CHAPTER 1

(HB 43)

AN ACT relating to tourism development and declaring an emergency.

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

Section 1. KRS 154.29-010 is amended to read as follows:

As used in KRS 139.536 and KRS 154.29-010 to 154.29-060, unless the context clearly indicates otherwise:

(1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 154.29-050, on behalf of the authority and an approved company on or before June 30, 2002, with respect to a tourism attraction project;

(2) "Approved company" means any eligible company approved by the secretary of the Tourism Development Cabinet and the authority pursuant to KRS 154.29-050 that is seeking to undertake a tourism attraction project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;

(b) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(d) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

(e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;

(f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and

(g) All other costs comparable with those described in this subsection;

(4) "Authority" means the Kentucky Economic Development Finance Authority as set forth in KRS 154.20-010;

(5) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;

(6) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Development Cabinet pursuant to KRS 154.29-030. An eligible company may operate or intend to operate directly or indirectly through a lessee;

(7) "Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;

(8) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 154.29-010 to 154.29-060;

(9) "Inducements" means the Kentucky sales tax refund as prescribed in KRS 139.536;

(10) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 154.29-010 to 154.29-060;

(11) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;

(12) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a Kentucky crafts and products center, or an entertainment destination center. A tourism attraction shall not include any of the following:

(a) Lodging facilities, unless***:***

1. The facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency***; or***

2. The facilities involve the restoration or rehabilitation of a structure that is listed individually in the National Register of Historic Places or are located in a National Register Historic District and certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council;

(b) Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and

(c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

(13) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

Section 2. Whereas the restoration or rehabilitation of historic structures in the Commonwealth is of utmost importance to preserve our cultural heritage, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved February 7, 2000

CHAPTER 2

(HB 97)

AN ACT relating to reorganization.

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

Section 1. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

(1) Council on Postsecondary Education;

(2) Department of Military Affairs;

(3) Department for Local Government;

(4) Kentucky Commission on Human Rights;

(5) Kentucky Commission on Women;

(6) Kentucky Commission on Military Affairs;

(7) ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~;

(8) Governor's Office of Child Abuse and Domestic Violence Services;

(9) Office of the Chief Information Officer; and

(10) Office of Coal Marketing and Export.

Section 2. KRS 132.020 is amended to read as follows:

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81, fifteen cents ($0.15) upon machinery actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) (a) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:

1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;

2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;

3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and

4. Tobacco base allotments.

(b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570, except that four hundred thousand dollars ($400,000) of the state revenue shall be paid annually to the State Treasury and credited to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ for the purpose of public education of coal-related issues.

(10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business, which, on or after January 1, 1999, includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(11) An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

(12) An ad valorem tax for state purposes of one and one-half cents ($0.015) per one hundred dollars ($100) of assessed value shall be paid on aircraft not used in the business of transporting persons or property for compensation or hire.

(13) An ad valorem tax for state purposes of one and one-half cents ($0.015) per one hundred dollars ($100) of assessed value shall be paid on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes.

Section 3. KRS 143.090 is amended to read as follows:

(1) The Transportation Cabinet shall certify to the secretary of the Revenue Cabinet by October 1 of each fiscal year the amount required for lease rental payments to the Kentucky Turnpike Authority for resource recovery road projects.

(2) The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall certify to the secretary of the Revenue Cabinet by October 1 of each year the amount of the annual lease rental payments required to be made for any energy research developmental or demonstration project undertaken by the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~. The amount so certified shall in no case exceed three million dollars ($3,000,000) in any one (1) year.

(3) Upon receiving the certifications provided for in subsections (1) and (2) of this section, the secretary of the Revenue Cabinet shall cause the certified amounts to be deposited from the proceeds of the tax levied by KRS 143.020 to the credit of the transportation fund and the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~, respectively, unless otherwise provided by the General Assembly in a budget bill, as follows:

(a) An amount equal to the amount certified by the Transportation Cabinet shall be deposited to the transportation fund (road fund); and

(b) An amount equal to the amount certified by the ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~] shall be transferred by appropriate interfund transfer procedures to the ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~].

(4) All tax levied by KRS 143.020 collected in excess of the amount required to be deposited to the transportation fund (road fund) or transferred to the ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~] shall be deposited by the Revenue Cabinet to the credit of the general fund.

(5) If the proceeds of the tax levied by KRS 143.020 are less than the amounts certified under subsections (1) and (2) of this section, the secretary of revenue shall prorate the proceeds to the transportation fund and the ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~] based upon the ratio of each certified amount to the total of the two (2) certified amounts.

Section 4. KRS 154.12-250 is amended to read as follows:

(1) The ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~] is established within the Office of the Governor. The council shall provide direction to the Governor in marketing efforts targeted to increasing opportunities for Kentucky coal and other products and it shall carry out other duties and responsibilities as assigned by the Governor.

(2) The Office of Coal Marketing and Export is established within the Office of the Governor. The office shall carry out the purposes of the council and provide other staff support as is deemed necessary.

(3) All personnel, equipment, supplies, and records relating to the ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~] shall be transferred to the Office of Coal Marketing and Export in the Office of the Governor.

Section 5. KRS 154.12-252 is amended to read as follows:

(1) The ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~] shall be composed of fourteen (14) members, as follows:

(a) The secretary to the Governor's Executive Cabinet, who shall serve as vice chair of the council;

(b) The secretary of the Transportation Cabinet;

(c) The deputy secretary of the Natural Resources and Environmental Protection Cabinet;

(d) The executive director of the ***Kentucky Coal Council***[~~Coal Marketing and Export Council~~];

(e) A representative of the Alliance of Kentucky Coal appointed by the Governor; and

(f) Nine (9) citizen members appointed by the Governor for terms of four (4) years. These citizen members shall include representatives of interests concerned with the marketing of Kentucky coal and other products, such as the owners or operators of companies involved in coal production, transportation, and consumption; representatives of the academic and financial communities; and representatives of

major coal and industry associations. As the terms expire, the Governor shall appoint successors for terms of four (4) years. Each citizen member shall serve until his successor is appointed.

(2) Council members shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as council members.

(3) The council shall, at a minimum, meet once every quarter.

(4) Eight (8) members of the council shall constitute a quorum for the purpose of conducting business.

(5) The council shall elect a chair on a biennial basis from the council's citizen membership.

Section 6. KRS 154.12-255 is amended to read as follows:

The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall annually or more frequently, as deemed necessary, forward recommendations to the secretary of the Cabinet for Economic Development and the Governor on areas critical to marketing Kentucky coal and other products including, but not limited to:

(1) Promotion of Kentucky coal through development of market information;

(2) Coordination of ongoing research and marketing programs relating to coal production, transportation, and consumption;

(3) Identification of national and international market developments relating to coal and other products; and

(4) Provision of advice to coal operators and other industries seeking to enter or expand domestic or export markets.

Section 7. KRS 224.46-850 is amended to read as follows:

(1) It is the intent of the General Assembly that a regional integrated waste treatment and disposal demonstration facility contain an industrial park component. The approved site for a regional integrated waste treatment and disposal demonstration facility shall be of sufficient size to accommodate new industrial and commercial concerns that can utilize the energy by-products of the treatment technologies.

(2) It shall be the responsibility of the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ to establish a plan for and develop the industrial park component of a regional integrated waste treatment and disposal demonstration facility. The industrial park component, located on property contiguous with the treatment and disposal technologies, shall be designed so as to utilize energy generated from the waste treatment technologies.

Section 8. KRS 224.46-870 is amended to read as follows:

The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall provide the cabinet with the information deemed necessary by the cabinet to project hazardous waste generation in the Commonwealth as required by KRS 224.10-100(24) and 224.46-830(2)(d).

Section 9. KRS 247.920 is amended to read as follows:

(1) Application for an alcohol production exemption certificate shall be filed with the Revenue Cabinet in such manner and in such form as may be prescribed by regulations issued by the Revenue Cabinet and shall contain plans and specifications of the structure or structures

including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of producing ethanol for fuel use and any additional information deemed necessary by the Revenue Cabinet for the proper administration of KRS 247.910 and this section. The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall provide technical assistance and factual information as requested in writing by the Revenue Cabinet. If the Revenue Cabinet finds that the facility qualifies as an alcohol production facility as defined by KRS 247.910, it shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date of issuance of the certificate.

(2) Before issuing an alcohol production tax exemption certificate, the Revenue Cabinet shall give notice in writing by mail to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~, and shall afford to the applicant and to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ an opportunity for a hearing. On like notice and opportunity for a hearing, the Revenue Cabinet shall on its own initiative revoke the certificate when any of the following appears:

(a) The certificate was obtained by fraud or misrepresentation;

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the alcohol production facilities; or

(c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of alcohol production for fuel use and is being used for a different purpose.

(3) If the circumstances so require, the Revenue Cabinet, in lieu of revoking the certificate, may modify it.

(4) On mailing of notice of the action of the Revenue Cabinet revoking or modifying a certificate as provided in subsection (5) of this section, the certificate shall cease to be in force or shall remain in force only as modified as the case may require.

(5) An alcohol production tax exemption certificate, when issued, shall be sent by certified mail to the applicant and the notice of issuance in the form of certified copies thereof shall be sent to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~. Notice of an order of the Revenue Cabinet denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder and shall be sent to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~. The applicant or holder and the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall be deemed parties for the purpose of the review afforded by subsection (6) of this section.

(6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of an alcohol production tax exemption certificate may appeal from the final ruling of the Revenue Cabinet to the Kentucky Board of Tax Appeals as provided in KRS 131.340.

(7) In the event of the sale, lease, or other transfer of an alcohol production facility, not involving a different location or use, the holder of an alcohol production tax exemption certificate for the facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the certificate. The transferee shall give written

notice of the effective date of the transfer, together with a copy of the instrument of transfer to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ and the Revenue Cabinet.

(8) In the event an alcohol production facility for which an exemption certificate is held ceases to be used for the primary purpose of alcohol production for fuel use or is used for a different purpose other than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of the change to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ and to the Revenue Cabinet.

(9) The alcohol production facility exemption certificate, upon approval, shall exempt said facilities from taxes outlined in the provisions of KRS 247.910 and this section and included in KRS Chapters 132, 136, 138, and 139. Each exemption certificate shall remain in force for a period of eight (8) years from the date of issuance and at the end of said period shall lapse. Any alcohol production facility previously exempted under the terms of KRS 247.910 and this section shall not be eligible for recertification upon completion of the eight (8) year certificate period.

Section 10. KRS 262.875 is amended to read as follows:

(1) There shall be created a committee to advise the Governor on state activities that may contribute to the conversion of farmland to nonfarm uses. The committee shall be called the Interagency Farmland Advisory Committee and the members shall be appointed by the Governor and shall include one (1) representative for each of the following:

(a) Governor's Cabinet;

(b) Finance and Administration Cabinet;

(c) Revenue Cabinet;

(d) Transportation Cabinet;

(e) Natural Resources and Environmental Protection Cabinet;

(f) ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~;

(g) Department of Agriculture;

(h) Department for Local Government;

(i) Department of Fish and Wildlife Resources;

(j) Environmental Quality Commission;

(k) Soil and Water Conservation Commission;

(l) Dean, College of Agriculture, University of Kentucky;

(m) Two (2) farmer owners and operators of one hundred fifty (150) acres or less, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization;

(n) Two (2) farmer owners and operators of more than one hundred fifty (150) acres, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization; and

(o) The joint chairpersons of the Interim Joint Committee on Agriculture and Natural Resources.

(2) The representative of the Natural Resources and Environmental Protection Cabinet shall be the chairperson of the committee, and the representative of the Soil and Water Conservation Commission shall be the vice chairperson of the committee. The staff for the committee shall be provided by the Natural Resources and Environmental Protection Cabinet.

(3) In order to advise the Governor, the committee shall review proposed state projects which will convert farmland to nonfarm use. The review shall consider alternatives to the project proposal in an effort to balance the public purpose to be served by the state project against the public purpose of conserving productive farmland.

(4) The Interagency Farmland Advisory Committee shall review proposed projects of all state agencies, including but not limited to, boards and commissions. The review shall be limited to proposed projects which will require the acquisition of more than fifty (50) acres of farmland.

(5) During the planning stage of the project and before any action is taken to acquire farmland, the state agency shall submit a report to the committee. The report shall explain the project, contain an agricultural impact assessment, highlight the location of land that must be acquired, present the reasons for needing the land, and explain the reasons for rejecting alternatives to the proposed project.

(6) All state projects shall be located to provide minimal interference with the productivity of agricultural lands of statewide importance as identified by KRS 246.065.

(7) The committee shall provide notice of the proposed project to the local community by publishing the notice in the newspaper of greatest local circulation within fifteen (15) days after receiving the report. The notice shall solicit comments on the proposal and state that a public hearing will be held upon a request received within fifteen (15) days of the last published notice. If requested, the public hearing shall be held within fifteen (15) days after receiving the request. No later than ten (10) days after the hearing, the committee shall file its report and any recommendations to the Governor. The committee may recommend to the Governor that action be taken by the Governor to alter the proposed state project if necessary to balance the public interests.

(8) A majority of the members of the committee constitutes a quorum for conducting business, and any action taken in the name of the committee requires an affirmative vote of a majority of the members present and voting.

(9) Members shall receive no compensation but shall be reimbursed for expenses incurred.

Section 11. The General Assembly hereby confirms Executive Order 98-1049, dated August 6, 1998, which changes the name of the Coal Marketing and Export Council within the Office of the Governor to the Kentucky Coal Council.

Approved February 7, 2000

CHAPTER 3

(HB 99)

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) The Office of Inspector General is established within the Office of the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) The Office of Inspector General shall be headed by an executive director appointed by the secretary of the Natural Resources and Environmental Protection Cabinet, subject to approval of the Governor as provided in KRS 12.050.

(3) The office shall:

(a) Be responsible for investigating alleged violations of environmental laws and administrative regulations;

(b) Coordinate and provide support for the Natural Resources and Environmental Protection Cabinet's participation in investigations involving the cabinet, other Kentucky state agencies, and agencies of other states and the federal government; and

(c) Be responsible for administrative investigations necessary for the effective and efficient management of the cabinet.

(4) The Office of Inspector General shall be composed of organizational entities deemed appropriate by the secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.

2. Lieutenant Governor.

3. Department of State.

(a) Secretary of State.

(b) Board of Elections.

(c) Registry of Election Finance.

4. Department of Law.

(a) Attorney General.

5. Department of the Treasury.

(a) Treasurer.

6. Department of Agriculture.

(a) Commissioner of Agriculture.

(b) Kentucky Council on Agriculture.

7. Superintendent of Public Instruction.

8. Auditor of Public Accounts.

9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:

(a) Department of State Police.

(b) Department of Criminal Justice Training.

(c) Department of Corrections.

(d) Department of Juvenile Justice.

(e) Office of the Secretary.

(f) Offices of the Deputy Secretaries.

(g) Office of General Counsel.

(h) Division of Kentucky State Medical Examiners Office.

(i) Parole Board.

(j) Kentucky State Corrections Commission.

(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

(h) Office of Inspector General.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 3. The Central Investigation Section, established within the Office of Legal Services of the Natural Resources and Environmental Protection Cabinet by Executive Order 96-697, and transferred to the secretary's office by Administrative Order No. 98-02, is abolished.

Section 4. The General Assembly confirms Executive Order 99-413, dated March 30, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

Approved February 7, 2000

CHAPTER 4

(HB 255)

AN ACT relating to anatomical gifts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) If an anatomical gift is made in Kentucky for organ transplantation for which the donor does not name a specific donee, and if the organ is deemed suitable for transplantation, the organ shall be donated to the organ procurement organization designated by the Federal Health Care Financing Administration as the organ procurement organization for the county in which the gift is made. The organ procurement organization shall use its best efforts to determine if there is a suitable recipient listed at a transplant center in a county for which it is the designated organ procurement organization.

(2) Any organ procurement organization operating in Kentucky may enter into a reciprocal agreement for the sharing of organs with one (1) or more qualified organ procurement organizations located in other states, if the organ procurement organization considers the agreement advisable, necessary, or expedient, and consistent with the best interests of Kentucky citizens who are awaiting transplantation. Before the organ procurement organization enters into a reciprocal agreement, it shall obtain approval of the proposed agreement from the United Network for Organ Sharing, or its successor, acting as the Organ Procurement and Transplantation Network as designated by the United States Department of Health and Human Services.

(3) To avoid the wasting of donated organs, to avoid futile transplants, to promote patient access to transplantation, and to promote the efficient management of organ placement, except as otherwise provided by any agreement entered into under subsection (2) of this section, an organ procurement organization in Kentucky shall not be mandated to transfer an organ for transplantation to an out-of-state organ procurement organization or to a transplant recipient at a transplant center outside its designated service area if a suitable recipient can be identified at a transplant center within its service area.

Approved February 9, 2000

CHAPTER 5

(HB 95)

AN ACT relating to the reorganization of the Finance and Administration Cabinet.

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

Section 1. KRS 42.013 is amended to read as follows:

(1) The office of the secretary of the Finance and Administration Cabinet shall include a deputy secretary who shall be appointed by the secretary with the approval of the Governor. The deputy secretary shall be responsible to and have such authority to sign for the secretary as the secretary designates in writing.

(2) The secretary may organize the office into such additional administrative units as he deems necessary to perform the functions and fulfill the duties of the cabinet, subject to the provisions of KRS Chapter 12. The Office of the Secretary shall include the ***Office of Technology Operations, the Customer Resource Center,***~~[Division of Information Resources]~~ and the ***Administrative Policy and Audit*** Division~~[of Internal Audit]~~.

(3) All appointments under this chapter to positions not in the classified service shall be made pursuant to KRS 12.050 and such appointees shall be major assistants to the secretary and shall assist in the development of policy.

Section 2. KRS 42.023 is amended to read as follows:

(1) The Department for Administration of the cabinet established by KRS 42.014 shall be generally responsible for any functions and duties the secretary may assign relating, but not limited to, supervision of purchasing and store keeping, control of stores, control of personal property and disposition of surplus personal property, printing and reproductions, state forms, postal services, and technical assistance and advice to state agencies.

(2) There shall be established in the Department for Administration a Division of ***Material and Procurement Services***~~[Purchases]~~, ***a Division of Surplus Property,*** a Division of Printing, a Division of Risk Management, a Division of Creative Services, a Division of Occupations and Professions, and a Division of Postal Services, each of which shall be headed by a director appointed by the commissioner, subject to the approval of the Governor, and who shall be responsible to the commissioner. There may be, if needed, sections assigned to specific areas of work, responsible directly to the commissioner for administration.

Section 3. KRS 42.024 is amended to read as follows:

(1) The Division of ***Material and Procurement Services***~~[Purchases]~~ shall be responsible for the performance of the cabinet's purchasing functions under KRS Chapters 45 and 45A, except those purchasing functions related to the acquisition of interests in real property, and contractual and construction services which are related to and required in connection with the construction, renovation, and repair of state-owned buildings. The Division of ***Material and Procurement Services***~~[Purchases]~~ shall be responsible for the control of all state-purchased personal property***.***

(2) The Division of Surplus Property shall be responsible~~[and]~~ for the disposition of all personal property of the state declared surplus. The division shall be the single state agency of the Commonwealth of Kentucky that may receive, warehouse, and distribute surplus

property under the Federal Property and Administrative Services Act of 1949, as amended, and any other federal law relating to the disposal of surplus federal property to the states and political subdivisions within the states. The division shall comply with federal laws and regulations in the administration of surplus property received through federal agencies. The secretary of the Finance and Administration Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to comply with the minimum standards established by federal laws and regulations governing disposal of surplus federal property and to implement subsection (3) of this section.

(3)[~~(2)~~] The Division of Creative Services shall provide photography, multimedia, and graphic service to state government.

(4)[~~(3)~~] The secretary of the Finance and Administration Cabinet may establish, charge, and collect from donees of federal surplus property a fair and reasonable fee or service charge to defray the cost of operating the surplus property disposal program. The fees shall be deposited in a trust and agency account in the State Treasury to the credit of the Division of ***Surplus Property***[~~Purchases~~].

Section 4. KRS 42.065 is amended to read as follows:

(1) ***An Administrative Policy and Audit Division***[~~A Division of Internal Audit~~] is established in the Office of the Secretary within the Finance and Administration Cabinet.

(2) The ***Administrative Policy and Audit*** Division[~~ of Internal Audit~~] shall be headed by a director, appointed by the secretary of finance pursuant to KRS 12.050, and shall include other personnel employed pursuant to KRS Chapter 18A, as determined by the director of the division, with the approval of the secretary, to be necessary and desirable to carry out the division's functions.

(3) The division may, with the approval of the secretary of finance, conduct any internal audit, investigation, or management review in the Finance and Administration Cabinet related to the secretary's duties and responsibilities as chief financial officer of the Commonwealth pursuant to KRS 42.012.

(4) When it is necessary to complete an internal audit, investigation, or management review in the Finance and Administration Cabinet, with the written approval of the secretary of the Governor's Executive Cabinet, the division shall have access, during business hours, to all books, reports, papers, and accounts in the office or under the custody or control of any budget unit, or of any other program cabinet, department, or agency under the authority and direction of the Governor.

Section 5. KRS 42.0201 is amended to read as follows:

(1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration Cabinet for administrative and reporting purposes.

(2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.

(3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.

(4) The state controller; the executive director of the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.

(5) There are established in the Office of the Controller the Division of ***Statewide Accounting Services***~~[Accounts]~~ and the Division of Social Security.

(a) The Division of ***Statewide Accounting Services***~~[Accounts]~~ shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for:

1. The performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and

2. The state government's duties and functions relating to the county fee system for local entities.

(b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to 61.500.

Section 6. 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, 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 Division of ***Material and Procurement Services***~~[Purchases]~~, 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 Division of ***Material and Procurement Services***~~[Purchases]~~ 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 7. KRS 45A.045 is amended to read as follows:

(1) The Finance and Administration Cabinet shall serve as the central procurement and contracting agency of the Commonwealth.

