry of the order.

➔Section 258. KRS 362.1-122 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a statement of qualification if:
  - (a) The limited liability partnership does not deliver its annual report with the Secretary of State on or before the due date;
  - (b) The limited liability partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more; or
  - (c) The limited liability partnership does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
- (2) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for the administrative dissolution of a statement of qualification, then the Secretary of State shall serve the partnership with written

notice of the determination by mailing such notice by first class mail to the limited liability partnership at the street address of the partnership's chief executive office as set forth in the partnership's most recent annual report filed pursuant to KRS 362.1-121 or, if none, that set forth in the statement of partnership qualification filed pursuant to KRS 14A.6-010 or the statement of foreign qualification filed by a foreign limited liability partnership pursuant to KRS 362.1-951.

- (3) If the limited liability partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, then the Secretary of State shall administratively dissolve the statement of qualification by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original certificate and serve a copy on the limited liability partnership by mailing such certificate by first class mail to the partnership at its chief executive office address. The administrative dissolution of a statement of qualification shall not terminate the authority of the registered agent of the partnership.
- (4) The administrative dissolution of a statement of qualification affects only the partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.
- (5) The partnership whose statement of qualification has been administratively dissolved may apply to the Secretary of State for reinstatement of the statement at any time after the effective date of the dissolution by filing an application that:
  - (a) Recites the name of the partnership, identifies the statement that was administratively dissolved and the effective date of that administrative dissolution;
  - (b) States that the ground or grounds for dissolution either did not exist or have

- been eliminated;
- (c) States that the name of the partnership satisfies the requirements of KRS 14A.3-010; and
  - (d) Is accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report.
- (6) If the Secretary of State determines that the application contains the information required by subsection (5) of this section and that the information provided therein is correct, then the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate, and serve a copy on the partnership by mailing the certificate by first class mail to the partnership at its chief executive office address. When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the statement or statements shall be in full force and effect as if the administrative dissolution had never occurred.
- (7) If the Secretary of State denies a partnership's application for reinstatement of its statement of qualification following administrative dissolution, then the Secretary of State shall serve the partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the partnership at its chief executive office address. The partnership may appeal the denial of reinstatement to the Franklin Circuit Court, *or the Circuit Court of the county where the partnership is located, or, if there is a qualifying Kentucky county, then the Circuit Court of any county where the Secretary of State maintains an office,* within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of

State's certificate of administrative dissolution, the partnership's application for reinstatement, and the Secretary of State's notice of denial. The court may summarily order the Secretary of State to reinstate the statement of qualification or may take any other action the court considers appropriate. The court's final decision may be appealed as in any other civil proceedings.

➔Section 259. KRS 362.1-803 is amended to read as follows:

- (1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the Circuit Court for the county in which the registered office is located or, if none, the Franklin Circuit Court *or the Circuit Court of any county where the Secretary of State maintains an office*, for good cause shown, may order judicial supervision of the winding up.
- (2) The legal representative of the last surviving partner may wind up a partnership's business.
- (3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to KRS 362.1-807, settle disputes by mediation or arbitration, and perform other necessary acts.

➔Section 260. KRS 365.573 is amended to read as follows:

- (1) Upon the filing of an application for registration and payment of the application fee prescribed in KRS 365.571, the Secretary may cause the application to be examined for conformity with KRS 365.561 to 365.613.
- (2) The applicant shall provide any additional pertinent information requested by the Secretary, including a description of the design mark, and may make, or authorize

the Secretary to make any amendments to the application as are reasonably requested by the Secretary, or deemed advisable by the applicant to respond to any rejection or objection.

- (3) The Secretary may require the applicant to disclaim exclusive rights in an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration under another application if the disclaimed matter has become distinctive of the applicant's or registrant's goods or services.
- (4) The Secretary may amend the application with the applicant's agreement or may require a substitute application to be submitted.
- (5) The Secretary shall advise the applicant if he is not entitled to registration and state the reasons for the decision. The applicant shall have a reasonable period of time as set out in administrative regulations promulgated by the Secretary, in which to reply to or amend the application, in which event the application shall then be reexamined. This procedure may be repeated until:
  - (a) The Secretary finally refuses registration of the mark; or
  - (b) The applicant fails to reply to or amend the application within the specified period, whereupon the application shall be deemed to have been withdrawn.
- (6) If the Secretary finally refuses registration of the mark, the applicant may appeal the decision to the Franklin Circuit Court or the Circuit Court of the county where the applicant resides or has a principal place of business. The court may summarily order the Secretary to register the mark on proof that all the statements in the application are true and that the mark is otherwise entitled to registration. The Secretary of State shall not be liable for any court costs. The court's final decision may be appealed as in other civil proceedings.