(a) The cabinet shall require all agencies to furnish an estimate of specific needs for supplies, materials, and equipment to be purchased by competitive bidding for the purpose of permitting scheduling of purchasing in large volume. The cabinet shall establish and enforce schedules for purchasing supplies, materials, and equipment. In addition, prior to the beginning of each fiscal year all agencies shall submit to the Finance and Administration Cabinet an estimate of all needs for supplies, materials, and equipment during that year which will have to be required through competitive bidding.

(b) The Finance and Administration Cabinet shall have power, with the approval of the secretary of the Finance and Administration Cabinet, to transfer between departments, to salvage, to exchange, and to condemn supplies, equipment, and real property.

(c) The Finance and Administration Cabinet shall attempt in every practicable way to ensure that state agencies are fulfilling their business needs through the application of the best value criteria.

(2) The Finance and Administration Cabinet shall recommend regulations, rules, and procedures and shall have supervision over all purchases by the various spending agencies, except as otherwise provided by law, and, subject to the approval of the secretary of the Finance and Administration Cabinet, shall promulgate administrative regulations to govern purchasing by or for all these agencies. The cabinet shall publish a manual of procedures which shall be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This manual shall be distributed to agencies and shall be revised upon issuance of amendments to these procedures. No purchase or contract shall be binding on the state or any agency thereof unless approved by the Finance and Administration Cabinet or made under general administrative regulations promulgated by the cabinet.

(3) The Finance and Administration Cabinet shall purchase or otherwise acquire, or, with the approval of the secretary, may delegate and control the purchase and acquisition of the combined requirements of all spending agencies of the state, including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services.

(4) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of any interest in real property of the state which is not needed, or has become unsuitable for public use, or would be more suitable to the public's interest if used in another manner, as determined by the secretary of the Finance and Administration Cabinet. The determination

of the secretary of the Finance and Administration Cabinet shall be set forth in an order and shall be reached only after review of a written request by the agency desiring to dispose of the property. This request shall describe the property and state the reasons why the agency believes the property should be disposed. All instruments required by law to be recorded which convey any interest in any real property so disposed of shall be executed and signed by the secretary of the Finance and Administration Cabinet and approved by the Governor. Unless the secretary of the Finance and Administration Cabinet deems it in the best interest of the state to proceed otherwise, all interests in real property shall be sold either by invitation of sealed bids or by public auction. The selling price of any interest in real property shall not be less than the appraised value thereof as determined by the cabinet, or the Transportation Cabinet for the requirements of that cabinet.

(5) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of all personal property of the state that is not needed, or has become unsuitable for public use, or would be more suitable to the public's interest if used in another manner, or, with the approval of the secretary, may delegate the sale, trade, or other disposal of the personal property. In the event the authority is delegated, the method for disposal shall be determined by the agency head, in accordance with administrative regulations promulgated by the Finance and Administration Cabinet, and shall be set forth in a document describing the property and stating the method of disposal and the reasons why the agency believes the property should be disposed of. In the event the authority is not delegated, requests to the Finance and Administration Cabinet to sell, trade, or otherwise dispose of the property shall describe the property and state the reasons why the agency believes the property should be disposed of. The method for disposal shall be determined by the Division of~~[Purchases,]~~ Surplus Property~~[Branch]~~, and approved by the secretary of the Finance and Administration Cabinet or his or her designee.

(6) The Finance and Administration Cabinet shall exercise general supervision and control over all warehouses, storerooms, and stores and of all inventories of supplies, services, and construction belonging to the Commonwealth. The cabinet shall promulgate administrative regulations to require agencies to take and maintain inventories of plant property, buildings, structures, other fixed assets, and equipment. The cabinet shall conduct periodic physical audits of inventories.

(7) The Finance and Administration Cabinet shall establish and maintain programs for the development and use of purchasing specifications and for the inspection, testing, and acceptance of supplies, services, and construction.

(8) Nothing in this section shall prevent the Finance and Administration Cabinet from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof. No contract executed under this provision shall authorize a price higher than is contained in the contract between the General Services Administration and the vendor affected.

(9) Except as provided in KRS Chapters 175, 176, 177, and 180, and subject to the provisions of this code, the Finance and Administration Cabinet shall purchase or otherwise acquire all real property determined to be needed for state use, upon approval of the secretary of the Finance and Administration Cabinet as to the determination of need and as to the action of purchase or other acquisition. The amount paid for this real property shall not exceed the appraised value as determined by the cabinet or the Transportation Cabinet (for such requirements of that cabinet), or the value set by eminent domain procedure. Subject to the

provisions of this code, real property or any interest therein may be purchased, leased, or otherwise acquired from any officer or employee of any agency of the state upon a finding by the Finance and Administration Cabinet, based upon a written application by the head of the agency requesting the purchase, and approved by the secretary of the Finance and Administration Cabinet and the Governor, that the employee has not either himself or herself, or through any other person, influenced or attempted to influence either the agency requesting the acquisition of the property or the Finance and Administration Cabinet in connection with such acquisition. Whenever such an acquisition is consummated, the request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.

(10) The Finance and Administration Cabinet shall maintain records of all purchases and sales made under its authority and shall make periodic summary reports of all transactions to the secretary of the Finance and Administration Cabinet, the Governor, and the General Assembly. The Finance and Administration Cabinet shall also report trends in costs and prices, including savings realized through improved practices, to the above authorities. The Finance and Administration Cabinet shall also compile an annual report of state purchases by all spending agencies in the state's statewide accounting and reporting system. The report format shall include, but not be limited to, dollar amount, volume, type of purchase, and vendor.

(11) For capital construction projects, subject to the provisions of this code, the bidding may be on whichever of the following methods, in the judgment of the secretary of the Finance and Administration Cabinet, offers the lowest real cost to the taxpayer:

(a) A total design-bid basis;

(b) A package system commonly referred to as "turnkey";

(c) Phase bidding commonly referred to as "fast track"; or

(d) Construction management.

Bids shall be reviewed by the engineering staff to assure quality and value, and compliance with bid procedures. All specifications shall be written to promote competition.

(12) The Finance and Administration Cabinet shall have control and supervision over all purchases of energy-consuming equipment, supplies, and related equipment purchased or acquired by any agency of the state as provided in this code, and shall promulgate administrative regulations to designate the manner in which an energy-consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products. Major energy components shall be amortized on a seven (7) to ten (10) years' recovery basis and shall take into consideration the projected cost of fuel. The Finance and Administration Cabinet, in consultation with the Cabinet for Economic Development, shall conduct a thorough economic feasibility analysis on any major energy-using component of at least three million (3,000,000) BTU's per hour heat input and shall issue a certificate of economic feasibility prior to the Finance and Administration Cabinet's purchasing or retrofitting any such component that utilizes any fuel other than coal. The economic feasibility analysis shall consist of life-cycle cost comparisons of a component that would utilize coal and one(s) that would utilize any fuel other than coal. For the analysis, the Finance and Administration Cabinet shall provide detailed estimates of equipment purchase

price, installation cost, annual operation and maintenance costs, and usage patterns of energy-using components.

Section 8. KRS 45A.540 is amended to read as follows:

Every county, city, school district, and special district may purchase goods, supplies, equipment, material, and printing which meet the procurement standards for minimum recycled material content through the central stores branch of the Division of ***Material and Procurement Services***~~[Purchases]~~ in the Finance and Administration Cabinet. Counties, cities, school districts, and special districts which purchase goods, supplies, equipment, material, and printing which meet the procurement standards established pursuant to KRS 45A.520 for minimum recycled material content shall receive a fifty percent (50%) reduction in any administrative fee the central purchasing agency is authorized to charge.

Section 9. KRS 156.076 is amended to read as follows:

The chief state school officer shall furnish full information on established price contracts to each district board of education. Any board of education may purchase supplies and equipment from the vendor to whom the contract has been awarded, under the terms of the contract. Any board of education may advertise for its own bids on supplies and equipment which meet the specifications of the contracts awarded by the Division of ***Material and Procurement Services***~~[Purchases]~~. Any board of education, after advertising for bids, may award contracts if the chief state school officer certifies that the bid offers supplies and equipment which meet the standards and specifications fixed by the Kentucky Board of Education and that the bid price is lower than that established by the price contract agreement. If supplies and equipment that meet the specifications of the contracts awarded by the Division of ***Material and Procurement Services***~~[Purchases]~~ or a federal, local, or cooperative agency are available for purchase elsewhere, a board of education may purchase those supplies and equipment without advertising for bids. However, prior to making the purchases, the board of education shall obtain certification from:

(1) The Department of Education for technology components defined in the master plan for education technology for which standards have been established by the Kentucky Board of Education. The department shall certify that the items to be purchased meet or exceed, at a lower cost, the specifications of the components of the original equipment of manufacturers currently holding Kentucky education technology system price contracts; and

(2) The district's finance officer for supplies and equipment other than that described in subsection (1) of this section. He shall certify that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, the local school district's bid, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the price contract agreement or available through the bidding process and the price does not exceed two thousand five hundred dollars ($2,500).

Section 10. KRS 197.210 is amended to read as follows:

(1) On and after June 17, 1954, all offices, departments, institutions, agencies, and all political subdivisions which are supported in whole or in part by the Commonwealth shall purchase, when economically feasible, from the department all articles or products required which are produced or manufactured by prison labor, as provided by KRS 197.200 to 197.250. No article or product shall be purchased by any office, department, institution, or agency, from any source except as specified in this subsection.

Exceptions may be made in any case where, in the opinion of the Finance and Administration Cabinet, the articles or products produced or manufactured do not meet the reasonable requirements of the offices, departments, institutions, agencies, or where the requisition cannot be reasonably complied with because of an insufficient supply of the articles or products required. However, no office, department, institution, or agency shall be allowed to evade the intent and meaning of KRS 197.200 to 197.250 by slight variations from standards adopted by the Division of ***Material and Procurement Services***~~[purchases]~~, when the articles or products produced or manufactured by the department in accordance with the standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

(2) All purchases under KRS 197.200 to 197.250 shall be made through the Finance and Administration Cabinet upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of the Commonwealth.

Section 11. KRS 424.260 is amended to read as follows:

(1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than ten thousand dollars ($10,000) without first making newspaper advertisement for bids.

(2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than ten thousand dollars ($10,000), the fiscal court requirement shall prevail.

(3) (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of ***Material and Procurement Services***~~[Purchases]~~ or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.

(b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.

(4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate

with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.

Section 12. The General Assembly hereby confirms Executive Order 98-1132, issued by the Governor on August 21, 1998, as amended by Executive Order 99-486, issued by the Governor on April 13, 1999, to the extent that the orders are not otherwise confirmed by Sections 1 through 11 of this Act.

Approved February 14, 2000

CHAPTER 6

(HB 80)

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.

7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   - (a) Department of State Police.
   - (b) Department of Criminal Justice Training.
   - (c) Department of Corrections.
   - (d) Department of Juvenile Justice.
   - (e) Office of the Secretary.
   - (f) Offices of the Deputy Secretaries.
   - (g) Office of General Counsel.
   - (h) Division of Kentucky State Medical Examiners Office.
   - (i) Parole Board.
   - (j) Kentucky State Corrections Commission.
   - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
   - (a) Department of Education.
     - (1) Kentucky Board of Education.
     - (2) Education Professional Standards Board.
   - (b) Department for Libraries and Archives.
   - (c) Kentucky Arts Council.
   - (d) Kentucky Educational Television.
   - (e) Kentucky Historical Society.
   - (f) Kentucky Teachers' Retirement System Board of Trustees.
   - (g) Kentucky Center for the Arts.
   - (h) Kentucky Craft Marketing Program.
   - (i) Kentucky Commission on the Deaf and Hard of Hearing.
   - (j) Governor's Scholars Program.
   - (k) Governor's School for the Arts.
   - (l) Operations and Development Office.
   - (m) Kentucky Heritage Council.
   - (n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.[

~~(j) Office of Aging Services.]~~

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

(j) Office of Aging Services.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 2. KRS 194A.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

(1) Office of the Secretary;

(2) Office of Program Support. The Office of Program Support shall provide professional support in personnel activities; planning; budgeting; contract management; policy analysis, including but not limited to the appraisal of needs; evaluation of programs; review of citizen complaints about services of the cabinet when complaints cannot be resolved through normal administrative remedies; and fiscal, facility, and information management functions of the cabinet. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050;

(3) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under with KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

(4) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

(5) Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall develop and administer programs for the prevention of mental illness, mental retardation, and chemical dependency and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, who have mental retardation, or who are chemically dependent. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

(6) Office of the Inspector General. The Office of the Inspector General shall be responsible for:

(a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;

(b) Licensing and regulatory functions as the secretary may delegate;

(c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.235 and KRS 311.241, 311.243, 311.245, and 311.247; and

(d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

(7) Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities and, to the extent that funds are available, shall provide the services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the office of the executive director of the commission. The executive director shall be appointed by the Governor under KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary;

(8) Office of Certificate of Need. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS Chapter 216B, shall be performed by this office;

(9) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.

(10) Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended, 42 U.S.C. secs. 3001 et seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service-provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long-term care ombudsman program for

Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.

SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

As used in Sections 3, 4, 5, and 6 of this Act:

(1) "Council" means the Alzheimer's Disease and Related Disorders Advisory Council;

(2) "Dementia" means Alzheimer's disease and related dementia illnesses and disorders; and

(3) "Office" means the Office on Alzheimer's Disease and Related Disorders.

SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) The Office on Alzheimer's Disease and Related Disorders is established within the cabinet. The purpose of the office is to oversee information and resources related to policy and services affecting the sixty thousand (60,000) residents of Kentucky with dementia, and the caregivers and families of the residents.

(2) The director of the office shall be a full-time, permanent employee and shall be responsible for the staffing and operational details of the office. A report on the start-up and implementation of the office shall be made to the Interim Joint Committee on Health and Welfare by September 30, 2000, and on a quarterly basis thereafter.

(3) The office shall:

(a) Enhance the quality of life for persons affected by dementia and for their caregivers;

(b) Recommend the delivery of services in the most effective and efficient manner possible to facilitate the needs of people with dementia and their caregivers, after consultation with other agencies of state government that work with dementia-related illness;

(c) Determine ways the Commonwealth may secure additional federal and private funding to provide additional services and programs through a coordinated effort;

(d) Apply for any public or private funding relating to dementia that will enhance the office's abilities to perform its duties under this section;

(e) Promote public and professional awareness and education of dementia and access to needed services and programs;

(f) Oversee and receive reports from the Alzheimer's Disease and Related Disorders Advisory Council; and

(g) Coordinate and oversee the implementation of the recommendations of the 1995 Governor's Task Force on Alzheimer's Disease and Related Disorders.

SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) The Alzheimer's Disease and Related Disorders Advisory Council is created. The council shall report directly to the office.

(2) The council shall be composed of a minimum of fifteen (15) members appointed by the Governor. Three (3) members shall represent agencies of state government dealing with dementia, three (3) shall represent local health departments, one (1) shall represent the University of Kentucky Alzheimer's Disease Research Center at the Sanders-Brown Center on Aging, at least one (1) shall be appointed from each of the chapters of the Alzheimer's Disease and Related Disease Association that serve the Commonwealth, and the remainder shall represent consumers, health-care providers, and the medical research community. Members who are not state employees shall be reimbursed for necessary and actual expenses. The council shall meet quarterly. A majority of the members shall constitute a quorum for the transaction of the council's business.

(3) The council shall:

(a) Elect its own chairperson and establish other officers and subcommittees as needed to execute the duties of the council;

(b) Adopt bylaws and operate under its bylaws;

(c) Select the director of the office;

(d) Establish and evaluate goals and outcomes for the office that may facilitate treatment and care of persons with dementia;

(e) Assist with the dissemination of information about the availability of program materials, education materials, and curriculum guides; and

(f) Prepare a report of its activities, at least annually, for submission to the office.

(4) The office shall provide requested personnel to assist the council in fulfilling its responsibilities.

SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The cabinet shall promulgate administrative regulations under KRS Chapter 13A sufficient to implement Sections 3, 4, 5, and 6 of this Act.

Section 7. KRS 194A.090 is amended to read as follows:

(1) The cabinet shall include citizen advisory bodies within its structure to provide independent advice from the general public.

(2) A Public Health Services Advisory Council is created within the cabinet.

(a) The council shall advise the secretary for health services, the commissioner for public health, and officials of the Commonwealth on policy matters concerning the delivery of health services, including the assessment of needs, the development of program alternatives, the determination of priorities, the formulation of policy, the allocation of resources, and the evaluation of programs. The council shall be utilized by the cabinet to fulfill federal requirements for citizen's advisory councils associated with programs designed to provide health services and to advise the cabinet on the development and content of the state health plan.

(b) The council shall be composed of no more than nineteen (19) citizen members appointed by the Governor. Six (6) members of the council shall be chosen to broadly represent public interest groups concerned with health services, recipients of health services provided by the Commonwealth, minority groups, and the general public.

Thirteen (13) members of the council shall represent providers of health care and not less than one-half (1/2) of the providers shall be direct providers of health care. At least one (1) of the direct providers of health care shall be a person engaged in the administration of a hospital, and one (1) shall be a physician in active practice. At least one (1) member shall be a registered sanitarian or sanitary engineer, one (1) a public health nurse, one (1) a member of the current minority advisory council, and one (1) a practicing public health physician. Nominations for health care provider members of the council shall be solicited from recognized health care provider organizations. Membership of the council shall be geographically distributed in order that area development districts are represented. Members shall serve for terms of three (3) years. If a vacancy occurs, the person appointed as a replacement shall serve only for the remainder of the vacated term. Members shall serve until the term begins for their appointed successors. No member shall serve more than two (2) consecutive terms. The chair of the council shall be appointed by the Governor. The secretary for health services and the commissioner for public health shall be nonvoting, ex officio members of the council, and the commissioner for public health shall be a staff director for, and secretary to, the council. The council shall meet at least quarterly and on other occasions as may be necessary on the call of the secretary for health services or the commissioner for public health. A majority of the appointed members shall constitute a quorum.

(3) An Institute for Aging is created within the cabinet.

(a) The institute shall advise the secretary for health services and other officials of the Commonwealth on policy matters relating to the development and delivery of services to the aged.

(b) The institute shall be composed of no more than fifteen (15) citizen members appointed by the Governor. Members of the institute shall be chosen to broadly represent public interest groups concerned with the needs of the aged, professionals involved in the delivery of services to the aged, minority groups, recipients of state-provided services to the aged, and the general public. The Governor shall appoint a chair of the institute. The secretary for health services shall be a nonvoting, ex officio member of, staff director for, and secretary to the institute. The institute shall meet at least quarterly and on other occasions as may be necessary, on the call of the secretary for health services. A majority of the appointed members shall constitute a quorum.

SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

All administrative regulations, acts, determinations, and decisions of or by the corporate bodies or instrumentalities of the Commonwealth, advisory committees, interstate compacts, or other statutory bodies, transferred in whole or in part to the Institute for Aging, shall remain in effect as administrative regulations, acts, determinations, and decisions of the cabinet unless duly modified or repealed by the secretary.

Section 9. KRS 194A.140 is amended to read as follows:

When the Public Health Services Advisory Council ***or the Institute for Aging*** is assigned responsibility for qualifying the Commonwealth for federal programs with representation and

membership formulas that conflict with a particular council's membership, the secretary shall have the authority to create special subcommittees to these citizens' councils that meet federal requirements.

Section 10. KRS 194A.190 is amended to read as follows:

The Public Health Services Advisory Council and the Advisory Council for Medical Assistance ***and the Institute for Aging*** shall be empowered to accept gifts and grants, but all of these moneys shall be administered by the cabinet, which shall administer these funds through appropriate trust and agency accounts.

Section 11. KRS 194A.200 is amended to read as follows:

The members of the Public Health Services Advisory Council ***and of the Institute for Aging*** shall receive no compensation for their services but shall be allowed the necessary expenses incurred through the performance of their duties as members of this citizens' council. No member of a citizens' council shall be held to be a public officer by reason of membership on a council.

Section 12. KRS 194B.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

(1) Office of the Secretary. The Office of the Secretary for Families and Children may, in addition to the secretary for families and children, include other personnel as are necessary to direct and carry out the missions and goals of the cabinet, including a deputy secretary if deemed necessary by the secretary of the cabinet and upon approval of the Governor.

(2) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.

(3) Office of Program Support. The Office of Program Support shall be responsible for providing administrative and management support, planning, and appraisal of need services within the Cabinet for Families and Children. All personnel, fiscal, budgetary, contract monitoring, quality assurance, quality control, outcome assessment, and facility management functions of the cabinet shall be vested in the Office of Program Support. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Program Support under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(4) Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social services

shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(5) Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner is under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(6) Office of Family Resource and Youth Services Centers. The Office of Family Resources and Youth Services Centers shall be responsible for the administration, management, and operations of the Family Resources and Youth Services Centers Program. The Office of Family Resources and Youth Services Centers shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.

(7) Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including, but not limited to, a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies; contract monitoring; and professional development and training. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.

(8) Office of Technology Services. The Office of Technology Services shall develop and maintain technology and information management systems in support of all units of the cabinet. The Office of Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director for technology services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director for technology services shall exercise authority of the Office of Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

[~~(9) Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended by 42 U.S.C. sec. 3001 et seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer~~

~~the long-term care ombudsman program for Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.]~~

Section 13. KRS 194B.050 is amended to read as follows:

(1) The secretary shall formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

(2) The secretary shall utilize the~~[Institute for Aging or the]~~ Council for Families and Children to review and make recommendations on contemplated administrative regulations. No administrative regulations issued under the authority of the cabinet shall be filed with the Legislative Research Commission unless issued under the authority of the secretary, and the secretary shall not delegate this authority. All administrative regulations prepared within the cabinet shall be attested as to form and legality by the Office of the General Counsel.

(3) Except as otherwise provided by law, the secretary shall have authority to establish by administrative regulation a schedule of reasonable fees, none of which shall exceed one hundred dollars ($100), to cover the costs of annual inspections of efforts regarding compliance with program standards administered by the cabinet. The balance of the account shall lapse to the general fund at the end of each biennium. Fees shall not be charged for investigation of complaints.

Section 14. KRS 194B.090 is amended to read as follows:

The cabinet shall include citizen advisory bodies within its structure to provide independent advice from the general public. The ***Council for Families and Children shall be a*** citizen ***body***~~[bodies]~~ within the cabinet ***and*** shall have the following structure:

(1) ~~[A Council for Families and Children is created within the cabinet.~~

~~(a)~~]The council shall advise the secretary for families and children, the commissioner for social insurance, the commissioner for social services, and other officials of the Commonwealth on policy matters relating to the human service needs.

(2)~~[(b)]~~ The council shall be composed of no more than twenty-one (21) citizen members appointed by the Governor. Members of the council shall be chosen to broadly represent public interest groups concerned with social insurance and social service programs operated by the Commonwealth, professionals involved in the delivery of human services, minority groups, the poor, the disadvantaged, recipients of human services provided by the state, and the general public. The Governor shall appoint the chair of the council. The secretary for families and children, the commissioner for social insurance, and the commissioner for social services shall be nonvoting, ex officio members of the council, and the commissioners for social insurance and social services shall be staff directors for, and secretaries to, the council. The council shall meet at least quarterly and on other occasions as

may be necessary, on call of the secretary for families and children. A majority of appointed members shall constitute a quorum.

~~[(2) An Institute for Aging is created within the cabinet.~~

~~(a) The institute shall advise the secretary for families and children and other officials of the Commonwealth on policy matters relating to the development and delivery of services to the aged.~~

~~(b) The institute shall be composed of no more than fifteen (15) citizen members appointed by the Governor. Members of the institute shall be chosen to broadly represent public interest groups concerned with the needs of the aged, professionals involved in the delivery of services to the aged, minority groups, recipients of state-provided services to the aged, and the general public. The Governor shall appoint a chair of the institute. The secretary for families and children shall be a nonvoting, ex officio member of, staff director for, and secretary to the institute. The institute shall meet at least quarterly and on other occasions as may be necessary, on the call of the secretary for families and children. A majority of the appointed members shall constitute a quorum.]~~

Section 15. KRS 194B.140 is amended to read as follows:

When the~~[Institute for Aging and the]~~ Council for Families and Children ***is***~~[are]~~ assigned a responsibility for qualifying the Commonwealth for federal programs with representations and membership formulas that conflict with ***the***~~[a particular]~~ council's membership, the secretary shall have the authority to create special subcommittees to ***this***~~[these]~~ citizens' ***body***~~[bodies]~~ that meet federal requirements.

Section 16. KRS 194B.190 is amended to read as follows:

The~~[Institute for Aging and the]~~ Council for Families and Children shall be empowered to accept gifts and grants, but all of these moneys shall be administered by the cabinet, which shall administer these funds through appropriate trust and agency accounts.

Section 17. KRS 194B.200 is amended to read as follows:

The members of the~~[Institute for Aging and the]~~ Council for Families and Children shall receive no compensation for their services but shall be allowed the necessary expenses incurred through the performance of their duties as members of ***this***~~[these]~~ citizens' ***council***~~[councils]~~. No member of ***the***~~[a]~~ citizens' council shall be held to be a public officer by reason of membership on ***the***~~[a]~~ council.

Section 18. KRS 205.179 is amended to read as follows:

The Cabinet for ***Health Services***~~[Families and Children]~~ shall conduct an annual review of all addresses or locations at which four (4) or more persons reside who receive state supplementation of federal supplemental security income benefits to determine if the address or location is a boarding home that has not registered pursuant to KRS 216B.305. The results of the review shall be reported to the Office of Aging Services and action shall be taken to ensure the registration of all unregistered boarding homes that are identified.

Section 19. KRS 205.201 is amended to read as follows:

The duties of the Cabinet for ***Health Services***~~[Families and Children]~~ shall be to:

(1) Promote and aid in the establishment of local programs and services for the aging;

(2) Conduct programs to educate the public as to problems of the aging;

(3) Review existing state programs and services for the aging and to make recommendations to the Governor, to the appropriate department and agencies of the state, and to the legislature for improvements in and additions to such programs and services;

(4) Assist and encourage governmental and private agencies to coordinate their efforts on behalf of the aging;

(5) Conduct and encourage other organizations to conduct studies concerning the aging;

(6) Establish, in selected areas and communities of the state, programs of services for the aging to demonstrate the value of such programs, and to encourage local agencies to continue the programs and to create new services where needed. Emphasis shall be given to services designed to foster continued participation of older people in family and community life and to lessen the need for institutional care;

(7) Provide services designed to meet the needs of the minority elderly in programs administered by the cabinet. The cabinet shall annually prepare a report identifying the special needs of the minority elderly population in the Commonwealth as compared to the elderly population at large. The report shall be completed no later than October 1 of each year and transmitted to the Legislative Research Commission. The report shall, at a minimum:

(a) Contain an overview of the health status of minority elderly Kentuckians;

(b) Identify specific diseases and health conditions for which the minority elderly are at greater risk than the general population;

(c) Identify problems experienced by the minority elderly in obtaining services from governmental agencies; and

(d) Identify programs at the state and local level designed to specifically meet the needs of the minority elderly;

(8) In preparing the report required by subsection (7) of this section, the cabinet shall solicit and consider the input of individuals and organizations representing the concerns of the minority elderly population as relates to:

(a) Programs and services needed by the minority elderly;

(b) The extent to which existing programs do not meet the needs of the minority elderly;

(c) The accessibility of existing programs to the minority elderly;

(d) The availability and adequacy of information regarding existing services;

(e) Health problems the minority elderly experience at a higher rate than the nonminority elderly population; and

(f) Financial, social, and other barriers experienced by the minority elderly in obtaining services;

(9) Conduct an outreach program that provides information to minority elderly Kentuckians about health and social problems experienced by minority elderly persons and available

programs to address those problems, as identified in the report prepared pursuant to subsection (7) of this section; and

(10) Cooperate with the federal government and with the governments of other states in programs relating to the aging.

Section 20. KRS 205.202 is amended to read as follows:

The secretary of the Cabinet for ***Health Services***~~[Families and Children]~~ shall be empowered to accept and expend gifts and grants from any source. Such moneys shall go into a trust and agency fund to be administered by the cabinet in furtherance of the purposes of the provisions of KRS 205.201 to 205.204.

Section 21. KRS 205.203 is amended to read as follows:

(1) The secretary of the Cabinet for ***Health Services***~~[Families and Children]~~ may provide, within budgetary limitations, for in-home services to the aging to include, but not necessarily limited to: homemaker services; home-help therapy services; day-care services; home-delivered meal services; transportation services; foster care services; and health services.

(2) The cabinet is authorized to collect fees for services rendered pursuant to this section in accordance with a fee schedule adopted by the secretary for ***health services***~~[families and children]~~. The fee schedule shall take into consideration the ability of the patient or client to pay for such services. Fees shall not be collected from any person who is "needy aged" as defined by KRS 205.010.

(3) The secretary may utilize and promote available or potential community resources for the delivery of services to the aging and shall, when he deems appropriate, contract for services with local, community, private agencies, and individuals, including relatives of patients and clients, when such services would not otherwise be available without cost.

(4) The services to the aging authorized under this section are in addition and supplementary to any services to which the aging may be entitled under any other federal, state, or local governmental law, regulation, or program.

(5) The services to the aging authorized under this section shall be designed to meet the needs of the minority elderly as identified by the Cabinet for ***Health Services***~~[Families and Children]~~ pursuant to KRS 205.201.

Section 22. KRS 205.204 is amended to read as follows:

(1) The Cabinet for ***Health Services***~~[Families and Children]~~, unless otherwise directed by an executive order of the Governor, is designated the agency of this state for the purpose of administering the Older Americans Act of 1965, Pub. L. 89-73, including all amendments thereto. In administering programs and allocating funds under the Older Americans Act, the cabinet shall design programs and allocate funds to meet the needs of the minority elderly as identified by the cabinet pursuant to KRS 205.201.

(2) The secretary for ***health services***~~[families and children]~~ may promulgate such administrative regulations as are necessary to comply with any requirement imposed or required by federal law.

Section 23. KRS 205.217 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Case manager" means an employee of the area development district or an agency under contract with the area development district who shall assist any functionally impaired person in identifying and accessing the long-term-care services most appropriate to the individual's social and medical needs.

(b) "Functionally impaired person" means any person who is unable to perform without assistance any of the activities of daily living including, but not limited to dressing, bathing, toileting, transferring, or feeding, or any of the instrumental activities of daily living including but not limited to meal preparation, laundry, housecleaning, budgeting, and shopping.

(2) There shall be established within the Cabinet for ***Health Services***~~[Families and Children]~~ a Long-Term Care Case Management Demonstration Program to consolidate and coordinate all services provided or funded by the cabinet with respect to long-term care, conducted in at least three (3) area development districts. This demonstration program shall serve as the focal point for the provision of all services provided to functionally impaired persons to assure that services are consistent with the following goals:

(a) That functionally impaired persons be allowed to live independently at home or with others as long as the citizen desires without requiring inappropriate or premature institutionalization;

(b) That services provided or funded by the cabinet promote independent living by functionally impaired persons and prevent or minimize illness or social isolation;

(c) That institutional services be used only as a last resort when in-home or community-based support services are not available or are not adequate to meet the needs of functionally impaired persons;

(d) That a single entry point for all services for functionally impaired persons be available to all persons in need of information about or access to the services; and

(e) That the use of informal providers of care, such as friends and relatives of functionally impaired persons, be used as long as possible before paid services are utilized.

(3) The following programs and services shall be included in the Long-Term Care Case Management Demonstration Program:

(a) Hospital-based long-term-care services including dual-licensed beds, swing beds and physical rehabilitation services, skilled-nursing facility services, intermediate-care-facility services, nursing-facility services, home-health services, and home- and community-based waiver services funded by the Kentucky Medical Assistance Program;

(b) In-home and community-based services for elderly persons funded under the Older Americans Act (42 U.S.C. secs. 3001 et seq.) and Title XX of the Social Security Act (42 U.S.C. secs. 1397-1397f);

(c) Services provided under the home care program pursuant to KRS 205.460; and

(d) Personal-care-home services or domiciliary care funded by supplemental payments to persons receiving supplemental security income benefits pursuant to KRS 205.245.

(4) The Long-Term Care Case Management Demonstration Program shall employ a system of case management to assure that appropriate services are provided to all persons using or applying for the services set forth in subsection (3) of this section, and that the services are consistent with the goals set forth in subsection (2) of this section. All persons applying for these services shall be assigned a case manager. The duties of the case manager shall include preparation of a general plan of care, based on the person's need for services, arranging placements or other needed services or equipment, coordination and management of the applicant through the eligibility process for these services, and reviewing each case on a periodic basis to assure the plan of care is being followed. Case management shall not include the determination of eligibility for Medicaid covered services, long-term-care facility preadmission reviews, level-of-care determinations for purposes of Medicaid reimbursement, or peer review activities. The general plan of care shall not replace a daily care plan prescribed by a physician for treatment of a person in a hospital or long-term-care facility or receiving home-health services. The general plan of care shall identify the categories of services or type of placement required and the providers of the services. Case managers shall serve as advocates for applicants for the services set forth in subsection (3) of this section, and shall interact with the existing administrative structure within the Cabinet for ***Health Services***~~[Families and Children]~~ to meet the goals stated in subsection (2) of this section. Patients discharged from a hospital to a long-term-care facility shall receive case management services in the hospital on a timely basis or immediately after admission to a long-term-care facility. The goal of each case plan shall be the provision of services in the least restrictive setting designed to best meet the individual needs of the functionally impaired person. When persons are determined to need services to maintain independent living, but do not meet the financial or eligibility criteria for services, case managers shall attempt to ensure that services are provided from community resources, family member, or volunteers.

(5) The cabinet, through the Long-Term Care Demonstration Program, shall provide access to information, counseling, and screening as appropriate, for persons potentially in need of long-term-care services without regard to the person's income, in order to assist functionally impaired persons in accessing available services. In administering the Long-Term Care Demonstration Program, the cabinet shall provide services to meet the needs of the minority elderly as identified by the cabinet pursuant to KRS 205.201. The cabinet may charge a fee for providing information, counseling, and screening services based on the client's ability to pay.

(6) The secretary for ***health services***~~[families and children]~~ may promulgate administrative regulations necessary to implement the Long-Term Care Demonstration Program.

Section 24. KRS 205.455 is amended to read as follows:

As used in KRS 205.460 and 205.465:

(1) "Chore services" means the performance of heavy housecleaning, minor household repairs, yard tasks, and other activities needed to assist in the maintenance of a functionally impaired elderly person in his own home.

(2) "Core services" means those services, including but not limited to client assessment and case management services, designed to identify a functionally impaired elderly person's

needs, develop a plan of care, arrange for services, monitor the provision of services, and reassess the person's needs on a regular basis.

(3) "Cabinet" means the Cabinet for ***Health Services***~~[Families and Children]~~.

(4) "District" means an area development district designated pursuant to KRS 147A.050.

(5) "Escort services" means the accompaniment of a person who requires such assistance for reasons of safety or protection to or from his physician, dentist, or other necessary services.

(6) "Essential services" means those services which are most needed to prevent unnecessary institutionalization of functionally impaired elderly persons. Essential services shall include chore services, home-delivered meals, home-health aide services, homemaker services, respite services, escort services, and home repair services.

(7) "Functionally impaired elderly person" means any person, sixty (60) years of age or older, with physical or mental limitations which restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently, thus rendering such person at risk of entering an institution. Functional impairment shall be determined through a functional assessment developed by the cabinet and delivered to each applicant for essential services.

(8) "Home-delivered meals" means the provision of a nutritionally sound meal, that meets at least one-third (1/3) of the current daily recommended dietary allowance, to a functionally impaired elderly person who is homebound by reason of illness, incapacity, or disability.

(9) "Home-health aide services" means the performance of simple procedures, including but not limited to personal care, ambulation, exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.

(10) "Homemaker services" means general household activities, including but not limited to nonmedical personal care, shopping, meal preparation, and routine household care, provided by a trained homemaker when the person regularly responsible for these activities is temporarily absent or unable to manage the home and care for himself or others in the home.

(11) "Home repair services" means the provision of minor home adaptations, additions, or modifications to enable the elderly to live independently or safely or to facilitate mobility including, where appropriate, emergency summons systems.

(12) "Respite services" means care provided by an approved caregiver or agency for a designated time period because of absence or need for relief of a primary caregiver.

Section 25. KRS 205.900 is amended to read as follows:

As used in KRS 205.905 to 205.920:

(1) "Cabinet" means the Cabinet for ***Health Services***~~[Families and Children]~~.

(2) "Evaluation team" means at least three (3) individuals employed as such by a qualified agency or organization.

(3) "Personal care assistance services" means services which are required by an adult with a severe physical disability to achieve greater physical independence and which include, but are not limited to:

(a) Routine bodily functions, such as bowel or bladder care;

(b) Dressing;

(c) Housecleaning and laundry;

(d) Preparation and consumption of food;

(e) Moving in and out of bed;

(f) Routine bathing;

(g) Ambulation; and

(h) Any other similar activity of daily living.

(4) "Qualified agency or organization" means an agency or organization whose purpose is to provide services to severely physically disabled adults to enable them to live as independently as possible and a majority of whose governing board are consumers of these services. If no qualified agency or organization exists, an agency or organization may become a qualified provider when consumers of personal care assistance services are a majority of its advisory council.

(5) "Secretary" means the secretary of the Cabinet for ***Health Services***~~[Families and Children]~~.

(6) "Severely physically disabled adult" means a person eighteen (18) years of age or older with permanent or temporary, recurring functional loss of two (2) or more limbs.

Section 26. KRS 205.950 is amended to read as follows:

(1) The Cabinet ***for Health Services*** shall, by administrative regulation in accordance with KRS Chapter 13A, establish health, safety, and treatment requirements for certified adult day care centers. No person, association, corporation, or other organization shall operate or maintain an adult day care center without first obtaining a certification as provided in this section.

(2) The cabinet may issue a certification to any adult day care center meeting standards provided for under subsection (1) of this section. The cabinet may deny, revoke, suspend, or modify adult day care center certification for failure to comply with standards or when it determines the health, safety, or security of residents is in jeopardy. Actions to deny, revoke, suspend, or modify a certification may be appealed to the cabinet within thirty (30) days of receipt of notification of intent. Upon appeal, a hearing shall be conducted in accordance with KRS Chapter 13B.

Section 27. KRS 209.500 is amended to read as follows:

The Kentucky Senior Games Program is hereby created within the Office of Aging Services of the Cabinet for ***Health Services***~~[Families and Children]~~. The program shall develop a year-round recreation, fitness, and health promotion program for Kentuckians fifty-five (55) years of age or older which shall provide a network of local competition and participation that culminates in a senior games state final.

Section 28. KRS 210.031 is amended to read as follows:

(1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for Mental Health and Mental Retardation Services of the need for particular services for persons who are deaf or hard-of-hearing.

(a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:

1. The Kentucky Association of the Deaf;
2. The A.G. Bell Association;
3. The Kentucky School for the Deaf Alumni Association; and
4. Self Help for the Hard of Hearing.

The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and Hard of Hearing.

(b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.

(c) The head of each of the following entities shall appoint one (1) member to the advisory committee:

1. The Cabinet for Health Services, Department for Mental Health and Mental Retardation Services;
2. The Cabinet for Workforce Development, Department of Vocational Rehabilitation;
3. The Cabinet for ***Health Services***~~[Families and Children]~~, Office of Aging Services;
4. The Education, Arts, and Humanities Cabinet, Commission on the Deaf and Hard of Hearing;
5. The Kentucky Registry of Interpreters for the Deaf; and
6. A Kentucky School for the Deaf staff person involved in education.

(d) The remaining member shall be a representative of a regional mental health/mental retardation board, appointed by the commissioner of the Department for Mental Health and Mental Retardation Services from a list composed of two (2) names submitted by each regional mental health/mental retardation board.

(2) Of the members defined in subsection (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsection (1)(c) and (d) of this section shall serve with no fixed term of office.

(3) The members defined under subsection (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsection (1)(c) and (d) shall serve without compensation or reimbursement of any kind.

(4) The Department for Mental Health and Mental Retardation Services shall make available personnel to serve as staff to the advisory committee.

(5) The advisory committee shall meet quarterly at a location determined by the committee chair.

(6) (a) The advisory committee shall prepare a biennial report which:

1. Describes the accommodations and the mental health, mental retardation, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;

2. Reports the number of deaf or hard-of-hearing persons served;

3. Identifies additional service needs for the deaf and hard-of-hearing; and

4. Identifies a plan to address unmet service needs.

(b) The report shall be submitted to the secretary, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

Section 29. KRS 216.541 is amended to read as follows:

(1) Willful interference, as defined in KRS 216.535, with representatives of the Office of the Long-Term-Care Ombudsman in the lawful performance of official duties, as set forth in the Older Americans Act, 42 U.S.C. secs. 3001 et seq., shall be unlawful.

(2) Retaliation and reprisals by a long-term-care facility or other entity against any employee or resident for having filed a complaint or having provided information to the long-term care ombudsman shall be unlawful.

(3) A violation of subsection (1) or (2) of this section shall result in a fine of one hundred dollars ($100) to five hundred dollars ($500) for each violation. Each day the violation continues shall constitute a separate violation. The manner in which appeals are presented for violations of this section shall be in accordance with administrative regulations prescribed by the secretary for determining the rights of the parties. All fines collected pursuant to this section shall be used for programs administered by the Office of Aging Services.

(4) The Cabinet for ***Health Services***~~[Families and Children]~~ shall authorize the acquisition of liability insurance for the protection of representatives of the Long-Term-Care Ombudsman Program who are not employed by the state, to ensure compliance with the federal mandate that no representative of the office shall be liable under state law for the good faith performance of official duties.

Section 30. KRS 216.787 is amended to read as follows:

(1) No agency providing services to senior citizens which are funded by the Department for Social Services ***of the Cabinet for Families and Children*** or the Office of Aging Services of the Cabinet for ***Health Services***~~[Families and Children]~~ shall employ persons in a position which involves providing direct services to a senior citizen if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime.

(2) Operators of service provider agencies may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor.

(3) Each service provider agency providing direct services to senior citizens as specified under KRS 216.785 to 216.793 shall request all conviction information from the Justice Cabinet for any applicant for employment prior to employing the applicant.

Section 31. KRS 216.793 is amended to read as follows:

(1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in a nursing facility or nursing pool providing staff to a nursing facility or in a position funded by the Department for Social Services ***of the Cabinet for Families and Children*** or the Office of Aging Services of the Cabinet for ***Health Services***~~[Families and Children]~~ and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed five dollars ($5) per application.

Section 32. The following KRS section is repealed:

194B.180 Administrative regulations and decisions of various bodies transferred to Institute for Aging.

194B.550 Definitions for KRS 194B.550 to 194B.559.

194B.552 Office on Alzheimer's Disease and Related Disorders -- Director -- Report -- Purposes and duties.

194B.555 Alzheimer's Disease and Related Disorders Council -- Members -- Duties.

194B.559 Authority to promulgate administrative regulations.

Section 33. The General Assembly confirms Executive Order 99-80, dated January 20, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

Approved February 15, 2000

CHAPTER 7

(HB 83)

AN ACT relating to reorganization.

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

Section 1. KRS 198A.035 is amended to read as follows:

(1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:

(a) The following ***eleven (11)***~~[ten (10)]~~ state government members, or their duly-appointed designees: the commissioner of education; commissioner of the Department

for Local Government; commissioner of the Department of Housing, Buildings and Construction; secretary of the Cabinet for Economic Development; secretary of the Cabinet for Families and Children; secretary of the Natural Resources and Environmental Protection Cabinet; ***secretary of the Cabinet for Health Services;*** executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.

(b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:

1. Public housing authorities;
2. Mortgage banking industry;
3. Manufactured housing industry;
4. Realtors;
5. Homebuilders;
6. Urban nonprofit housing organizations;
7. Rural nonprofit housing organizations;
8. Urban advocates for the homeless;
9. Rural advocates for the homeless;
10. Residents of economically-diverse urban neighborhoods;
11. Residents of economically-diverse rural neighborhoods;
12. Rental property providers;
13. Advocates for persons with physical disabilities;
14. Advocates for persons with mental disabilities;
15. The Kentucky State Building Trades Council;
16. The Kentucky League of Cities; and
17. The Kentucky Association of Counties.