- (7) If two (2) or more applications are concurrently being processed by the Secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the Secretary shall grant priority to the applications in the order of filing. If a prior-filed application is granted a registration, the other applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration on grounds of prior or superior rights to the mark, in accordance with the provisions of KRS 365.591.

➔Section 261. KRS 365.607 is amended to read as follows:

- (1) Actions to require cancellation of a mark registered pursuant to KRS 365.561 to 365.613 or to compel registration of a mark pursuant to KRS 365.561 to 365.613 shall be brought in the Franklin Circuit Court or the Circuit Court of the county where the mark is to be registered. In an action to compel registration, the proceeding shall be based solely upon the record before the Secretary. In an action for cancellation, the Secretary shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the ~~Franklin~~ Circuit Court and shall be given the right to intervene in the action.
- (2) In any action brought against a nonresident registrant, service may be effected upon the Secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under KRS 454.210(3).

➔Section 262. KRS 367.656 is amended to read as follows:

- (1) (a) A filing pursuant to KRS 367.653 and this section shall be accepted unless the Attorney General notifies the professional solicitor or fundraising consultant otherwise, within fourteen (14) calendar days of the receipt of filing. If a filing is not accepted, the Attorney General shall notify the affected charity at the time of rejection. Within seven (7) calendar days after receiving a notice that the filing requirements are not satisfied, the professional solicitor or

fundraising consultant may request a hearing. The hearing shall be held in accordance with KRS Chapter 13B.

- (b) A professional solicitor or fundraising consultant may submit an amended filing upon receiving notice that his prior filing has not been accepted.
- (2) The Attorney General may revoke, suspend, or refuse to renew the registration of a professional solicitor or fundraising consultant if:
- (a) He has violated any provision of KRS 367.650 to 367.670 or any administrative regulations promulgated by the Attorney General pursuant to those sections;
  - (b) He or any of his principal officers have refused or failed, after notice, to produce any records or disclose any information required pursuant to KRS 367.650 to 367.670, or any administrative regulations promulgated by the Attorney General pursuant to those sections.
  - (c) He has made a material false statement in an application, statement, or report required to be filed under KRS 367.650 to 367.670.
- (3) Any party to a hearing who is aggrieved by the final order may seek judicial review by filing an appeal in the Franklin Circuit Court *or the Circuit Court of the county where the party resides* in accordance with KRS Chapter 13B.
- (4) The Attorney General may bring a civil action directly in the Franklin Circuit Court or in the Circuit Court of any county in which the fundraising campaign involving the professional solicitor or fundraising consultant is being conducted to revoke or suspend the registration statement for any of the grounds set forth in this section.

➔Section 263. KRS 367.690 is amended to read as follows:

- (1) Any person who dispenses, offers to dispense, or attempts to dispense contact lenses in violation of KRS 367.680 to 367.690 or the administrative regulations promulgated by the Attorney General concerning the dispensing of contact lenses shall, in addition to any other penalty provided by law, pay a civil penalty to the

office of the Attorney General in an amount not to exceed five thousand dollars (\$5,000) for each violation.

- (2) Any person charged in a complaint filed by the Attorney General with violating any of the provisions of KRS 367.680 to 367.690 shall be entitled to an administrative hearing conducted in accordance with the provisions of KRS Chapter 13B.
- (3) Any person aggrieved by a final order issued under the authority of this section shall have the right of an appeal by filing a petition with the Franklin Circuit Court *or the Circuit Court of any county where the person resides or conducts business* in accordance with KRS Chapter 13B.

➔Section 264. KRS 367.973 is amended to read as follows:

- (1) The Attorney General may deny, suspend, or revoke any license granted under KRS 367.940 or levy civil penalties not to exceed five hundred dollars (\$500) or both or place the licensee on probation for up to twelve (12) months for any of the following causes:
  - (a) Obtaining a license through false statement or misrepresentation;
  - (b) Conducting, or undertaking a substantial step toward conducting his business in an unfair, false, misleading, or deceptive manner;
  - (c) Entry of a final civil judgment against the licensee for a violation of KRS 367.934 to 367.974, or for entry of a final judgment of conviction for a violation of KRS 367.991;
  - (d) Entry of a final judgment of conviction against the licensee for any crime involving moral turpitude; or
  - (e) Violating any of the provisions of KRS 367.932 to 367.974 or any lawful order or administrative regulation made or promulgated under KRS 367.932 to 367.974.
- (2) The Attorney General shall, before denying, suspending, or revoking a license or imposing fines, file a complaint alleging the grounds upon which the licensee may

have his license denied, revoked, or suspended or have fines imposed. A copy of the complaint, together with any exhibits, shall be served upon the defendant licensee at the licensee's last known address. The complainant shall show certification that there has been service by writing to the last known address. The answer shall be returned to the Attorney General's office within twenty (20) days of receipt of the complaint by the defendant licensee. Upon receipt of an answer to a complaint, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