(c) One (1) member of the Senate and one (1) member of the House of Representatives.

(2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.

(3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.

(4) Any vacancy shall be filled as provided by the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.

(5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.

(6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.

(7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.

(8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.

(9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.

(10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

Section 2. The General Assembly hereby confirms Executive Order 98-1013, dated July 30, 1998, to the extent it is not otherwise confirmed by this Act.

Approved February 15, 2000

CHAPTER 8

(HB 183)

AN ACT relating to reorganization.

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

Section 1. KRS 15A.067 is amended to read as follows:

(1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent or adjudicated delinquent.

(2) There is established within the Department of Juvenile Justice, a Division of ***Program***~~[Educational]~~ Services, that shall be responsible for the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.

(3) Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.

(4) The Division of ***Program***~~[Educational]~~ Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:

(a) For students identified before incarceration as having an educational disability, the Division of ***Program***~~[Educational]~~ Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.

(b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.

(c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.

(5) The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.

(6) The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of ***Program***~~[Educational]~~ Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.

(7) (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.

(b) Within five (5) days after the juvenile is released, the Division of ***Program***~~[Educational]~~ Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.

(8) The Department of Juvenile Justice shall, after consultation with the Department of Education, promulgate an administrative regulation for the effective implementation of this section.

Section 2. The General Assembly hereby confirms Executive Order 99-1325, dated September 27, 1999, to the extent it is not otherwise confirmed by this Act. The reorganization creates the Division of Staff Development and abolishes the Division of Detention Programs and the Division of Educational Services, which is referenced in the order as the Division of Education Services. The Division of Quality Assurance is renamed the Division of Program Services, which assumes the duties of the abolished Division of Educational Services as provided in Section 1 of this Act.

Approved February 15, 2000

CHAPTER 9

(HB 184)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-1311, dated September 22, 1999, which creates the Office of the Public Advocate within the Department of Public Advocacy. The Office of the Public Advocate shall consist of the public advocate, the deputy public advocate, the general counsel, and other policy-making positions as deemed necessary.

Approved February 15, 2000

CHAPTER 10

(HB 51)

AN ACT relating to the Federal Individuals with Disabilities Education Act.

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

Section 1. KRS 200.672 is amended to read as follows:

Kentucky's participation in Part C of the Federal Individuals with Disabilities Education Act requires that~~[Within the limitations of any available funding and subject to any appropriations related thereto,]~~ an infant or toddler with a disability who is being served by the Kentucky Early Intervention System and the parent or guardian of that child shall have the following rights:

(1) To a timely, multidisciplinary evaluation and assessment;

(2) To appropriate early intervention services for children and families;

(3) To refuse evaluation, assessment, or services;

(4) To written notice before a change is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;

(5) To written notice before a refusal of services is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;

(6) To confidentiality of personally identifiable information, including the right of the parent or guardian to be provided written notice of, and written consent to, the exchange of information among agencies, consistent with federal and state laws;

(7) To determine if any family member will accept or decline an early intervention service under KRS 200.650 to 200.676, in accordance with state law, without jeopardizing other early intervention services under KRS 200.650 to 200.676;

(8) To review all records and, if appropriate, to amend records;

(9) To bring an advocate or attorney into any and all dealings with the early intervention system; and

(10) To administrative process and judicial review in accordance with KRS Chapter 13B to resolve complaints.

Approved February 15, 2000

CHAPTER 11

(HB 79)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1671 of the Department of Education, dated December 17, 1998, which reorganizes the Department of Education into the following: the Office of Communications, the Office of Human Resources and Equity, the Office of District Support Services, the Office of Budget and Financial Management, the Office of Special Instructional Services, the Office of Teacher Education and Certification, the Office of Leadership and School Improvement, the Office of Supportive Learning Environments, the Office of Assessment and Accountability, and the Office of Academic and Professional Development. The Division of Management Assistance Programs is transferred from the Office of Legal Services to the Office of District Support Services. The Bureau of Learning Results Services and the Office of Learning Programs Development are abolished. The relevant duties, functions, responsibilities, records, equipment, facilities, and support budgets of the Department of Education shall be transferred to the appropriate organizational unit or administrative body to effectuate the provisions of the Executive Order, as confirmed by this section. Executive Orders 95-112, 93-689, and 93-542 and 1994 Ky. Acts Ch. 256, which reorganized the Department of Education, remain in effect except to the extent that they are modified by this section.

Approved February 15, 2000

CHAPTER 12

(HB 91)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-869, issued by the Governor on July 8, 1998, which organizes the Kentucky Higher Education Assistance Authority into the following divisions:

(1) Division of Student and Administrative Services, which shall be responsible for administration of the state-funded student aid program, the Kentucky Educational Savings Plan Trust, outreach, development and dissemination of student financial aid information, personnel, and other administrative support functions including records, facility management, and document processing performed by the authority. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.

(2) Division of Information Resources and Technology, which shall be responsible for managing the authority's information resources and technology. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.

(3) Division of Legal Services, which shall be responsible for all legal requirements and activities of the authority. The division shall be headed by the authority's general counsel who shall be appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 12.050, and KRS 12.210(1).

(4) Division of Loan Policy Services, which shall be responsible for policy development and client inquiries, contract management, appeals, compliance, and market development for loans. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), 164.748(21), and KRS 12.050.

(5) Division of Loan Program Administration, formerly named the Division of Program Administration, which shall continue to be responsible for administering the Federal Family Education Loan Program in accordance with federal laws and regulations and providing the origination services of student loans for lenders. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.

(6) Division of Financial Affairs, formerly named the Division of Fiscal Affairs, which shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.

Approved February 15, 2000

CHAPTER 13

(HB 93)

AN ACT relating to reorganization.

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

Section 1. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

(1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;

(2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;

(3) "ACT score" means the composite score achieved on the American College Test or an equivalent score, as determined by the council, on the Scholastic Assessment Test;

(4) "Authority" means the Kentucky Higher Education Assistance Authority;

(5) "Award period" means two (2) consecutive academic terms;

(6) "***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship" means a scholarship provided to an eligible student to attend a participating institution;

(7) "***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;

(8) "***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship trust fund" means the Wallace G. Wilkinson ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship trust fund;

(9) "Council" means the Council on Postsecondary Education created under KRS 164.011;

(10) "Eligible student" means any person who is a Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;

(11) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;

(12) "Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;

(13) "High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;

(14) "Maximum award amount" means the sum of the proportionate base scholarship amount earned by an eligible student in each academic year of high school study and any supplemental award earned by an eligible student. The amount so determined shall be the maximum amount available to the eligible student for any award period;

(15) "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:

(a) 1. Is publicly operated; or

2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; and

(b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;

(16) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and

(17) "Supplemental award" means commitment of additional scholarship funds under KRS 164.7879(3) to an eligible student based on the eligible student's ACT score.

Section 2. KRS 164.7877 is amended to read as follows:

(1) There is established in the State Treasury a permanent and perpetual fund to be known as the "Wallace G. Wilkinson ***Kentucky Educational Excellence***~~[Commonwealth Merit]~~ Scholarship Trust Fund" to which shall be credited net lottery revenues transferred in accordance with KRS 154A.130; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private.

(2) The moneys in the fund are hereby continuously appropriated only for the purposes set forth in KRS 164.7871 to 164.7885 and KRS 164.7889.

(3) The council shall administer the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship trust fund. Upon the approval of the council, the authority may expend funds from the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship trust fund that are necessary and reasonable to meet the expenses of administering the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship trust fund.

Section 3. KRS 164.7879 is amended to read as follows:

(1) ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship awards shall be based upon an established base scholarship amount and an eligible student's grade point average. The base scholarship amount for students attaining a grade point average between 2.5 and 4.0 for the 1998-1999 academic year shall be as follows:

GPA	Amount	GPA	Amount
2.50	$125.00	3.30	$325.00
2.60	$150.00	3.40	$350.00
2.70	$175.00	3.50	$375.00
2.75	$187.50	3.60	$400.00
2.80	$200.00	3.70	$425.00
2.90	$225.00	3.75	$437.50
3.00	$250.00	3.80	$450.00
3.10	$275.00	3.90	$475.00
3.20	$300.00	4.00	$500.00
3.25	$312.50		

The council shall review the base amount of the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship beginning with the 1999-2000 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

(2) The authority shall commit to provide to each eligible student the base amount of the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship for each academic year of high school study in the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship curriculum that the student has attained at least a 2.5 grade point average. The

award shall be based upon the eligible student's grade point average at the close of each academic year. An award attributable to a past academic year shall not be increased after the award has been earned by an eligible student, regardless of any subsequent increases made to the base amount of the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship through the promulgation of an administrative regulation by the council.

(3) (a) The authority shall commit to provide to each eligible student graduating from high school before June 30, 1999, and achieving a score of at least 15 on the American College Test, a supplemental award for the award period beginning in the fall of 1999, based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Annual Bonus	ACT Score	Annual Bonus
15	$21	22	$171
16	$43	23	$193
17	$64	24	$214
18	$86	25	$236
19	$107	26	$257
20	$129	27	$279
21	$150	28 or above	$300

Subsequent supplemental awards for eligible students graduating before June 30, 1999, shall be determined in accordance with the provisions of paragraph (b) of this subsection.

(b) The authority shall commit to provide to each eligible student upon achievement after June 30, 1999, of an ACT score of at least 15 on the American College Test a supplemental award based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Amount	ACT Score	Amount
15	$36	22	$286
16	$71	23	$321
17	$107	24	$357
18	$143	25	$393
19	$179	26	$428
20	$214	27	$464
21	$250	28 and above	$500

The council shall review the base amount of the supplemental award beginning with the 2001-2002 academic year and each academic year thereafter and may promulgate

an administrative regulation to make adjustments after considering the availability of funds.

(c) The council shall promulgate administrative regulations establishing the eligibility criteria and procedures for making a supplemental award to Kentucky residents who graduate from a nonpublic high school not certified by the Kentucky Board of Education and Kentucky residents who obtain a General Educational Development (GED) diploma within five (5) years of their high school graduating class.

Section 4. KRS 164.7881 is amended to read as follows:

(1) Every eligible student who has graduated from high school and who has earned a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship, or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and a supplemental award, shall be eligible to receive the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship, or the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and the supplemental award, for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.

(2) To receive the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award, an eligible student shall:

(a) Enroll in and attend a participating institution as a full-time student or a part-time student; and

(b) Maintain eligibility as provided in subsection (3) of this section.

(3) Eligibility for a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award shall terminate upon the earlier of:

(a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or

(b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award for a cumulative total of eight (8) academic terms if the student enrolls full-time in a four (4) year program.

(4) (a) The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible student for an award period shall be disbursed by the authority to the eligible student in two (2) equal installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period.

(b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible student for any academic term in which the student is enrolled on a part-time basis. Each academic

term for which any scholarship or supplemental award funds are accepted by an eligible student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible student.

(c) 1. An eligible student who is enrolled full-time in an undergraduate program of study shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study. To retain the maximum award for the second award period, an eligible student shall have a 2.5 grade point average at the end of the first award period. To retain the maximum award amount for subsequent award periods, an eligible student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period.

2. Any eligible student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.

3. Any eligible student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.

4. Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each eligible student enrolled as a full-time or part-time student at the participating institution.

5. Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.

(5) The expiration of a student's five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:

(a) A serious and extended illness or injury of the student, certified by an attending physician;

(b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;

(c) Natural disasters that would render a student unable to attend classes; or

(d) Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.

(6) An eligible student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship, or the ***Kentucky educational***

excellence~~[Commonwealth merit]~~ scholarship and the supplemental award for a maximum of ten (10) academic terms. The expiration of an eligible student's five (5) year eligibility shall be extended to six (6) years for eligible students meeting the requirements of this subsection.

(7) Each eligible student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District.

Section 5. KRS 164.7885 is amended to read as follows:

(1) Not later than August 1, 1999, and each June 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students during the academic year. The list shall identify the high school and shall contain each eligible student's name, social security number, address, grade point average for the academic year, expected or actual graduation date, and highest ACT score. The authority shall notify each eligible student of his or her ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship award earned each academic year. The authority shall determine the final ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award based upon the actual final grade point average and highest ACT score and shall notify each eligible student of the final determination. The authority shall make available a list of eligible students to participating institutions.

(2) Not later than January 30, 1999, and each January 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students expected to graduate during the academic year. The list shall identify the high school and shall contain each eligible student's name, Social Security number, address, grade point average for the fall academic period of the current academic year, and highest ACT score. The authority shall then calculate each eligible student's projected ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award based on the eligible student's data available to the Authority and shall make available to participating institutions by April 1 of each academic year a comprehensive list of prospective graduates who are eligible students and their projected scholarship and supplemental award amounts. The authority shall notify each prospective high school graduate who is an eligible student of his or her projected ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award amount.

(3) The authority shall provide data access only to participating institutions that have either received an admission application from an eligible student or have been listed by the eligible student on the Free Application For Federal Student Aid.

(4) For each eligible student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority:

(a) The student's initial eligibility for a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship or ***Kentucky educational excellence***~~[Commonwealth]~~ scholarship and supplemental award through the comprehensive list compiled by the authority or an alternative source satisfactory to the authority;

(b) The student's highest ACT score attained by the date of graduation from high school;

(c) The eligible student's full-time or part-time enrollment status at the beginning of each academic term; and

(d) The eligible student's cumulative grade point average after the completion of each award period.

(5) Each participating institution shall submit to the authority a report, in a form satisfactory to the authority, of all eligible students enrolled for that academic term. ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarships and supplemental awards shall be disbursed by the authority to each eligible student attending a participating institution during the academic term within thirty (30) days after receiving a satisfactory report.

(6) Except as provided in this subsection, the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and the supplemental award shall not be reduced.

(a) If the sum of the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and the supplemental award plus other student financial assistance from all sources exceeds the eligible student's total cost of education, as defined in 20 U.S.C. sec. 1087ll, need-based financial assistance awards administered by the authority and the participating institution shall be reduced by the amount that all student financial assistance exceeds the total cost of education.

(b) ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarships and supplemental awards shall not be awarded to any eligible students who are in default on any obligation to the authority under any programs administered by the authority under KRS 164.785 until financial obligations to the authority are satisfied, except that ineligibility may be waived by the authority for cause.

(7) Notwithstanding the provisions of KRS 164.753, the authority may promulgate administrative regulations for the administration of ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarships and supplemental awards under the provisions of KRS 164.7871 to 164.7885 and KRS 164.7889.

Section 6. KRS 154A.130 is amended to read as follows:

(1) All money received by the corporation from the sale of lottery tickets and all other sources shall be deposited into a corporate operating account. The corporation is authorized to use all money in the corporate operating account for the purposes of paying prizes and the necessary expenses of the corporation and dividends to the state. The corporation shall allocate the amount to be paid by the corporation to prize winners. The amount in the corporate operating account which the corporation anticipates will be available for the payment of prizes on an annuity basis may be invested in direct United States Treasury obligations. These instruments may be in varying maturities with respect to payment of annuities and may be in book-entry form. Monthly, no later than the last business day of the succeeding month, the corporation shall transfer to a lottery trust fund the amount of net revenues which the corporation determines are surplus to its needs. These funds shall be held in trust until 1990 at which time the General Assembly shall determine the manner in which the funds will be allocated and appropriated. The net revenues shall be determined by deducting from gross revenues the payment costs incurred in the operation and administration of the lottery, including the expenses of the corporation and the costs resulting from any contract or contracts entered into for promotional, advertising, or operational services or for the purchase or lease of lottery equipment and materials, fixed capital outlays, and the payment of prizes to the holders of winning tickets. After the start-up costs are paid, it is the intent of the Legislature that it shall be the goal of the corporation

to transfer each year thirty-five percent (35%) of gross revenues to the general fund for the purposes stated above.

(2) A Kentucky lottery trust account is established in the State Treasury. Net lottery revenues shall be credited to this restricted account as provided in subsection (1) of this section. Moneys credited to the Kentucky lottery trust account shall be invested by the state in accordance with state investment practices and all earnings from the investments shall accrue to this account. No moneys shall be allotted or expended from this account unless pursuant to an appropriation by the General Assembly, except that moneys as are needed shall be transferred to the general fund pursuant to the provisions of the Acts of the Extraordinary Session of the 1988 General Assembly. Moneys in the Kentucky lottery trust account shall not lapse at the close of the state fiscal year.

(3) Beginning in fiscal year 1999-2000, and each fiscal year thereafter, three million dollars ($3,000,000) from net lottery revenues from the sale of lottery tickets shall be credited from the general fund as follows:

(a) To the Collaborative Center for Literacy Development, one million two hundred thousand dollars ($1,200,000) in fiscal year 1999-2000 and each fiscal year thereafter; and

(b) To the early reading incentive fund, one million eight hundred thousand dollars ($1,800,000) in fiscal year 1999-2000 and each fiscal year thereafter.

(4) After the allocation of three million dollars ($3,000,000) to literacy development, as provided in subsection (3) of this section, net lottery revenues from the sale of lottery tickets shall be credited from the general fund as follows:

(a) To the Wallace G. Wilkinson ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship trust fund established in Section 3 of this Act:

1. Seven million dollars ($7,000,000) in fiscal year 1999-2000;

2. Fifteen percent (15%) in fiscal year 2000-2001;

3. Twenty-five percent (25%) in fiscal year 2001-2002;

4. Thirty-two percent (32%) in fiscal year 2002-2003;

5. Forty percent (40%) in fiscal year 2003-2004; and

6. Forty-five percent (45%) in fiscal year 2004-2005 and each fiscal year thereafter; and

(b) To the College Access Program and the Kentucky Tuition Grants Program established in KRS Chapter 164:

1. Fourteen million dollars ($14,000,000) in fiscal year 1998-1999;

2. Fifteen million dollars ($15,000,000) in fiscal year 1999-2000;

3. Thirty-two percent (32%) in fiscal year 2000-2001 through fiscal year 2002-2003;

4. Forty percent (40%) in fiscal year 2003-2004;

5. Forty-five percent (45%) in fiscal year 2004-2005; and

6. Fifty-five percent (55%) of net lottery revenues in fiscal year 2005-2006 and each fiscal year thereafter.

(5) The Auditor of Public Accounts shall be responsible for a financial postaudit of the books and records of the corporation. The postaudit shall be conducted in accordance with generally accepted accounting principles, shall be paid for by the corporation, and shall be completed within ninety (90) days of the close of the corporation's fiscal year. The Auditor of Public Accounts shall contract with an independent, certified public accountant who meets the qualifications existing to do business within the Commonwealth of Kentucky to perform the corporation postaudit. The Auditor of Public Accounts shall remain responsible for the annual postaudit and the corporation shall pay all audit costs. The Auditor of Public Accounts may at any time conduct additional audits, including performance audits, of the corporation as he deems necessary or desirable. Contracts shall be entered into for audit services for a period not to exceed five (5) years and the same firm shall not receive two (2) consecutive audit contracts. All audits shall be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives. The corporation shall reimburse the Auditor of Public Accounts for the reasonable costs of any audits performed by him. The corporation shall cooperate with the Auditor of Public Accounts by giving employees designated by any of them access to facilities of the corporation for the purpose of efficient compliance with their respective responsibilities. With respect to any reimbursement that the corporation is required to pay to any agency, the corporation shall enter into an agreement with that agency under which the corporation shall pay to the agency an amount reasonably anticipated to cover the reimbursable expenses in advance of the expenses being incurred.

(6) By no later than December 31 of each year, in an advertisement at least one-fourth (1/4) of a page in size, the Kentucky Lottery Corporation shall publish the following information in every general-circulation daily newspaper published in Kentucky:

(a) The statements of revenue, expenses, and changes in retained earnings as shown in the most recent annual audit report. It shall be explained that the transfer of dividends is the amount of lottery earnings transferred to the general fund;

(b) A statement identifying the auditing firm;

(c) A telephone number which citizens may call to obtain a complete copy of the annual audit report; and

(d) The name of the president/chief executive officer of the Kentucky Lottery Corporation and a complete list of board members.

The Kentucky Lottery Corporation shall pay for the cost of the advertisement.

Section 7. The General Assembly hereby confirms Executive Order 98-1592, issued by the Governor on December 3, 1998, to the extent that it is not otherwise confirmed by this Act.

Approved February 15, 2000

CHAPTER 14

(SB 24)

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   (a) Department of State Police.

(b) Department of Criminal Justice Training.

(c) Department of Corrections.

(d) Department of Juvenile Justice.

(e) Office of the Secretary.

(f) Offices of the Deputy Secretaries.

(g) Office of General Counsel.

(h) Division of Kentucky State Medical Examiners Office.

(i) Parole Board.

(j) Kentucky State Corrections Commission.

(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for ***Community Based Services***~~[Social Insurance]~~.

(b) Department for ***Disability Determination***~~[Social]~~ Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of ***Performance Enhancement***~~[Aging Services]~~.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 2. 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

(b) Cabinet for Health Services

1. Office of Certificate of Need

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

(c) Cabinet for Families and Children

1. Department for ***Community Based***~~[Social]~~ Services

a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630

2. Department for ***Disability Determination Services***~~[Social Insurance]~~

a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404

(d) Justice Cabinet

1. Department of State Police

   a. 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

(e) Labor Cabinet

1. Department of Workers' Claims

   a. Workers' compensation hearings conducted under authority of KRS Chapter 342

(f) Natural Resources and Environmental Protection Cabinet

1. Department for Surface Mining Reclamation and Enforcement

   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

(g) Kentucky Occupational Safety and Health Review Commission

1. Occupational safety and health hearings conducted under authority of KRS Chapter 338

(h) Public Protection and Regulation Cabinet

1. Board of Claims

   a. Liability hearings conducted under authority of KRS Chapter 44

2. Public Service Commission

   a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279

(i) Cabinet for Workforce Development

1. Department for Employment Services

a. Unemployment Insurance hearings conducted under authority of KRS Chapter 341

(j) Secretary of State

1. Registry of Election Finance

a. Campaign finance hearings conducted under authority of KRS Chapter 121

(k) 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 the Franklin Circuit Court 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 3. KRS 15.290 is amended to read as follows:

(1) There is hereby established in the Department of Law the Child Support Enforcement Commission which shall consist of nine (9) members as prescribed below:

(a) The Attorney General, or a designee, who shall also serve as chairman;

(b) The secretary of the Cabinet for Families and Children, or his designee, who shall also serve as vice chairman;

(c) The director of the Administrative Office of the Courts, or his designee;

(d) The director of the Division of Child Support~~[Enforcement]~~ within the Cabinet for Families and Children; and

(e) The remaining five (5) members shall be appointed by the Governor for terms of four (4) years, except that the initial appointments shall be made in the following manner: One (1) member for two (2) years, two (2) members for three (3) years, and two (2) members for four (4) years. Each member shall serve until a successor is named and any appointment, due to vacancy, shall be for the unexpired term. The remaining five (5) members shall be appointed in the following manner: three (3) members from a list of nine (9) nominees submitted by the Kentucky County Attorney Association, with one (1) of the three members representing either a first class or urban-county government, and two (2) citizen-at-large members.

(2) The secretary of the cabinet shall reimburse to the Department of Law such an amount as incurred related to the function of the commission. The secretary shall provide such information as may be requested by the commission.

(3) The commission shall meet at least quarterly and may meet additional times as may be deemed necessary by the chairman.

(4) Reimbursement for actual travel expenses shall be paid by the Department of Law for commission members, if members are not otherwise eligible for such reimbursement from their respective agency.

(5) The commission shall have the following responsibilities:

(a) Advise the Governor on any issue related to the child-support program;

(b) Advise the Cabinet for Families and Children on any issue related to the child-support program;

(c) Advise the Department of Law on any issue related to the child-support program;

(d) Advise the Administrative Office of the Courts on any issue related to the child-support program;

(e) Provide a regular forum for all parties involved in the child-support program to address any aspect of the administrative or judicial process;

(f) Develop and prepare reports and recommendations related to administrative procedures, prosecution, judicial procedures, state or federal legislation; or any other matters which might improve program effectiveness and efficiency; and

(g) Initiate recommendations to facilitate interaction between local officials and the cabinet.

(6) The commission shall prepare and issue an annual report not later than August 15 of each year for the preceding fiscal year which includes a performance assessment for all aspects of the program. The report shall include recommendations to improve performance and service delivery. The report shall be submitted to the Governor and the Legislative Research Commission. The first report shall be due August 15, 1989.

(7) Nothing in this section shall be construed as modifying the designation of the single state agency as required under the Federal Title IV-D plan.

Section 4. KRS 15A.300 is amended to read as follows:

(1) The Department of Juvenile Justice or a local organization approved by the Department of Juvenile Justice may form local juvenile delinquency prevention councils for the purpose of encouraging the initiation of, or supporting ongoing, interagency cooperation and collaboration in addressing juvenile crime and juvenile status offenses.

(2) The membership of the local council shall be determined by the Department of Juvenile Justice and shall include representatives of law enforcement, the school system, the Department for ***Community Based***~~[Social]~~ Services, the Court of Justice, the Commonwealth's attorney, the county attorney, a representative of a county juvenile detention facility, and the Department for Public Advocacy. The members of the council shall be appointed as provided by the department by administrative regulation and shall be appointed for not longer than four (4) years, but members may be reappointed for a successive term. A member of the council shall receive no salary for service as a member of the council but may be reimbursed for expenses in the same manner as a state employee.

(3) The duties and responsibilities of a juvenile delinquency prevention council shall include but not be limited to:

(a) Developing a local juvenile justice plan based upon utilization of the resources of law enforcement, the school system, the Department of Juvenile Justice, the Department for ***Community Based***~~[Social]~~ Services, the Administrative Office of the Courts, and others in a cooperative and collaborative manner to prevent or discourage juvenile delinquency and to develop meaningful alternatives to incarceration;

(b) Entering into a written local interagency agreement specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan;

(c) Sharing of information as authorized by law to carry out the interagency agreements;

(d) Applying for and receiving public or private grants to be administered by one (1) of the participating cities or counties or other public agencies; and

(e) Providing a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreement.

(4) Training of council members shall be the responsibility of the department.

(5) The Department of Juvenile Justice may provide grants to the councils to establish or enhance prevention programs.

(6) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A that relate to:

(a) The formation of councils;

(b) The operation of councils;

(c) The duties of councils; and

(d) The administration and operation of the grant program.

Section 5. KRS 17.460 is amended to read as follows:

(1) Upon notification by a parent, guardian, person exercising custodial control or supervision, or the authorized representative of the Department for ***Community Based***~~[Social]~~ Services of the Cabinet for Families and Children if the child is a ward of the state, that a child is missing, the law enforcement agency receiving notification shall immediately complete a missing person's report in a form prescribed by the Justice Cabinet which shall include information the Justice Cabinet deems necessary for the identification of the missing child, including the child's physical description, last known location, and known associates.

(2) Within twenty-four (24) hours after completion of the missing person's report form, the law enforcement agency shall transmit the report for inclusion within the Kentucky Missing Child Information Center computer and shall cause the report to be entered into the National Crime Information Center computer.

(3) Within twenty-four (24) hours thereafter, the law enforcement agency shall investigate the report, shall inform all appropriate law enforcement officers of the existence of the missing child report, and shall communicate the report to every other law enforcement agency having jurisdiction in the area.

(4) (a) Upon location of the missing child and verification of the National Crime Information Center entry, the law enforcement agency shall transport the child to the parent, guardian, or person exercising custodial control or supervision.

(b) If the child is a ward of the state, the law enforcement agency shall transport the child to the authorized representative of the Department for ***Community Based***~~[Social]~~ Services of the Cabinet for Families and Children in the jurisdiction of the law enforcement agency.

(c) If the law enforcement agency is unable to return the child to the appropriate caretaker pursuant to paragraph (a) of this subsection, the law enforcement agency shall contact the court-designated worker with jurisdiction for placement determination.

(d) If the child is in custody on a charge of committing an offense pursuant to KRS Chapters 600 to 645, the law enforcement agency shall proceed according to the provisions therein.

(5) Within twenty-four (24) hours after a missing child is located and returned to the appropriate caretaker pursuant to subsection (4) of this section, the law enforcement agency which transported, found, or returned the missing child shall notify both the Missing Child Information Center and the National Crime Information Center of that fact.

Section 6. KRS 36.255 is amended to read as follows:

(1) The Kentucky Community Crisis Response Board is hereby created as a separate administrative body of state government within the meaning of KRS Chapter 12 and attached for administrative purposes to the Department of Military Affairs.

(2) The membership of the board shall consist of the following:

(a) The commissioner of the Department for Mental Health and Mental Retardation Services, or the commissioner's designee;

(b) The commissioner of the Department for Public Health, or the commissioner's designee;

(c) The commissioner of the Department of Education, or the commissioner's designee;

(d) The commissioner of the Kentucky State Police, or the commissioner's designee;

(e) The Kentucky state fire marshal, or the fire marshal's designee;

(f) The executive director of the Division of Disaster and Emergency Services, or the executive director's designee;

(g) The Attorney General, or the Attorney General's designee;

(h) One (1) representative of local community crisis response teams appointed by the Governor;

(i) Four (4) members appointed by the Governor to represent mental health disciplines;

(j) Two (2) members appointed by the Governor to represent emergency services disciplines;

(k) One (1) member who is a mental health professional licensed for independent clinical practice, to be appointed by the Governor. The licensed mental health professional member shall serve as clinical director for the board;

(l) One (1) member, appointed by the Governor, from a state-wide chaplain's association involved in emergency services, who is trained in grief counseling and has experience in crisis response;

(m) One (1) member from the Kentucky Chapter of the American Red Cross; and

(n) The commissioner of the Department for ***Community Based***~~[Social]~~ Services or the commissioner's designee.

(3) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall be approved members of the existing community crisis response team.

(4) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall have demonstrated a commitment to the provision of community crisis response services.

(5) The members of the board appointed by the Governor shall serve for two (2) years and may be reappointed for one (1) additional consecutive two (2) year term. All vacancies in appointed members' terms shall be filled by appointment of the Governor for the remainder of the unexpired term.

(6) The board shall elect annually from its membership a chairperson and shall establish other officers and committees as needed to execute the duties of the board.

(7) The board shall meet at least quarterly, and a majority of the members shall constitute a quorum for the transaction of the board's business.

(8) Except for hired and appointed staff, no board member or team member shall receive compensation. However, board members and crisis response team members may receive reimbursement for expenses incurred in the course of providing crisis response services or executing the duties of the board, consistent with state policy governing the reimbursement of state employees for food, travel, and lodging. Except as provided for in KRS 36.260, nothing in the provisions of KRS 36.250 to 36.270 shall be construed to create liability of a private party for expenses incurred or reimbursed under this subsection.

Section 7. KRS 62.160 is amended to read as follows:

(1) The state officers elected by the voters of the state at large, except the Governor, Lieutenant Governor, and the Superintendent of Public Instruction, the heads of departments and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Kentucky Board of Tax Appeals and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.

(2) The minimum sum of the bond for the following offices shall be as follows:

Secretary of State	$10,000
Attorney General	10,000
State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary for education, arts, and humanities	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000
Secretary of finance and administration	100,000
Secretary of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice	50,000
Secretary of corrections	25,000
Commissioner for health services	10,000
Secretary of labor	5,000
Commissioner of surface mining reclamation and enforcement	50,000
State librarian	5,000

Commissioner of mines and minerals 5,000

Commissioner of alcoholic beverage control 10,000

Commissioner of financial institutions 25,000

Secretary for natural resources and environmental protection 10,000

Commissioner of insurance 50,000

Commissioner of vehicle regulation 10,000

Commissioner of fish and wildlife resources 5,000

Secretary for health services 20,000

Secretary for families and children 20,000

Commissioner for environmental protection 10,000

Secretary for public protection and regulation 10,000

Secretary of tourism 25,000

Commissioner for ***community based services***~~[social insurance]~~ 20,000

Member of the Public Service Commission 10,000

Member of State Fair Board 10,000

Member of Fish and Wildlife Resources Commission 1,000

Member of Kentucky Board of Tax Appeals 10,000

Associate member of Alcoholic Beverage Control Board 5,000

Commissioner of local government 100,000

Section 8. KRS 72.410 is amended to read as follows:

(1) The coroner of each county shall investigate the cause and manner of all deaths that are defined by KRS 72.405 as a coroner's case.

(2) The coroner may, in his sound discretion, when investigating a coroner's case, request the assistance of the district medical examiner and the Division of Kentucky State Medical Examiners Office, order an autopsy, and hold an inquest.

(3) (a) Upon notification of the death of a child under the age of eighteen (18) years which meets the criteria for a coroner's case as defined in KRS 72.405 and 72.025, the coroner shall as soon as practicable contact the local office of the Department for ***Community Based***~~[Social]~~ Services, law enforcement agencies with local jurisdiction, and the local health department to determine the existence of relevant information concerning the case.

(b) Any agency of the state or any other agency, institution, or facility providing services to the child or the child's family, shall provide to the coroner upon his request the cooperation, assistance, and information to enable the coroner to comply with the provisions of this chapter. This section shall not be deemed to abrogate the attorney-client nor the clergy-penitent privilege or the confidentiality of records provided by KRS 311.377(2). If other privileged or confidential records are disclosed to the

coroner pursuant to this section, the records shall remain confidential or privileged and shall not be disclosed except as authorized by this section, to the state or local child fatality response team, or as otherwise required by law.

Section 9. KRS 141.065 is amended to read as follows:

(1) For the purposes of this section, "code" or "Internal Revenue Code" means the Internal Revenue Code in effect as of December 31, 1981.

(2) There shall be allowed as a credit for any taxpayer against the tax imposed by this chapter for any taxable year, an amount equal to one hundred dollars ($100) for each person hired by the taxpayer, if that person has been classified as unemployed by the Department for ***Community Based Services***~~[Social Insurance]~~ of the Cabinet for Families and Children, and has been so classified for at least sixty (60) days prior to his employment by the taxpayer, and if further that person has remained in the employ of the taxpayer for at least one hundred eighty (180) consecutive days during the taxable year in which the taxpayer claims the credit.

(3) No credit shall be allowed to any taxpayer for any person hired under any of the following circumstances:

(a) A person for whom the taxpayer receives federally funded payments for on-the-job training;

(b) For any person who bears any of the relationships to the taxpayer described in paragraphs (1) through (8) of Section 152(a) of the Internal Revenue Code, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent (50%) in value of the outstanding stock of the corporation as determined with the application of Section 267(c) of the code;

(c) If the taxpayer is an estate or trust, to any person who is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of Section 152(a) of the code to a grantor, beneficiary, or fiduciary of the estate or trust; or

(d) To any person who is a dependent of the taxpayer as described in code Section 152(a)(9), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(4) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year by such a controlled group of corporations. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to that term by code Section 1563(a), except that "more than fifty percent (50%)" shall be substituted for "at least eighty percent (80%)" each place it appears in code Section 1563(a)(1), and the determination shall be made without regard to subsections (a)(4) and (e)(3)(c) of code Section 1563.

(5) For purposes of this section, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and in no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year.

(6) No credit shall be allowed under subsection (2) of this section to any organization which is exempt from income tax by this chapter.

(7) In the case of an electing small business corporation, the amount of the credit determined under this section for any taxable year shall be apportioned pro rata among the persons who are shareholders of the corporation on the last day of the taxable year, and any person to whom an amount is so apportioned shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for that amount.

(8) In the case of an estate or trust, the amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of income of the estate or trust allocable to each, and any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for that amount.

(9) In no event shall the credit allowed, pursuant to this section, for any taxable year exceed the tax liability of the taxpayer for the taxable year.

Section 10. KRS 157.317 is amended to read as follows:

(1) The Kentucky Board of Education through administrative regulations shall develop and implement a statewide Early Childhood Education Program which shall include basic principles of child development, early childhood education, and all other related concepts which deal with generally accepted early childhood programs, including the delivery of health and social services to children as needed.

(2) (a) The Kentucky Early Childhood Advisory Council is created to advise the chief state school officer on the implementation of early childhood education programs. The Department of Education shall provide staff and administrative support for the council.

(b) The Kentucky Early Childhood Advisory Council shall consist of one (1) member of the Kentucky Board of Education appointed by the chairman and sixteen (16) members appointed by the Governor. The sixteen (16) appointed members shall include ***two (2) representatives from the Department for Community Based Services and*** one (1) representative from each of the following agencies or groups: preschool teachers, public school teachers, elementary school principals, parents, child-care providers, community education, the Interagency Task Force on Family Resource Centers and Youth Services Centers, the Head Start Association, the Head Start director, the Head Start Program, the Infant/Toddler Coordinating Council, the Department for Public Health,~~[the Department for Social Services, the Department for Social Insurance,]~~ the colleges of education, and the colleges of home economics.

(c) Members shall serve a four (4) year term, except initial appointments shall be set so that four (4) members shall serve one (1) year, four (4) members shall serve two (2) years, four (4) members shall serve three (3) years, and four (4) members shall serve four (4) years.

Section 11. KRS 158.442 is amended to read as follows:

(1) The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research;

dissemination of information about successful school safety programs, research results, and new programs; and, in collaboration with the Department of Education and others, to provide technical assistance for safe schools.

(2) To fulfill its mission, the Center for School Safety shall:

(a) Establish a clearinghouse for information and materials concerning school violence prevention;

(b) Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;

(c) Analyze the data collected in compliance with KRS 158.444;

(d) Research and evaluate school safety programs so schools and communities are better able to address their specific needs;

(e) Administer a school safety grant program for local districts as directed by the General Assembly;

(f) Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions and with local juvenile delinquency prevention councils;

(g) Prepare and disseminate information regarding best practices in creating safe and effective schools;

(h) Advise the Kentucky Board of Education on administrative policies and administrative regulations; and

(i) Provide an annual report by July 1 of each year to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky.

(3) The Center for School Safety shall be governed by a board of directors appointed by the Governor. Members shall consist of:

(a) The commissioner or a designee of the Department of Education;

(b) The commissioner or a designee of the Department of Juvenile Justice;

(c) The commissioner or a designee of the Department for Mental Health and Mental Retardation Services;

(d) The commissioner or a designee of the Department for ***Community Based***~~[Social]~~ Services;

(e) The secretary or a designee of the Education, Arts, and Humanities Cabinet;

(f) A juvenile court judge;

(g) A local school district board of education member;

(h) A local school administrator;

(i) A school council parent representative;

(j) A teacher;

(k) A classified school employee; and

(l) A superintendent of schools who is a member of the Kentucky Association of School Administrators.

In appointing the board of education member, the school administrator, the school superintendent, the school council parent member, the teacher, and the classified employee, the Governor shall solicit recommendations from the following groups respectively: the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of School Councils, the Kentucky Education Association, and the Kentucky Education Support Personnel Association. The initial board shall be appointed by July 15, 1998. The board shall hold its first meeting no later than thirty (30) days after the appointment of the members.

Section 12. KRS 194B.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

(1) Office of the Secretary. The Office of the Secretary for Families and Children may, in addition to the secretary for families and children, include other personnel as are necessary to direct and carry out the missions and goals of the cabinet, including a deputy secretary if deemed necessary by the secretary of the cabinet and upon approval of the Governor.

(2) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.

(3) Office of Program Support. The Office of Program Support shall be responsible for providing administrative and management support, planning, and appraisal of need services within the Cabinet for Families and Children. All personnel, fiscal, budgetary, ***legislative***[~~contract monitoring, quality assurance, quality control, outcome assessment~~], and facility management functions of the cabinet shall be vested in the Office of Program Support. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Program Support under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(4)[~~ Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in~~

~~the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.~~

~~(5) Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner is under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.~~

~~(6)]~~ Office of Family Resource and Youth Services Centers. The Office of Family Resources and Youth Services Centers shall be responsible for the administration, management, and operations of the Family Resources and Youth Services Centers Program. The Office of Family Resources and Youth Services Centers shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.

(5)~~[(7)]~~ Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including, but not limited to, a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies; contract monitoring; and professional development and training. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.

(6)~~[(8)]~~ Office of Technology Services. The Office of Technology Services shall develop and maintain technology and information management systems in support of all units of the cabinet. The Office of Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director for technology services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director for technology services shall exercise authority of the Office of Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(7)~~[(9)]~~ Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended by 42 U.S.C. sec. 3001 et seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long-term care ombudsman program for Kentucky, and provide and

coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.

(8) Office of Performance Enhancement. The Office of Performance Enhancement shall be responsible for quality assurance and performance measurement programs, including contract monitoring, program monitoring, and the development of outcome-based contracts. The Office of Performance Enhancement shall focus on research, best practice, and program accountability, shall monitor federal compliance, and shall provide training for temporary assistance for needy families, food stamps, social services, and medical assistance programs. The Office of Performance Enhancement shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.

(9) Department for Community Based Services. The Department for Community Based Services shall administer an array of services including child and adult protection, permanency, child care, social services, public assistance, family and child support, and services to enhance family self-sufficiency. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.

(10) Department for Disability Determination Services. The Department for Disability Determination Services shall serve as the state unit as required by Title II and Title XVI of the Social Security Act, including having responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. The department shall also make determinations for citizens of the Commonwealth who make application for the Kentucky Transitional Assistance Program and determine medical exemptions for participants in the Kentucky Works Program. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.

Section 13. KRS 194B.090 is amended to read as follows:

The cabinet shall include ***a citizens'***~~[citizen]~~ advisory ***body***~~[bodies]~~ within its structure to provide independent advice from the general public.~~[The citizen bodies within the cabinet shall have the following structure:(1)]~~ A Council for Families and Children is created within the cabinet.

(1)~~[(a)]~~ The council shall advise the secretary for families and children, the commissioner for ***community based***~~[social insurance, the commissioner for social]~~ services, and other officials of the Commonwealth on policy matters relating to the human service needs.

(2)~~[(b)]~~ The council shall be composed of no more than twenty-one (21) citizen members appointed by the Governor. Members of the council shall be chosen to broadly represent public interest groups concerned with social insurance and social service programs operated by the Commonwealth, professionals involved in the delivery of human services, minority groups, the poor, the disadvantaged, recipients of human services provided by the state, and the general public. The Governor shall appoint the chair of the council. The secretary for families and children ***and***~~[,]~~ the commissioner for ***community based***~~[social insurance, and the commissioner for social]~~ services shall be nonvoting, ex officio members of the council, and the ***commissioner for community based***~~[commissioners for social insurance and social]~~ services shall be staff ***director***~~[directors]~~ for, and ***secretary***~~[secretaries]~~ to, the council. The council shall meet at least quarterly and on other occasions as may be necessary, on call of

the secretary for families and children. A majority of appointed members shall constitute a quorum.

(3)[~~(2)~~] An Institute for Aging is created within the cabinet.

(a) The institute shall advise the secretary for families and children and other officials of the Commonwealth on policy matters relating to the development and delivery of services to the aged.

(b) The institute shall be composed of no more than fifteen (15) citizen members appointed by the Governor. Members of the institute shall be chosen to broadly represent public interest groups concerned with the needs of the aged, professionals involved in the delivery of services to the aged, minority groups, recipients of state-provided services to the aged, and the general public. The Governor shall appoint a chair of the institute. The secretary for families and children shall be a nonvoting, ex officio member of, staff director for, and secretary to the institute. The institute shall meet at least quarterly and on other occasions as may be necessary, on the call of the secretary for families and children. A majority of the appointed members shall constitute a quorum.

Section 14. KRS 194B.102 is amended to read as follows:

(1) There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for ***Community Based***[~~Social~~] Services. The committee shall be composed of the following:

(a) Members who shall serve by virtue of their positions: the ***secretary of the Cabinet for Families and Children or the secretary's designee***[~~commissioner of the Department for Social Services~~], the commissioner of the Department for Public Health, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner for the Department for Medicaid Services, the commissioner of the Department for ***Community Based Services***[~~Social Insurance~~], the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and

(b) One (1) foster parent selected by the statewide organization for foster parents, one (1) District Judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Families and Children, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Families and Children, and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.

(2) The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.

(3) The strategic plan shall, at a minimum, include:

(a) A mission statement;

(b) Measurable goals;

(c) Principles;

(d) Strategies and objectives; and

(e) Benchmarks.

(4) The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.

(5) The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in KRS 199.801, establish a statewide facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.

(6) The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities, or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.