- (3) Any person aggrieved by a final order issued under authority of this section shall have the right of an appeal by filing a petition with the Franklin Circuit Court or the Circuit Court of the county where the person resides in accordance with KRS Chapter 13B.

➔Section 265. KRS 367.97534 is amended to read as follows:

- (1) The Attorney General may deny, suspend, or revoke any license granted under KRS 367.97504 or levy civil penalties not to exceed five hundred dollars (\$500), or both, or place the licensee on probation for up to twelve (12) months for any of the following causes:
- (a) Obtaining a license through false statement or misrepresentation;
  - (b) Conducting or undertaking business in an unfair, false, misleading, or deceptive manner;
  - (c) Entry of a final judgment or conviction for any crime involving moral turpitude; or
  - (d) Violating any of the provisions of KRS 367.97501 to 367.97537 or any administrative regulation promulgated or order made pursuant to KRS 367.97501 to 367.97537.
- (2) The Attorney General shall, before denying, suspending, or revoking a license or imposing civil penalties, issue a complaint alleging the grounds upon which the licensee may have its license denied, revoked, or suspended, or have civil penalties

imposed. A copy of the complaint, together with any exhibits, shall be served upon the defendant licensee at the licensee's last ~~known~~<sup>known</sup> address. The licensee shall file an answer with the Attorney General's office within twenty (20) days of receipt of the complaint. Upon receipt of an answer to a complaint, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

- (3) Any party aggrieved by the final order of the Attorney General in denying, suspending, or revoking a license, or imposing civil penalties may appeal the final order to the Franklin Circuit Court or the Circuit Court of the county where the party resides in accordance with KRS Chapter 13B.
- (4) All of the remedies, powers, and duties provided for the Attorney General by KRS 376.190 to 367.300 and KRS 367.990 pertaining to acts declared unlawful by KRS 367.170 shall apply with equal force and effect to violations of KRS 367.97501 to 367.97537.
- (5) Nothing in KRS 367.97501 to 367.97537 shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General, which he is authorized to exercise or perform under any other provision of law including direct court action to obtain injunctive relief and revocation of license. The Attorney General has the authority to promulgate any administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537.

➔Section 266. KRS 393.022 is amended to read as follows:

- (1) As used in this section:
  - (a) "Book-entry bond" means a savings bond maintained by the United States Treasury in electronic or paperless form as a computer record;
  - (b) "Definitive bond" means a savings bond issued by the United States Treasury in paper form;
  - (c) "Final maturity" means the date a United States savings bond ceases to earn interest; and

- (d) "United States savings bond" means a book-entry bond or definitive bond issued by the United States Treasury.
- (2) This section shall apply to the escheat of United States savings bonds to the Commonwealth of Kentucky.
- (3) A United States savings bond held or owing in this state by any person, or issued or owed in the course of a holder's business, or by a state or other government, governmental subdivision, agency, or instrumentality, and all proceeds thereof, shall be presumed abandoned in this state if:
- (a) The last known address of the owner of the United States savings bond is in this state; and
- (b) The United States savings bond has remained unclaimed and unredeemed for three (3) years after final maturity.
- (4) United States savings bonds which are presumed abandoned under subsection (3) of this section shall escheat to the Commonwealth of Kentucky three (3) years after becoming abandoned property, and all property rights and legal title to and ownership of the United States savings bonds or proceeds from the bonds, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the Commonwealth of Kentucky according to the procedure set forth in subsections (5) to (8) of this section.
- (5) If no claim has been filed in accordance with the provisions of this chapter, the department shall commence a civil action in any~~the Franklin~~ Circuit Court of competent jurisdiction for a determination that United States savings bonds have escheated to the Commonwealth of Kentucky and the Commonwealth of Kentucky is the owner of the savings bonds.
- (6) (a) The department shall provide notice of the action by publication in at least two (2) newspapers of statewide circulation in accordance with the provisions of KRS 424.110 to 424.215.