(7) As a part of the statewide strategic plan, and in consultation with the Kentucky Information Resources Management Commission, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:

(a) Number of placements per child;

(b) Reasons for placement disruptions;

(c) Length of time between removal and establishment of permanency;

(d) Reabuse or reoffense rates;

(e) Fatality rates;

(f) Injury and hospitalization rates;

(g) Health care provision rates;

(h) Educational achievement rates;

(i) Multiple placement rates;

(j) Sibling placement rates;

(k) Ethnicity matching rates;

(l) Family maintenance and preservation rate; and

(m) Adoption disruption rates.

(8) The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.

Section 15. KRS 194B.530 is amended to read as follows:

(1) The secretary for families and children shall develop an initial training course and continuing education courses for employees of the Department for ***Community Based***~~[Social]~~ Services concerning the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.

(2) Each person employed by the Department for ***Community Based***~~[Social]~~ Services who provides supervisory or direct service at the local, district, or state level shall successfully complete the initial training course and, at least once every two (2) years, the continuing education course developed under subsection (1) of this section.

Section 16. KRS 196.081 is amended to read as follows:

(1) To facilitate the need for comprehensive planning for the Department of Corrections and for related matters the Kentucky State Corrections Commission is created and is attached to the office of the secretary of the Justice Cabinet. The commission shall consist of twelve (12) members as follows:

(a) The Attorney General;

(b) The secretary of the Justice Cabinet;

(c) The commissioner of the Department of Corrections;

(d) The chairman of the Parole Board;

(e) The secretary of the Cabinet for Families and Children;

(f) A county jailer chosen by the Governor;

(g) A Circuit Judge chosen by the Governor from a list of three (3) submitted by the Chief Justice;

(h) Two (2) criminal justice professionals who are familiar with correctional research, theory, and program implementation, appointed by the Governor;

(i) A representative from a law enforcement agency, appointed by the Governor;

(j) A Commonwealth's attorney chosen by the Governor from a list of three (3) submitted by the Prosecutors Advisory Council; and

(k) The state Public Advocate.

(2) The terms of those representatives appointed by the Governor shall be three (3) years. These members shall serve at the pleasure of the Governor and shall be eligible for reappointment. If there is a vacancy, the Governor shall immediately make an appointment effective for the unexpired term.

(3) The Governor shall appoint a chairman of the corrections commission from among its members. The members of the commission shall elect from among its members a vice chairman who shall preside and exercise the functions of chairman during absence or disability of the chairman.

(4) Regular meetings of the commission shall be held at least once every three (3) months at a place, day, and hour determined by the commission. Special meetings shall be held when needed as determined by the chairman. If six (6) or more members of the commission request in writing that the chairman call a special meeting, the chairman shall call a special meeting.

(5) Members of the commission shall receive reimbursement for necessary expenses for attendance at official commission meetings or public hearings. The commission shall be staffed by a director and other staff.

(6) The commission shall:

(a) Develop and approve the methodology to be used by the commission to project and maintain current six (6) year projections of prison populations;

(b) Develop a six (6) year plan for Department of Corrections operations, including both construction and programmatic elements; this plan shall be developed with information supplied by the agencies, departments, and groups represented on the commission, and other public and private agencies and citizens with a vested interest in corrections;

(c) Monitor, modify, and update the six (6) year plan as necessary but not less frequently than semiannually and submit the current plan to the Legislative Research Commission not later than six (6) months prior to the commencement of every regular session of the General Assembly;

(d) Assist the Department of Corrections in preparing and submitting legislative proposals, including budget requests necessary to implement and update the six (6) year plan;

(e) Review and make recommendations to the General Assembly concerning legislative proposals, including Department of Corrections budget proposals, to insure consistency with the six (6) year plan;

(f) Develop, in cooperation with the Department of Public Advocacy, the Administrative Office of the Courts, the Prosecutors Advisory Council, and other interested parties, a schedule of punitive and rehabilitative alternatives to imprisonment for dissemination to judges, prosecutors, and defense attorneys. The schedule shall include, but shall not be limited to, rehabilitation treatment and counseling, community work and service, and drug and alcohol testing;

(g) Receive regular reports from the Department of Corrections, on a schedule established by the commission, as to the department's progress in complying with the six (6) year plan;

(h) Review and make recommendations to the department on any significant change in programs, policies, procedures, staffing, classification, or other component of corrections operations which departs from the six (6) year plan;

(i) Assist the Legislative Research Commission in the preparation of corrections impact statements for proposed legislation;

(j) Make recommendations to the Governor and the General Assembly concerning legislation affecting corrections including, but not limited to, legislation relating to sentencing, probation, and parole;

(k) In cooperation with the Administrative Office of the Courts, the Prosecutors Advisory Council, the Department for ***Community Based***~~[Social]~~ Services of the Cabinet for Families and Children, and the Kentucky Bar Association, conduct educational seminars for judges, attorneys, and probation officers, to disseminate information concerning the availability and appropriate utilization of community service, rehabilitation, and other types of alternative sentences and conditions of probation; and

(l) Administer the provisions of KRS 196.700 to 196.735.

(7) The six (6) year plan shall consist of at least the following elements:

(a) The location, capacity, classification, and staffing of each penal institution and program administered by the Department of Corrections;

(b) The location, capacity, classification, staffing, and anticipated cost and time of construction of each new facility to be constructed or each facility expansion to be constructed during the six (6) year plan period;

(c) The administrative structure of the Department of Corrections;

(d) Prison population projections for the six (6) year plan period;

(e) Education, rehabilitation, and prison industries programs administered by the Department of Corrections;

(f) The inmate labor program administered by the department; and

(g) Contingency plans to deal with unexpected increases in prison population.

(8) The six (6) year plan shall be submitted to the General Assembly and approved by the General Assembly with the additions, deletions, or modifications the General Assembly shall deem advisable. Upon adoption by the General Assembly, all new facilities, and renovations and expansions of existing facilities, shall be in accordance with the plan, except in the case of an emergency declared by the Governor after the adoption of the plan. All other material changes in the plan shall be presented to the Corrections Commission for review and recommendation prior to implementation. While a change may be implemented without commission approval, the Corrections Commission shall advise the Legislative Research Commission of any material change request that is not favorably recommended by the commission.

Section 17. KRS 199.011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Secretary" means the secretary for families and children;

(2) "Cabinet" means the Cabinet for Families and Children;

(3) "Department" means the Department for ***Community Based***~~[Social]~~ Services;

(4) "Child" means any person who has not reached his eighteenth birthday;

(5) "Adult adopted person" means any adopted person who is twenty-one (21) years of age or older;

(6) "Child-caring facility" means any institution or group home, including institutions and group homes that are publicly operated, providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility, other than an institution or group home certified by an appropriate agency as operated primarily for educational or medical purposes, or a residential program operated or contracted by the Department of Juvenile Justice that maintains accreditation, or obtains accreditation within two (2) years of opening from a nationally recognized accrediting organization;

(7) "Child-placing agency" means any agency licensed by the cabinet which supervises the placement of children in foster family homes or child-caring facilities, or which places children for adoption;

(8) "Adoption worker" means an employee of the cabinet so designated by the secretary for families and children, a social worker employed by a county or city who has been approved by the cabinet to handle, under its supervision, adoption placement services to children, or a social worker employed by or under contract to a child-placing adoption agency;

(9) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;

(10) "Group home" means a homelike facility, excluding Department of Juvenile Justice operated or contracted facilities, for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;

(11) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children;

(12) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons;

(13) "Placement services" means those social services customarily provided by a licensed child-placing or a public agency which are necessary for the arrangement and placement of children in foster family homes, child-placing facilities, or adoptive homes. Placement services are provided through a licensed child-placing or a public agency for children who cannot be cared for by their biological parents and who need and can benefit from new and permanent family ties established through legal adoption. Licensed child-placing agencies and public agencies have a responsibility to act in the best interests of children, biological parents, and adoptive parents by providing social services to all the parties involved in an adoption; and

(14) "Voluntary and informed consent" means that at the time of the execution of the consent the consenting person was fully informed of the legal effect of the consent, that the consenting person was not given or promised anything of value except those expenses allowable under KRS 199.590(6), that the consenting person was not coerced in any way to execute the consent, and that the consent was voluntarily and knowingly given. If at the time of the execution of the consent the consenting person was represented by independent legal counsel, there shall be a presumption that the consent was voluntary and informed. In the event the person was not represented by independent legal counsel, the consent shall be in writing, signed and sworn to by the consenting person and include the following:

(a) Date, time, and place of the execution of the consent;

(b) Name of the child, if any, to be adopted and the date and place of the child's birth;

(c) Consenting person's relationship to the child;

(d) Identity of the proposed adoptive parents or a statement that the consenting person does not desire to know the identification of the proposed adoptive parents;

(e) A statement that the consenting person understands that the consent will be final and irrevocable twenty (20) days after the execution of the consent if the placement was previously approved, if approval of the placement is required;

(f) Disposition of the child if the adoption is not adjudged;

(g) A statement that the consenting person has received a completed and signed copy of the consent at the time of the execution of the consent;

(h) A statement that the consenting person understands that the consent may only be withdrawn by written notification sent by certified or registered mail addressed to either the attorney for the consenting person or to the attorney for the adoptive parents, within thirty (30) days following the execution of the consent;

(i) Name and address of the person who prepared the consent, name and address of the person who reviewed and explained the consent to the consenting person, and a verified statement from the consenting person that the consent has been reviewed with and fully explained to the consenting person; and

(j) Total amount of the consenting person's legal fees, if any, for any purpose related to the execution of the consent and the source of payment of the legal fees.

Section 18. KRS 199.461 is amended to read as follows:

(1) As used in this section, "***social***~~[family]~~ service worker" means a social worker employed by the Cabinet for Families and Children, Department for ***Community Based***~~[Social]~~ Services, to provide direct casework services in foster care, child protection, juvenile services, or adult protection.

(2) As used in this section, "active case" includes the total number of cases for which the family service worker has responsibility.

(3) The monthly statewide caseload average for ***social***~~[family]~~ service workers in the area of foster care, child protection, juvenile services, or adult protection shall not exceed twenty-five (25) active cases.

(4) Nothing in this section shall prevent the department or a ***social***~~[family]~~ service worker from handling emergencies to carry out statutory mandates. If the monthly statewide caseload

average for ***social***[~~family~~] service workers exceeds twenty-five (25) active cases for ninety (90) consecutive days, the department shall report the fact to the Governor and to the Legislative Research Commission together with a description of the factors contributing thereto and shall make recommendations related thereto. The report shall include, by county and district, ***social***[~~family~~] service worker caseload averages; the number of established ***social***[~~family~~] service worker positions; and the number of vacant ***social***[~~family~~] service worker positions.

Section 19. KRS 199.565 is amended to read as follows:

(1) The Department for ***Community Based***[~~Social~~] Services shall develop a written protocol for statewide swift adoption procedures to decrease the length of time necessary to complete the adoption process for children who are committed to the cabinet. The protocol shall establish outcome measures for the adoption process, and identify all state, local, and federal agencies, and other entities required to provide services in the adoption process.

(2) The department shall develop swift adoption teams to expedite the adoption process for children who are committed to the cabinet. Swift adoption teams shall include department personnel representing the state, district, and local levels. The swift adoption teams shall operate under the protocol developed pursuant to subsection (1) of this section. Case referrals to swift adoption teams shall be accepted from social services offices from across the state.

(3) The department shall issue a quarterly report which shall provide the status of the teams' goals and objectives and identify all adoption proceedings in which the teams have participated during the three (3) month period examined in the quarterly report. The report shall include:

(a) The number and location of all committed children placed for adoption;

(b) All options made available to those populations;

(c) The experience and activity for each case;

(d) The successful adoptions and locations;

(e) The status of all cases in which the teams have participated;

(f) The identity of all agencies involved in the adoption process;

(g) An evaluation of the team efforts for the quarter; and

(h) A report of initiatives for the swift adoption process for the upcoming quarter.

(4) The quarterly report shall also include recommendations for changes in statutes, administrative regulations, and policies that would enable the department to further improve the timeliness of adoption placements. The report shall be provided to the Governor, the Legislative Research Commission, and the Chief Justice of the Kentucky Supreme Court.

Section 20. KRS 199.5954 is amended to read as follows:

(1) A child with special needs residing in this state, who is the subject of an adoption assistance agreement with another state, shall be entitled to receive medical assistance from this state upon the filing in the Department for ***Community Based Services***[~~Social Insurance~~], Cabinet for Families and Children, a certified copy of the adoption assistance agreement

obtained from the adoption assistance state. In accordance with regulations of the Department for Medicaid Services, Cabinet for Health Services, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(2) The Department for Medicaid Services, Cabinet for Health Services shall consider recipients of medical assistance pursuant to this section as any other recipient of medical assistance under the laws of this state and shall process and make payment on claims on account of the recipient in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(3) The Department for Medicaid Services, Cabinet for Health Services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department for ***Community Based***~~[Social]~~ Services, Cabinet for Families and Children for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held by the child or the adoptive parents. The Cabinet for Families and Children shall make regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

(4) The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading, or fraudulent shall be punishable as perjury and shall also be subject to a fine not to exceed ten thousand dollars ($10,000) or imprisonment for not more than two (2) years, or both such fine and imprisonment.

(5) The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

Section 21. KRS 199.641 is amended to read as follows:

(1) As used in this section, unless the context otherwise requires:

(a) "Allowable costs" means all allowable costs as defined by the Federal Office of Management and Budget circular A-122, "cost principles for nonprofit organizations," utilizing cost data from the child-caring facility's most recent yearly audited financial statement;

(b) "Child-caring facility" means any institution or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility; and

(c) "Department" means the Department for ***Community Based***~~[Social]~~ Services of the Cabinet for Families and Children.

(2) When the Department for ***Community Based***~~[Social]~~ Services chooses to place a child in a nonprofit child-caring facility, the department shall reimburse that facility the allowable cost of the child's care, subject to the limitation set forth in subsection (3) of this section.

(3) When the Department for ***Community Based***~~[Social]~~ Services chooses to place a child in a nonprofit child-caring facility, the rate of reimbursement for the child's care shall not exceed seventy-five percent (75%) of the average cost in the most comparable residential facility operated by the department. The rate shall be based on actual total facility occupancy for the most recent audited year or ninety percent (90%) of the facility capacity for the audited year, whichever is greater.

(4) The secretary shall, to the extent funds are appropriated, implement the reimbursement methodology set forth in this section, or may promulgate administrative regulations in accordance with KRS Chapter 13A to establish the rate of reimbursement for child-caring facilities which are consistent with the level of service provided. If funds are insufficient in any given fiscal year to fully fund this provision, rates shall be adjusted by determining the reimbursement schedule and adjusting by the ratio of available funds to estimated full cost.

Section 22. KRS 199.680 is amended to read as follows:

(1) The Department for ***Community Based***~~[Social]~~ Services and the Department for Medicaid Services shall not reimburse an out-of-state provider of residential care for children whose care is paid by state general funds or state administered federal funds unless the Department for Medicaid Services or the Department for ***Community Based***~~[Social]~~ Services or a designated agent thereof has determined that there is no provider within the Commonwealth that is capable and willing to provide comparable services at a comparable cost per child to those that would be delivered by the out-of-state provider. An exception may be made if:

(a) The identified in-state resource is farther away from the child's parent or guardian than a similar out-of-state resource; or

(b) The services offered by the out-of-state resource is deemed by either department or a designated agent thereof to be more appropriate for the individual child than the services offered by the in-state provider.

(2) Prior to promulgating administrative regulations governing the determination of the availability of providers of residential care within the Commonwealth, the Department for Medicaid Services and the Department for ***Community Based***~~[Social]~~ Services shall establish uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth.

(3) Each department shall promulgate an administrative regulation in accordance with KRS Chapter 13A that contains the uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth established under subsection (2) of this section.

Section 23. KRS 199.800 is amended to read as follows:

For the purposes of KRS 199.800 to 199.805:

(1) "Department" means the Department for ***Community Based***~~[Social]~~ Services;

(2) "Home county" means the county in which the child's natural parents, adoptive parents, or guardian reside. If the parents are divorced, the home county is the county of residence of the parent with legal custody. If the child is committed, the home county is the county of original commitment or case responsibility;

(3) "Home district" means the Department for ***Community Based***~~[Social]~~ Services district in which the child's home county is located;

(4) "Type of placement" means the living arrangement, including family foster care, private child care, or other residential alternative that is deemed appropriate for a child as determined by the district placement coordinator and the ***social service***~~[family services]~~ worker with case responsibility; and

(5) "Unmet need" means the type of facility or placement needed to serve the child's needs which is unavailable at the time placement is being sought for the child.

Section 24. KRS 199.8982 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Cabinet" means the Cabinet for Families and Children;

(b) "Department" means the Department for ***Community Based***~~[Social]~~ Services; and

(c) "Family child-care home" means a private home which provides full or part-time care day or night for six (6) or fewer children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the provider.

(2) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;

2. Provide a written statement from a physician that the applicant is in good health;

3. Submit to a criminal record check as provided by KRS 17.165;

4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;

5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and

6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:

a. Basic health, safety, and sanitation;

b. Recognizing and reporting child abuse; and

c. Developmentally appropriate child-care practice.

(b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar ($10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars ($10).

(c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.

(d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.

(e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.

(f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home; provided, however, any administrative regulations promulgated in accordance with KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:

1. Certification requirements and procedures;

2. Information about available child-care training; and

3. Child-care food sponsoring organizations.

(3) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

(4) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (2)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (2)(a)6. of this section.

Section 25. KRS 199.8984 is amended to read as follows:

(1) The Child-Care Policy Council is created within the Cabinet for Families and Children. The council shall:

(a) Promote coordination and communication among state agencies responsible for child-care and early childhood education services;

(b) Serve as an advisor for state agencies responsible for child-care programs;

(c) Review state child-care programs and make recommendations to state agencies and the General Assembly related to program implementation, access to child care, the supply of child care, and coordination of child-care and other early childhood programs;

(d) Review and make recommendations on administrative regulations relating to child-care programs and services;

(e) Advise the cabinet on application requirements and distribution of contracts to local child-care resource and referral agencies; and

(f) Submit biennially to the Legislative Research Commission by October 1 in each odd-numbered year a report on the status of child care.

(2) The council shall be composed of seventeen (17) citizen members appointed by the Governor and shall include one (1) member of the House of Representatives appointed by the Speaker of the House and one (1) member of the Senate appointed by the Senate President. Members of the council shall serve for a term of four (4) years and until their successors are appointed and qualified; they shall be chosen to broadly represent public interest groups concerned with child-care services, professionals involved in the delivery of child-care services, nonprofit child-care providers, for-profit child-care providers, family child-care providers, employers, labor, resource and referral programs, parents, and the general public. The Governor shall appoint the chairman of the council, who shall also serve as one of the voting members of the council. The secretary for families and children ***and***~~[,]~~ the commissioner for ***community based***~~[social insurance, and the commissioner for social]~~ services shall be nonvoting, ex officio members of the council. The commissioner for ***community based***~~[social]~~ services shall be staff director for, and shall provide staff to, the council. The council shall meet at least quarterly and on other occasions as may be necessary. A majority of the appointed members shall constitute a quorum.

Section 26. KRS 200.503 is amended to read as follows:

As used in KRS 200.501 to 200.509, unless the context otherwise requires:

(1) "Child with an emotional disability" means a child with a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and seriously limits a child's capacity to function in the home, school, or community.

(2) "Child with a severe emotional disability" means a child with a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and that:

(a) Presents substantial limitations that have persisted for at least one (1) year or are judged by a mental health professional to be at high risk of continuing for one (1) year without professional intervention in at least two (2) of the following five (5) areas: "Self-care," defined as the ability to provide, sustain, and protect his or herself at a level appropriate to his or her age; "Interpersonal relationships," defined as the ability to build and maintain satisfactory relationships with peers and adults; "Family life," defined as the capacity to live in a family or family type environment; "Self-direction," defined as the child's ability to control his or her behavior and to make decisions in a manner appropriate to his or her age; and "Education," defined as the ability to learn social and intellectual skills from teachers in available educational settings; or

(b) Is a Kentucky resident and is receiving residential treatment for emotional disability through the interstate compact; or

(c) The Department for ***Community Based***~~[Social]~~ Services has removed the child from the child's home and has been unable to maintain the child in a stable setting due to behavioral or emotional disturbance; or

(d) Is a person under twenty-one (21) years of age meeting the criteria of paragraph (a) of this subsection and who was receiving services prior to age eighteen (18) that must be continued for therapeutic benefit.

(3) "State Family Advisory Council" means the council composed of all parent members or alternate parent members of the state, regional, and local interagency councils for services to children with an emotional disability pursuant to KRS 200.505 and 200.509 and all parent members of regional policy councils.

(4) "Least restrictive alternative mode of treatment" means treatment given in the least confining setting which will provide a child with an emotional disability or severe emotional disability appropriate treatment or care consistent with accepted professional practice. For purposes of this section, least restrictive alternative mode of treatment may include an institutional placement.

Section 27. KRS 200.505 is amended to read as follows:

There is hereby created a State Interagency Council for Services to Children with an Emotional Disability. The chairman of the council shall be designated by the Governor and shall establish procedures for the council's internal procedures.

(1) This council shall be composed of the following:

(a) Members who shall serve by virtue of their positions: the commissioner of the Department of Education, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner of the Department for ***Community Based***~~[Social]~~ Services, the commissioner of the Department for Public Health, the commissioner of the Department ***for***~~[of]~~ Medicaid Services, ***the commissioner of the***

Department of Juvenile Justice, and the executive director of the Administrative Offices of the Courts, or their designees; and

(b) The Governor shall appoint one (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability to serve as a member of the council, and one (1) parent who meets the same criteria to serve as the parent member's alternate to serve in the absence of the parent member. For each appointment to be made, the State Family Advisory Council shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment. The alternate parent member may attend and participate in all council meetings but shall vote only in the absence of the parent member. The parent member and alternate parent member shall receive no compensation in addition to that which they may already receive as service providers or state employees, but the parent member and alternate parent member shall be reimbursed for expenses incurred through the performance of their duties as council members.

(2) The State Interagency Council for Services to Children with an Emotional Disability shall:

(a) Consider issues and make recommendations annually to the Governor and the Legislative Research Commission regarding the provision of services for children with an emotional disability;

(b) Direct each regional interagency council to coordinate services to children with an emotional disability and identify factors contributing to a lack of coordination;

(c) Develop a form to be signed by the parent or other legal guardian of a child referred for services to any interagency council for children with an emotional disability. The form shall enable the agencies involved with the child to share information about the child as necessary to identify and provide services for the child;

(d) Review service and treatment plans for children for whom reviews are requested, and provide any advice and assistance that the state council determines to be necessary to meet the needs of children with an emotional disability referred by regional councils;

(e) Assess the effectiveness of regional councils in meeting the service needs of children with an emotional disability;

(f) Establish a uniform grievance procedure for the state, to be implemented by each regional interagency council. Appeals may be initiated by the child, parent, guardian, person exercising custodial control or supervision, or other authorized representative about matters relating to the interagency service plan for the child or the denial of services by the regional interagency council. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B;

(g) Meet at least monthly and maintain records of meetings, except that records that identify individual children shall only be disclosed as provided by law;

(h) Adopt interagency agreements as necessary for coordinating services to children with an emotional disability by the agencies represented in the state council;~~[and]~~

(i) Develop services to meet the needs of children with an emotional disability***; and***

(j) Promote services to prevent the emotional disability of a child.

(3) The State Interagency Council for Services to Children with an Emotional Disability may promulgate administrative regulations necessary to comply with the requirements of KRS 200.501 to 200.509.

Section 28. KRS 200.509 is amended to read as follows:

(1) There are hereby created regional interagency councils for services to children with an emotional disability. These councils shall be formed in each area development district within the Commonwealth of Kentucky, except that those area development districts that contain a county with a population greater than one hundred thousand (100,000) may form up to three (3) such councils. The regional interagency councils for services to children with an emotional disability shall be chaired by the ***service region administrator***[~~district supervisor~~] of the Department for ***Community Based***[~~Social~~] Services or a program specialist with expertise in this service area as the district supervisor's designee. Each council shall be composed of the following members:

(a) The children's services coordinator from each regional community mental health center or their designee in the case of a multicouncil district;

(b) One (1) court, designated worker chosen by the Chief Regional District Judge within the region;

(c) One (1) specialist in special education chosen by the school district superintendents in the area served by the regional council;

(d) One (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability, and one (1) parent who meets the same criteria to serve as the parent member's alternate, who may attend and participate in all council meetings, but shall vote only in the absence of the parent member. For each appointment to be made, the regional interagency council for which the appointment is to be made shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment;[~~ and~~]

(e) Any other local public or private agency that provides services to children with an emotional disability which the regional interagency council may invite to have a representative become a permanent or temporary member of the council***; and***

(f) Representatives from the Department of Juvenile Justice and local health departments.

(2) No member of a regional interagency council for services to children with an emotional disability shall be given compensation in addition to that which they already receive as service providers or state employees, except that the parent members and alternate parent members of regional interagency councils shall be reimbursed for all expenses incurred through the performance of their duties as council members.

(3) Each regional interagency council for services to children with an emotional disability shall perform the following functions:

(a) Review case histories of children referred to it by its members or any other entity within its geographical area to coordinate service provision;

(b) Coordinate the development of interagency service plans for children with an emotional disability in the least restrictive alternative mode of treatment;

(c) Identify the time frames necessary and the parties responsible for the timely development of the interagency service plans for children with an emotional disability;

(d) Verify that services identified in interagency service plans are developed, accessed, and delivered in a coordinated and timely manner;

(e) Initiate and adopt interagency agreements as necessary for providing services to children with an emotional disability by the agencies represented in the regional council;

(f) Advise the state interagency council regarding service delivery to children with an emotional disability within the region;

(g) Refer those children for whom the regional councils cannot provide adequate services to the state interagency council;

(h) Implement the uniform grievance procedure established by the state interagency council;

(i) Make periodic reports to the state interagency council regarding the number of children referred to the regional council and the progress made in meeting the needs of each child;~~[and]~~

(j) Recognize local interagency councils for services to children with an emotional disability when it determines the council would be beneficial to service delivery***; and***

(k) Promote services to prevent the emotional disability of a child.

(4) The secretary for families and children and the designee of the State Department of Education shall ensure that regional councils for services to children with an emotional disability are formed by October 1, 1990.

(5) Local interagency councils for services to children with an emotional disability may be formed as necessary to enhance service provision, better coordinate services, or initiate special projects and fundraising activities for children with an emotional disability within a city, county, or other local community.

Section 29. KRS 200.585 is amended to read as follows:

(1) The Department for ***Community Based***~~[Social]~~ Services shall be the lead administrative agency for family preservation services and may receive funding for the implementation of these services. The Department for ***Community Based***~~[Social]~~ Services shall:

(a) Provide the coordination of and planning for the implementation of family preservation services;

(b) Provide standards for family preservation services programs;

(c) Monitor these services to ensure they meet measurable standards of performance as set forth in state law and as developed by the Department for ***Community Based***~~[Social]~~ Services; and

(d) Provide the initial training and approve any ongoing training required by providers of family preservation services.

(2) The Department for ***Community Based***~~[Social]~~ Services may provide family preservation services directly or may contract with a private, nonprofit social service agency to provide these services. In the event the department provides family preservation services with state caseworkers, those caseworkers and cases shall be excluded for the overall caseworker/case averages provided on a quarterly basis to the Legislative Research Commission and the Governor's office under KRS 199.461. Family preservation services caseworkers and cases shall be included in the report as a separate category.

(3) In the event a nonprofit social service agency is contracted by the Department for ***Community Based***~~[Social]~~ Services, to provide family preservation services, the contract shall include:

(a) Requirements for provider acceptance of any client referred by the Cabinet for Families and Children for family preservation services;

(b) Limitation of caseload to four (4) or fewer families per caseworker;

(c) Provision of twenty-four (24) hour crisis intervention services to families served by the program;

(d) Provision for training of family preservation services staff to meet the following minimum standards:

1. Intensive training of not less than forty (40) hours to any therapist before family preservation services clients are assigned. This training is to be provided by individuals with recognized expertise regarding family preservation services and is to concern itself with the required knowledge skills, and techniques for success within the family preservation services model;

2. A plan for the continuing education of staff therapists after the initial forty (40) hours;

3. Training of not less than twenty (20) hours for a paraprofessional family aide before provision of services without the direct supervision of a family preservation services caseworker;

(e) Provide for and conduct internal program evaluation and cooperate with external evaluation as directed by the Department for ***Community Based***~~[Social]~~ Services;

(4) To qualify for continued funding under subsection (3) of this section, an agency contracting to provide family preservation services shall demonstrate an annual success rate of seventy-five percent (75%) in avoiding out-of-home placement six (6) months after the cessation of family preservation services.

Section 30. KRS 200.658 is amended to read as follows:

(1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to

serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Cabinet for Health Services. Pursuant to federal law and regulations, the membership shall be as follows:

(a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;

(b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;

(c) At least one (1) member shall be a member of the Kentucky General Assembly;

(d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;

(e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;

(f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;

(g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;

(h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for ***Community Based***~~[Social]~~ Services;

(i) At least one (1) member shall be the commissioner or designee of the Department of Education;

(j) At least one (1) member shall be the commissioner or designee of the Department of Insurance; and

(k) At least one (1) member shall be a representative of the Commission for Handicapped Children.

(2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including, but not limited to, the following:

(a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;

(b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;

(c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;

(d) Resolution of disputes, to the extent deemed appropriate by the cabinet;

(e) Provision of appropriate services for children from birth to five (5) years of age;

(f) Identify sources of fiscal and other support services for early intervention programs;

(g) Preparing applications to Part H of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications; and

(h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.

(3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.

(4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

Section 31. KRS 200.662 is amended to read as follows:

The cabinet shall establish one (1) district early intervention committee in each of the fifteen (15) area development districts. Each committee shall have from fifteen (15) to twenty-five (25) members of whom at least five (5) shall be parents, at least five (5) shall be early intervention service providers, and at least one (1) shall be a representative from each of the following: the local health department, the local office of the Department for ***Community Based***~~[Social]~~ Services, the local community mental health and mental retardation center, and the local Commission for Handicapped Children. Each committee may include representatives from one (1) or more of the following: a child day-care facility, a public school, a provider of medical services, a provider of therapy services, a home health agency if operated separately from the local health department, a university or college, a family resource center, a local business, a local charity, or others deemed appropriate. Each committee shall:

(1) Advise and assist the cabinet and the council in the development, implementation, and monitoring of the Kentucky Early Intervention System;

(2) Identify local resources available to infants and toddlers with disabilities and their families;

(3) Assist in identifying the unmet needs of infants and toddlers with disabilities and their families;

(4) Assist in establishing and maintaining a point of entry to the early intervention system; and

(5) Assist in the establishment of local interagency agreements for early intervention services and provide a forum for coordinating district early intervention services.

Section 32. KRS 205.510 is amended to read as follows:

As used in this chapter as it pertains to medical assistance unless the context clearly requires a different meaning:

(1) "Council" means the Advisory Council for Medical Assistance;

(2) "Dentist" means a person authorized to practice dentistry under laws of the Commonwealth;

(3) "Medical care" as used in this chapter means essential medical, surgical, dental, optometric, podiatric, and nursing services, in the home, office, clinic, or other suitable places, which are provided or prescribed by physicians, optometrists, podiatrists, or dentists licensed to render such services, including drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing-home and convalescent care, hospital care as defined in KRS 205.560(1)(a), and such other essential medical services and supplies as may be prescribed by such persons; but not including abortions, or induced miscarriages or premature births, unless in the opinion of a physician such procedures are necessary for the preservation of the life of the woman seeking such treatment or except in induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child. However, this section does not authorize optometrists to perform any services other than those authorized by KRS Chapter 320;

(4) "Nurse" means a person authorized to practice professional nursing under the laws of the Commonwealth;

(5) "Nursing home" means a facility which provides routine medical care in which physicians regularly visit patients, which provide nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond that which the untrained person possesses, and which maintains complete records on patient care, and which is licensed pursuant to the provisions of KRS 216B.015;

(6) "Optometrist" means a person authorized to practice optometry under the laws of the Commonwealth;

(7) "Pharmacist" means a person authorized to practice pharmacy under the laws of the Commonwealth;

(8) "Physician" means a person authorized to practice medicine or osteopathy under the laws of the Commonwealth;

(9) "Podiatrist" means a person authorized to practice podiatry under the laws of the Commonwealth;

(10) "Primary-care center" means a facility which provides comprehensive medical care with emphasis on the prevention of disease and the maintenance of the patients' health as opposed to the treatment of disease;

(11) "Public assistance recipient" means a person who has been certified by the Department for ***Community Based Services***~~[Social Insurance]~~ of the Cabinet for Families and Children as being eligible for, and a recipient of, public assistance under the provisions of this chapter;

(12) "Other persons eligible for medical assistance" may include the categorically needy excluded from money payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as prescribed by regulation of the secretary for health services or his designee;

(13) "Vendor payment" means a payment for medical care which is paid by the Cabinet for Health Services directly to the authorized person or institution which rendered medical care to an eligible recipient;

(14) "Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including but not limited to a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparation Act, who is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act.

Section 33. KRS 205.6318 is amended to read as follows:

The Cabinet for Health Services shall review the available technology associated with the medical assistance system to determine which technology is best suited to enhance program service operation, monitoring ability, and fraud and abuse detection. This shall include the ability to provide on-line access to data files to allow cross-analysis of provider and recipient utilization patterns. The cabinet shall by promulgation of administrative regulations, pursuant to KRS Chapter 13A, establish an integrated system to enhance program integrity, using a combination of staff, computer technology, and contractual services to identify potential fraud, abuse, and misutilization of services. This system shall:

(1) Utilize statisticians, program specialists, accountants, nurses, and other medical specialists to review the Medical Assistance Program to identify patterns of provider and recipient behavior that contributes to unnecessary or abusive use of program services;

(2) Utilize computer capability through contractual services or the purchase of computer software to detect the unbundling of claims and other techniques used by providers to enhance reimbursement;

(3) Impose utilization controls on the expenditures in respiratory, physical, speech, and occupational therapy and durable medical equipment provided to nursing-home residents, through the use of established medical criteria or preauthorization of ancillary therapies;

(4) Establish state audit and edit requirements that exceed the federal audit and edit requirements;

(5) Obtain access to necessary data from the fiscal agent of each medical provider;

(6) Review the efficiency and effectiveness of the fraud and abuse detection and investigation process to determine whether changes shall be made;

(7) Direct that fraud and abuse detection and investigation components shall be active in initiating investigations. The fraud and abuse detection, investigation, and prosecution functions shall be integrated, with access to information in files maintained by the Department for ***Community Based Services***~~[Social Insurance]~~ and the Department for Medicaid Services;

(8) Review penalties for deterrent value for medical providers that are found to have abused Medicaid regulations and statutes; and

(9) Provide for a proactive effort to reduce costs for institutionalized program participants. Program officials shall seek to implement innovative or experimental demonstration programs that aim to control costs.

Section 34. KRS 205.6336 is amended to read as follows:

(1) The secretary of the Finance and Administration Cabinet, after consultation with the secretary for the Cabinet for Health Services, shall on a quarterly basis, certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by KRS 205.6310 to 205.6332 and any other procedures adopted by the Cabinet for Health Services or the Kentucky Health Policy Board to control the cost of health care.

(2) The certification shall indicate the following:

(a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and

(b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.

(3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for Health Services to provide health-care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.

(4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:

(a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.

(b) To the extent that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not eligible for certification under this section.

(5) Savings in the general fund appropriation to the Department for Mental Health and Mental Retardation Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(6) Savings in the general fund appropriation to the Department for Public Health shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(7) Savings in the general fund appropriation to the Department for ***Community Based***~~[Social]~~ Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.

Section 35. KRS 205.634 is amended to read as follows:

(1) No medical assistance payments shall be made under this chapter to any out-of-state health facility or health service providing services within the geographic boundaries of the Commonwealth who does not have a certificate of need if the health facility or health service would be required to obtain a certificate of need under KRS Chapter 216B if the facility or service were located within the geographic boundaries of the Commonwealth.

(2) The Department for Medicaid Services and the Department for ***Community Based***~~[Social]~~ Services shall not reimburse an out-of-state provider of residential care for children whose care is paid by state general funds or state administered federal funds, unless the Department for Medicaid Services or the Department for ***Community Based***~~[Social]~~ Services or a designated agent thereof has determined that there is no provider within the Commonwealth that is capable and willing to provide comparable services at a comparable cost per child to those that would be delivered by the out-of-state provider. An exception may be made if:

(a) The identified in-state resource is farther away from the child's parent or guardian than a similar out-of-state resource; or

(b) The services offered by the out-of-state resource is deemed by either department or a designated agent thereof to be more appropriate for the individual child than the services offered by the in-state provider.

(3) Prior to promulgating administrative regulations governing the determination of the availability of providers of residential care within the Commonwealth, the Department for Medicaid Services and the Department for ***Community Based***~~[Social]~~ Services shall establish uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth.

(4) Each department shall promulgate an administrative regulation in accordance with KRS Chapter 13A that contains the uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth established under subsection (3) of this section.

Section 36. KRS 205.6489 is amended to read as follows:

(1) The Kentucky Children's Health Insurance Program shall be administered by the Cabinet for Health Services in terms of conducting eligibility determination and providing oversight over enrollment and claims payment.

(2) The program shall include a system of outreach and referral for children who may be eligible for the Kentucky Children's Health Insurance Program. The program shall work with the Department for Medicaid Services, the Department for ***Community Based Services***~~[Social Insurance]~~, schools, pediatricians, public health departments, and other entities interested in the health of children in developing the system of outreach and referral.

(3) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish a structure for quality assurance and utilization review under KRS 205.6481 to 205.6495 and KRS 304.17A-340.

(4) The Kentucky Children's Health Insurance Program shall collect, analyze, and publicly disseminate comprehensive data on the number of children enrolled in the program, services received through the program, and the effect on health outcomes of children served by the

program including the special health needs of minority children. The information collected by the program shall be subject to KRS 216.2927(1). The program shall have access to all data collected by the cabinet under KRS 216.2920 to 216.2929 and shall coordinate program data collection efforts with the data collection efforts of the cabinet under KRS 216.2920 to 216.2929.

Section 37. KRS 205.712 is amended to read as follows:

(1) The Division of Child Support~~[Enforcement]~~ is established in the Cabinet for Families and Children.

(2) The duties of the Division of Child Support~~[Enforcement]~~, or its designee, shall include:

(a) Serve as state agency authorized to administer Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 to 669;

(b) Serve as the information agency as provided in the Uniform Interstate Family Support Act, KRS Chapter 407;

(c) Serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act;

(d) Serve as the agent for enforcement of international child support obligations, and respond to requests from foreign reciprocating countries;

(e) Establish and enforce an obligation upon receipt of a completed, notarized voluntary acknowledgment-of-paternity form;

(f) Enforce Kentucky child support laws, including collection of court-ordered or administratively ordered child support arrearages and prosecution of persons who fail to pay child support;

(g) Publicize the availability of services and encourage the use of these services for establishing paternity and child support;

(h) Pay the cost of genetic testing to establish paternity, subject to recoupment from the alleged father, when paternity is administratively or judicially determined; and obtain additional testing when an original test is contested, upon request and advance payment by the contestant;

(i) Establish child support obligations and seek modification of judicially or administratively established child support obligations in accordance with the child support guidelines of the Commonwealth of Kentucky as provided under KRS 403.212;

(j) Administratively establish child support orders which shall have the same force and effect of law;

(k) Issue an administrative subpoena to secure public and private records of utility and cable companies and asset and liability information from financial institutions for the establishment, modification, or enforcement of a child support obligation;

(l) Impose a penalty for failure to comply with an administrative subpoena;

(m) Provide notices, copies of proceedings, and determinations of support amounts to any parties or individuals who are applying for or receiving Title IV-D services, or who are parties to cases in which Title IV-D services are being provided;

(n) Issue interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court where the individual or entity resides; and

(o) May promulgate administrative regulations to implement this section and adopt forms or implement other requirements of federal law relating to interstate administrative subpoenas.

(3) Effective September 30, 1999, the cabinet shall establish a system to receive and process all child support payments. The system shall include existing computer systems to record the payments. The automated system shall include a state case registry that contains records with respect to each case in which services are being provided by the cabinet and each child support order established or modified in the state on or after October 1, 1998.

(4) The cabinet shall establish and operate a state disbursement unit for the collection, disbursement, and recording of payments under support orders for all Title IV-D cases and for all cases initially issued in the state on or after January 1, 1994, in which a wage withholding has been court-ordered or administratively ordered, pursuant to Part D of Title IV of the Social Security Act. Establishment of the state unit may include the designation and continuation of existing local collection units to aid efficient and effective collection, disbursement, and recording of child support payments.

(5) After the establishment of the disbursement unit child support collection system, the cabinet or its designee shall serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act.

(6) Where establishment of paternity and enforcement and collection of child support is by law the responsibility of local officials, the cabinet shall refer cases to the appropriate official for such action. The cabinet may enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the cabinet in administering the program of child support recovery, including the entering into of financial arrangements with such courts and officials as provided for under the provisions of federal law and regulations. The local county attorney shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county, subject to the option of the county attorney to decline such designation. Nothing in this section shall prevent the secretary from taking such action, with prior written notice, as appropriate if the terms and conditions of the cooperative agreement are not met. When a cooperative agreement with a contracting official is canceled for good cause, the cabinet may not offer that cooperative agreement to that official during the official's tenure.

(7) Where the local county attorney, friend of the court, domestic relations agent, or other designee of the cabinet has been contracted for the purpose of administering child support enforcement pursuant to Title IV-D of the Social Security Act, the contracting official shall be deemed to be representing the cabinet and as such does not have an attorney-client relationship with the applicant who has requested services pursuant to Title IV-D of the Social Security Act nor with any dependent on behalf of the individuals for whom services are sought.

(8) The cabinet shall determine the name of each obligor who owes an arrearage of at least five thousand dollars ($5,000). After notification to the obligor owing an arrearage amount of five thousand dollars ($5,000), the cabinet shall transmit to the United States secretary of health and human services the certified names of the individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport. The cabinet shall notify the identified obligor of the determination and the consequences and provide an opportunity to contest the determination.

(9) The cabinet shall determine the name of an obligor owing an arrearage and shall indefinitely deny, suspend, or revoke a license or certification that has been issued if the person has a child support arrearage that equals or exceeds the amount that would be owed after one (1) year of nonpayment or fails, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16).

(10) The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.

(11) The denial or suspension shall remain in effect until the child support arrearage has been eliminated or payments on the child support arrearage are being made in accordance with a court or administrative order, the person complies with the subpoena or warrant relating to paternity or child support proceedings, or the appeal of the denial or suspension is upheld and the license is reinstated.

(12) Except for cases administered by the cabinet under 42 U.S.C. sec. 651 et seq. which shall be afforded the appeal process set forth by KRS 405.450(3), an individual who has a license or certification denied, revoked, or suspended shall have the right to appeal to the licensing or certifying board.

(13) A dispute hearing shall be conducted by the cabinet in accordance with KRS 405.450. The only basis for a dispute hearing shall be a mistake in fact.

(14) The cabinet shall in its discretion enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in coordination with the financial institutions, a data match system. The financial institution shall be required to provide identifying information for each obligated parent who maintains an account at the institution and owes an arrearage, and who shall be identified by the cabinet. Assets held by the institutions on behalf of any obligated parent who is subject to a child support lien pursuant to KRS 205.745 shall be encumbered or surrendered in response to a notice of lien or levy issued by the cabinet. The cabinet may pay a reasonable fee to a financial institution for conducting the data match, not to exceed the actual cost. The financial institution shall not be liable for encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the cabinet or for any other action taken in good faith to comply with the requirements of this subsection.

(15) The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents that are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in

another state to an individual or entity in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.

Section 38. KRS 205.940 is amended to read as follows:

(1) A representative payee fund shall be created for the purpose of providing grants to public or private organizations who provide representative payee services. The fund shall consist of moneys appropriated by the General Assembly. These moneys may also be supplemented by funds obtained from other sources for the fund as provided in this section.