- (b) The notice shall list all persons to be served and shall notify those persons that:
  - 1. The person has been sued in a named court;
  - 2. The person must answer the petition or other pleading or otherwise respond, on or before a specified date not less than fifty (50) days after the date the notice is first published; and
  - 3. If the person does not answer or otherwise respond, the petition or other pleading shall be taken as true and judgment, the nature of which shall be stated, will be rendered accordingly.
- (7) Prior to providing notice by publication as required by subsection (6) of this section, the Treasurer or his or her designee shall file with the court an affidavit stating all the following that apply:
  - (a)
    - 1. The residences of all named persons sought to be served, if known;
    - 2. The names of all persons whose residences are unknown after reasonable effort to ascertain them; and
    - 3. The specific efforts made to ascertain the unknown residences;
  - (b) That the affiant has made a reasonable but unsuccessful effort to ascertain the names and residences of any persons sought to be served as unknown parties, and the specific efforts made to ascertain the names and residences;
  - (c) That the department is unable to obtain service of summons on the persons in the state; and
  - (d) That the case is one in which the department, with due diligence, is unable to serve summons on the person in this state and:
    - 1. The case relates to personal property in this state, if any person has or claims an interest in the property; or
    - 2. In which the relief demanded consists wholly or partly in excluding the person from any interest in the property.

- (8) If:
- (a) No person files a claim or appears at the hearing to substantiate a claim; or
  - (b) The court determines that a claimant is not entitled to the property claimed by the claimant;
- then the court, if satisfied by the evidence that the department has substantially complied with the laws of the Commonwealth, shall enter a judgment that the subject United States savings bonds have escheated to the Commonwealth of Kentucky, and all property rights and legal title to and ownership of the United States savings bonds or proceeds from the bonds, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the Commonwealth of Kentucky.
- (9) The department shall redeem the United States savings bonds escheated to the Commonwealth, and the proceeds from the redemption shall be deposited into a separate subsidiary account of the abandoned property fund.
- (10) After a judgment of escheat has been entered pursuant to subsection (8) of this section, the Treasurer or his or her designee may, at his or her discretion, make full or partial payment of requests for the proceeds of United States savings bonds to persons to whom, in the opinion of the Treasurer or his or her designee, the Commonwealth should in fairness and equity allow payment.

➔Section 267. KRS 393.082 is amended to read as follows:

- (1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

- (2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or his or her designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, offices, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.
- (3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.
- (4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the

payment of the workers' compensation liabilities of a bankrupt employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.

- (5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or the commissioner's designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.
- (6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.
- (7) All claimants shall cooperate with information requests from the Department of Workers' Claims concerning prior payments of workers' compensation benefits. The commissioner of the Department of Workers' Claims or his or her designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the commissioner of the Department of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court *or the Circuit Court of any county where a witness may be found.*
- (8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust

fund is challenged.

- (9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the commissioner of the Department of Workers' Claims, any agency, or employee, beyond that expressly set forth in a comprehensive distribution plan.
- (10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the commissioner of the Department of Workers' Claims.
- (11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.
- (12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by KRS 342.320, as well as the approval of the commissioner or his or her designee.
- (13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

➔Section 268. KRS 441.085 is amended to read as follows:

- (1) No person responsible for the supervision or maintenance of a jail shall knowingly cause or permit the facility to be operated in violation of the regulations and laws of this state pertaining to the health, safety, security, and operation of jails.
- (2) When the department, pursuant to KRS 441.075, orders a county jailer, if it is determined he is responsible, or the fiscal court, to correct or eliminate a violation

of any state regulation or law pertaining to the operations and maintenance of jails and the county jailer or fiscal court does not take corrective action to the satisfaction of the department within the time specified in the department's order, the commissioner of the department or his designee may request ~~any~~any~~[the Franklin County]~~ Circuit Court **of competent jurisdiction** to enforce the orders of the department. Any person who refuses to obey the orders of the court shall be held in civil contempt.

➔Section 269. KRS 441.095 is amended to read as follows:

Appeals from any order issued pursuant to KRS 441.055 to 441.065 shall be granted as a matter of right, and shall be taken to ~~any~~any~~[the Franklin County]~~ Circuit Court **of competent jurisdiction** within thirty (30) days from the date the order is issued by the department.

➔Section 270. KRS 452.430 is amended to read as follows:

An action against the Kentucky Board of Education ~~shall~~shall~~[, of this state, must]~~ be brought in **Franklin Circuit Court or** the county **where the cause of action arose**~~[that includes the seat of government].~~