(2) The fund shall be administered by the Cabinet for Families and Children.

(3) Application for moneys from the fund may be made to the cabinet, on forms prescribed by administrative regulation. The awarding of grants shall be based upon the availability of funds. Grants shall be given to nonprofit organizations or agencies providing representative payee services to more than ten (10) persons who are mentally impaired, homeless or at risk of being homeless, or substance abusers in area development districts created pursuant to KRS 147A.050. The cabinet shall endeavor to fund an applicant where an eligible applicant exists. Health-care facilities or other institutions, who serve as representative payees for persons residing therein, shall not be eligible to receive funds under this section.

(4) In determining the amount of each grant, the cabinet shall consider the number of persons receiving representative payee services from an applicant, the amount necessary to reimburse the applicant for all or a portion of the administrative costs incurred in providing representative payee services, and any fee charged by an applicant for the provision of representative payee services.

(5) The cabinet shall require applicants receiving funds pursuant to this section to be bonded, and to file an annual report with the cabinet providing an accounting of all funds expended on behalf of persons for whom representative payee services are provided. The cabinet shall promulgate administrative regulations providing for the termination of a grant if it determines a representative payee is not serving in the best interests of a client. If a grant is terminated, the cabinet shall report the termination to the agency who appointed the representative payee and recommend the appointment of a new representative payee. If financial exploitation is indicated, the termination shall also be reported to the Department for ***Community Based***~~[Social]~~ Services for investigation pursuant to KRS Chapter 209.

(6) The cabinet may provide training for persons serving as representative payees and may provide technical assistance to applicants awarded a grant.

(7) The cabinet may apply for any grants that may be used to supplement the representative payee fund, and may accept gifts or donations to the fund.

Section 39. KRS 207.200 is amended to read as follows:

(1) The Kentucky Department of Workplace Standards is authorized to enforce the employment provisions of KRS 207.130 to 207.240 in conjunction with the State Attorney General's office and the state and local courts.

(2) Any individual with a disability requesting the intervention of the Kentucky Department of Workplace Standards under this section shall, within one hundred and eighty (180) days of the alleged incident, submit with his request a signed, sworn statement specifying and describing the disability or disabilities which affect him. This statement may be used by the

commissioner of workplace standards or his representative to determine if the individual does, or does not, have a "physical disability" as defined in KRS 207.130(2). If the commissioner of workplace standards or his representative determines that the aggrieved individual does have a disability which falls under the definition in KRS 207.130(2), the Department of Workplace Standards shall provide a copy of the aggrieved individual's signed statement to the employer for his inspection.

(3) In the event the employer wishes to challenge the validity of the statement, he shall so notify the commissioner of workplace standards, who shall in turn notify the aggrieved individual. If the aggrieved individual wishes the Department of Workplace Standards to continue its involvement with the case, he shall be required to submit to the commissioner of workplace standards, within thirty (30) days of such notice, a signed, sworn statement from a licensed physician of his choice, or from one of the state or federal agencies serving individuals with disabilities:

(a) Specifying and describing the disability or disabilities affecting the individual; and

(b) Indicating any specific type of employment for which such disability should be considered a bona fide or necessary reason for limitation or exclusion.

(4) (a) The state agencies which may be consulted under subsection (3) of this section may include, but are not limited to, the following:

1. Department of Education, Office of Vocational Rehabilitation Services;

2. Cabinet for Health Services, Department for Public Health;

3. Cabinet for Families and Children, ***Department for***~~[Division of]~~ Disability Determination ***Services***.

(b) The commissioner of workplace standards, in conjunction with the agencies designated in this subsection, is authorized to adopt appropriate regulations governing the issuance and setting the standards of determinations of ability or disability;

(c) The agencies designated in this subsection, and any other state agency which serves individuals with disabilities and which the commissioner of workplace standards deems proper, shall cooperate to the fullest with the Department of Workplace Standards in issuing a statement of disability and limitations as specified in subsection (3) of this section within twenty (20) days of the date the individual with a disability presents himself before such agency for examination.

(5) (a) For the purposes of KRS 207.130 to 207.240, the commissioner of workplace standards, or his authorized representative, shall have the power to enter the place of employment of any employer, labor organization, or employment agency to inspect and copy employment records, to compare character of work and operations on which persons employed by him are engaged, to question such persons, and to obtain such other information as is reasonably necessary to make a preliminary determination that the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied;

(b) In the event that a preliminary determination is made that the aggrieved individual is not fully capable of carrying out the duties of the job which he or she had been denied, the aggrieved individual and the employer shall both be so advised;

(c) The aggrieved individual, within ten (10) days of receiving such notification, may file with the Department of Workplace Standards an application for reconsideration of the determination. Upon such application, the commissioner of workplace standards or his representative shall make a new determination within ten (10) days whether the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied. If the determination is again made that the aggrieved individual is not fully capable of carrying out these duties, the aggrieved individual and the employer shall both be so advised;

(d) In the event that a preliminary determination has been made that the aggrieved individual is fully capable of carrying out the duties of the job which he or she had been denied, the employer, labor organization, or employment agency shall be so advised and encouraged to make an immediate offer to the aggrieved individual of the position which he or she had been denied. In the event the position has already been filled, the employer, labor organization, or employment agency shall be encouraged to make an offer to the aggrieved individual of the next available position for which he or she is qualified.

Section 40. KRS 209.005 is amended to read as follows:

(1) The Cabinet for Families and Children shall create an Elder Abuse Committee to develop a model protocol on elder abuse and neglect in the Commonwealth, that shall be comprised of various state agency representatives from the following list:

(a) The Department for ***Community Based***~~[Social]~~ Services;

(b)~~[The Department for Social Insurance;~~

~~(c)]~~ The Department for Public Health;

(c)~~[(d)]~~ The Department for Mental Health and Mental Retardation;

(d)~~[(e)]~~ The ***Office of Aging Services***~~[Division of Aging]~~;

(e)~~[(f)]~~ The Division of Licensing and Regulation;

(f)~~[(g)]~~ The Office of the Ombudsman; and

(g)~~[(h)]~~ Area Agencies on Aging.

(2) The committee shall address issues of prevention, intervention, and agency coordination of services on a state and local level through interaction with local groups or entities that either directly or indirectly provide services to the elder population, including, but not limited to:

(a) Senior citizen centers;

(b) Local governmental human service groups;

(c) The Sanders-Brown Center on Aging at the University of Kentucky;

(d) Long Term Care Ombudsmen; and

(e) Other organizations or associations dedicated to serving elder citizens and their families in the Commonwealth.

(3) The committee shall:

(a) Explore the need for a comprehensive statewide resource directory of services for the elderly;

(b) Enhance existing public awareness campaigns for elder abuse and neglect; and

(c) Provide forums for the exchange of information to educate the elder population and their families on the rights of elders.

(4) The committee shall produce an annual report of their activities, products, and recommendations for public policy to the Governor and the Legislative Research Commission.

Section 41. KRS 209.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Secretary" means the secretary of the Cabinet for Families and Children;

(2) "Cabinet" means the Cabinet for Families and Children;

(3) "Department" means the Department for ***Community Based***~~[Social]~~ Services of the Cabinet for Families and Children;

(4) "Adult" means:

(a) A person eighteen (18) years of age or older, who because of mental or physical dysfunctioning, is unable to manage his own resources or carry out the activity of daily living or protect himself from neglect, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services; or

(b) A person without regard to age who is the victim of abuse and neglect inflicted by a spouse;

(5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he obtains suitable care in or out of his home;

(6) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement;

(7) "Abuse" means the infliction of physical pain, mental injury, or injury of an adult;

(8) "Exploitation" means the improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or other person;

(9) "Investigation" shall include, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse, or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;

(10) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;

(11) "Emergency protective services" are protective services furnished an adult in an emergency;

(12) "Protective placement" means the transfer of an adult from his present living arrangement to another;

(13) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;

(14) "Access to records" means that any representative of the Cabinet for Families and Children actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall be allowed access to the medical, mental, health, and financial records of the adult that are in the possession of any individual, hospital, firm, corporation or other facility, if necessary to complete the investigation mandated in this chapter; and

(15) "Neglect" means a situation in which an adult is unable to perform or obtain for himself the services which are necessary to maintain his health or welfare, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which a person deprives his spouse of reasonable services to maintain health and welfare.

Section 42. KRS 210.271 is amended to read as follows:

(1) No patient in an institution for the mentally ill or the mentally retarded operated by the Cabinet for Health Services shall be discharged to a boarding home as defined in KRS 216B.300 unless the boarding home is registered pursuant to KRS 216B.305.

(2) The cabinet shall conduct a quarterly follow-up visit, using cabinet personnel or through contract with the Regional Community Mental Health Centers, of all patients of state mental health or mental retardation facilities that are discharged to boarding homes. Any resident found to have needs that cannot be met by the boarding home shall be referred to the Department for ***Community Based***~~[Social]~~ Services for appropriate placement. Any boarding home suspected of operating as an unlicensed personal care facility or housing residents with needs that cannot be met by the boarding home shall be reported to the Division of Licensing and Regulation for investigation.

Section 43. KRS 211.686 is amended to read as follows:

(1) A local child fatality response team may be established in every county or group of contiguous counties by the coroner or coroners with jurisdiction in the county or counties. The local coroner may authorize the creation of additional local teams within the coroner's jurisdiction as needed.

(2) Membership of the local team may include representatives of the coroner, the local office of the Department for ***Community Based***~~[Social]~~ Services, law enforcement agencies with investigation responsibilities for child fatalities which occur within the jurisdiction of the local team, the Commonwealth's and county attorneys, representatives of the medical profession, and other members whose participation the local team believes is important to carry out its purpose. Each local team member shall be appointed by the agency the member is representing and shall serve at the pleasure of the appointing authority.

(3) The purpose of the local child fatality response team shall be to:

(a) Allow each member to share specific and unique information with the local team;

(b) Generate overall investigative direction and emphasis through team coordination and sharing of specialized information;

(c) Create a body of information that will assist in the coroner's effort to accurately identify the cause and reasons for death; and

(d) Facilitate the appropriate response by each member agency to the fatality, including but not limited to, intervention on behalf of other children who may be adversely affected by the situation, implementation of health services necessary for protection of other citizens, further investigation by law enforcement, or legal action by Commonwealth's or county attorneys.

(4) The local team may:

(a) Analyze information regarding local child fatalities to identify trends, patterns, and risk factors;

(b) Recommend to the state team, and any other entities deemed appropriate, changes in state or local programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate strategies for prevention and reduce the number of child fatalities; and

(c) Evaluate the effectiveness of local prevention and intervention strategies.

(5) The local team may establish a protocol for the investigation of child fatalities and may establish operating rules and procedures as it deems necessary to carry out the purposes of this section.

(6) The review of a child fatality by a local team may include information from reports generated or received by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case.

(7) The proceedings, records, opinions, and deliberations of the local team shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil action in any manner that would directly or indirectly identify specific persons or cases reviewed by the local team. Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the local team.

Section 44. KRS 213.066 is amended to read as follows:

(1) For each adoption decreed by a Circuit Court in the Commonwealth, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report shall include the facts necessary to establish a new certificate of birth of the person adopted and identify the order of adoption, and be certified by the clerk of the court.

(2) Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The Department for ***Community Based***~~[Social]~~ Services or any other agency or person having knowledge of the facts shall supply the court with the additional information necessary to complete the report. The provision of the information shall be prerequisite to the issuance of a final decree in the matter by the court.

(3) If an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof which shall include the facts necessary to identify the original adoption report and the facts amended in the adoption decree necessary to properly amend the birth record.

(4) Not later than the fifteenth day of each calendar month or more frequently, the clerk of the court shall forward to the state registrar reports of decrees of adoption, annulments of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the state registrar shall require.

(5) If the state registrar receives a report of adoption, annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the state registrar shall forward the report to the state registrar in the state of birth. If the birth occurred in a foreign country and the child was not a citizen of the United States at the time of birth, the state registrar shall prepare a record of foreign birth as provided by KRS 213.056(2). If the child was born in Canada, the state registrar shall also send a copy of the report of adoption, annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in that country.

Section 45. KRS 216.583 is amended to read as follows:

The Long-Term Care Coordinating Council shall be composed of the following members from within the cabinet: the commissioner of the Department for Public Health; the commissioner of the Department for ***Mental Health and Mental Retardation***~~[Social]~~ Services;~~[the commissioner of the Department for Social Insurance;]~~ the inspector general; the director of the Division for Licensing and Regulation; the executive director of the Office of Aging Services; the commissioner of the Department for Medicaid Services; the general counsel; and the long-term care ombudsman.

Section 46. KRS 216.787 is amended to read as follows:

(1) No agency providing services to senior citizens which are funded by the Department for ***Community Based***~~[Social]~~ Services or the Office of Aging Services of the Cabinet for Families and Children shall employ persons in a position which involves providing direct services to a senior citizen if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime.

(2) Operators of service provider agencies may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor.

(3) Each service provider agency providing direct services to senior citizens as specified under KRS 216.785 to 216.793 shall request all conviction information from the Justice Cabinet for any applicant for employment prior to employing the applicant.

Section 47. KRS 216.793 is amended to read as follows:

(1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in a nursing facility or nursing pool providing staff to a nursing facility or in a position funded by the Department for ***Community Based***~~[Social]~~ Services or the Office of Aging Services of the Cabinet for Families and Children and which involves providing

direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed five dollars ($5) per application.

Section 48. KRS 216B.455 is amended to read as follows:

(1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:

(a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;

(b) Department for ***Community Based***~~[Social]~~ Services;

(c) Local school districts;

(d) Psychiatric hospitals; and

(e) Any other agency, organization, or facility deemed appropriate by the cabinet.

(2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.

(3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations.

(4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.

(5) The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

Section 49. KRS 222.021 is amended to read as follows:

(1) There is hereby created within the Cabinet for Health Services a Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group. The work group shall carry out the planning and coordinating activities of the Commonwealth with regard to substance dependency and abuse among pregnant women and other women of childbearing age.

(2) The work group shall be appointed by the secretary for health services and be composed of, but not restricted to, a representative of the Cabinet for Health Services, Department for Public Health, Division of Maternal and Child Health Services; Department for ***Community Based***~~[Social]~~ Services;~~[Department for Social Insurance;]~~ Department for Mental Health and Mental Retardation Services, Division of Substance Abuse and Division of Mental Health; Department for Medicaid Services; Justice Cabinet, Department of State Police, Drug Enforcement, Special Investigations Unit; Department of Education, Division of

Program Resources; Office of the Attorney General; Office for a Drug Free Kentucky; Kentucky Commission on Women; Regional Community Mental Health and Mental Retardation System; University of Kentucky Institute on Women and Substance Abuse; University of Louisville, School of Medicine, Department of Pediatrics; University of Kentucky Medical Center, Department of Obstetrics and Gynecology; local or district health department; Kentucky Psychological Association; Kentucky Pharmacists Association; Kentucky Hospital Association; Kentucky Nurses Association; and the Kentucky Medical Association; Kentucky Chapter of the National Association of Social Workers; Kentucky Association of Addiction Professionals; Kentucky Prevention Network; Coalition for Women's Substance Abuse Services; Kentucky Women's Advocates; Kentucky Youth Advocates; Kentucky Chapter of the March of Dimes; Foster Parent Association; and the Homeless Coalition.

(3) The Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall be chaired jointly by the Director of the Division of Substance Abuse and another member of the work group who has been elected by the membership of the work group. The work group shall meet at least quarterly and shall periodically assess the extent of alcohol and other substance dependency and abuse among Kentucky women who are pregnant and other women of childbearing age; identify, develop, and coordinate resources available and needed within the Commonwealth for any woman who is pregnant or of childbearing age and at risk of alcohol and substance dependency or abuse; and identify, develop, and coordinate resources available and needed for infants and children exposed to alcohol or drugs in utero or through alcohol or drug abuse in the home.

(4) The work group shall make a biennial report, no later than January 1 of each odd-numbered year, of its activities and any recommendations to the Secretary of the Cabinet for Health Services and the Legislative Research Commission.

(5) The provisions of subsections (1) to (4) of this section, creating a Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall expire on July 15, 2002. As of that date, the Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall cease to exist.

Section 50. KRS 314.142 is amended to read as follows:

(1) The Kentucky Board of Nursing shall promulgate administrative regulations pursuant to KRS Chapter 13A to create a Sexual Assault Nurse Examiner Program. These administrative regulations shall address, at a minimum:

(a) Educational requirements for sexual assault nurse examiners and statewide standards for provision of the education;

(b) The application process through which registered nurses who submit documentation of required education and clinical experience and who remit the designated application fee may apply to the board to be credentialed as a "Sexual Assault Nurse Examiner";

(c) Continuing education requirements for maintenance of the sexual assault nurse examiner credential; and

(d) Methods of monitoring overall program implementation.

(2) For the purpose of providing recommendations to the Kentucky Board of Nursing on the development and implementation of the Sexual Assault Nurse Examiner Program, there is hereby created a Sexual Assault Nurse Examiner Advisory Council. The following members shall serve on the council by virtue of their office: the executive director of the Kentucky Board of Nursing or the executive director's designee; the executive director of the Kentucky Hospital Association or the executive director's designee; the state medical examiner or the examiner's designee; the commissioner of the Department for ***Community Based***~~[Social]~~ Services of the Cabinet for Families and Children or the commissioner's designee; the executive director of the Governor's Office of Child Abuse and Domestic Violence Services or the executive director's designee; the president of the Kentucky Association of Sexual Assault Programs or the president's designee; the commissioner of the Department for Public Health of the Cabinet for Health Services or the commissioner's designee; the commissioner of the Kentucky State Police or the commissioner's designee; the chair of the Kentucky Association of Baccalaureate and Higher Degree Nursing Programs or the chair's designee; the director of the Victim's Advocacy Division of the Office of the Attorney General or the director's designee; the director of the Prosecutors Advisory Council of the Office of the Attorney General or the director's designee; and the director of the Kentucky State Police Crime Lab or the director's designee. Two (2) members shall be registered nurses with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Nurses Association. One (1) member shall be a physician with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Medical Association. Two (2) members with a demonstrated interest and experience in victims' services shall be appointed by the Governor to serve as at-large members. Of the at-large members, one (1) shall be appointed from a list of three (3) names recommended by the Kentucky Board of Nursing and one (1) from a list of three (3) names recommended by the Cabinet for Health Services.

(3) Members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

(4) The chair of the advisory council shall be elected by a majority vote of council members.

(5) Each member of the council may be reimbursed for necessary expenses incurred in attending its meetings from funds available through the collection of fees required under subsection (1) of this section.

(6) Any person in this state who holds a credential as a Sexual Assault Nurse Examiner as defined in KRS 314.011(14) shall have the right to use the title "Sexual Assault Nurse Examiner" and the abbreviation "SANE". No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a Sexual Assault Nurse Examiner.

Section 51. KRS 403.270 is amended to read as follows:

(1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for ***Community Based***~~[Social]~~ Services. Any period of time after a legal proceeding has been

commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.

(b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.420, and 405.020.

(2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:

(a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;

(b) The wishes of the child as to his custodian;

(c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(d) The child's adjustment to his home, school, and community;

(e) The mental and physical health of all individuals involved;

(f) Information, records, and evidence of domestic violence as defined in KRS 403.720;

(g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;

(h) The intent of the parent or parents in placing the child with a de facto custodian; and

(i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

(3) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

(4) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.

(5) The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.

(6) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

Section 52. KRS 403.783 is amended to read as follows:

(1) For the purposes of KRS 403.783 to 403.785, "law enforcement agency" means any agency of state, county, city, or metropolitan government, or a combination of these, responsible for employing and directing the action of peace officers, including sheriffs and their deputies, sworn police officers, sworn enforcement officers of the Kentucky State Police or other duly authorized state law enforcement agency whose officers are persons with authority to make arrests under the provisions of KRS 403.760(2).

(2) The secretary of the Justice Cabinet, or a designee, in consultation with legal, victims' services, victim advocacy, and mental professionals with an expertise in domestic violence, shall develop a written model policy and procedures manual related to domestic violence for law enforcement agencies. The model policy shall set forth the core elements required to be addressed in each law enforcement agency's policy. The model policy shall also recommend procedures which may be included in local policies. The model policy shall be developed to comply with the provisions of KRS 403.715 to 403.785. The policy shall include purpose statements; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Families and Children, Department for ***Community Based***~~[Social]~~ Services; victim rights, assistance and service responsibilities; and duties related to timely completion of records. The model policy shall be completed no later than four (4) months after July 15, 1996. The cabinet shall distribute a copy of the model policy to each law enforcement agency in the Commonwealth.

(3) No later than January 1 after July 15, 1996, and July 31 of every even-numbered year which follows, every law enforcement agency shall submit a copy of the agency's written domestic violence policy to the Justice Cabinet.

(4) If a law enforcement agency fails to submit a copy of the agency's written domestic violence policy in a timely manner, the secretary shall promptly notify the law enforcement agency in writing of the requirements contained in this section.

(5) If the secretary determines that a law enforcement agency has submitted a domestic violence policy which is inadequate, the secretary shall reject the policy and provide assistance to the agency in developing an adequate domestic violence policy.

Section 53. KRS 403.785 is amended to read as follows:

(1) Each law enforcement agency shall report all incidents of actual or suspected domestic violence and abuse within their knowledge to the Cabinet for Families and Children, Department for ***Community Based***~~[Social]~~ Services, within forty-eight (48) hours of learning of the incident or of the suspected incident.

(2) When a law enforcement officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence and abuse, the officer shall use all reasonable means to prevent further abuse, including but not limited to:

(a) Remaining at the location of the domestic violence and abuse so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer;

(b) Assisting the victim of domestic violence and abuse in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and

(c) Advising the victim immediately of the rights available to them, including the provisions of KRS 403.715 to 403.785.

Section 54. KRS 407.5102 is amended to read as follows:

The Circuit Court, District Court, and family courts shall be the state tribunals for judicial proceedings, and the Cabinet for Families and Children and the Division of Child Support[~~ Enforcement (DCSE)~~] shall be the state tribunals for administrative proceedings.

Section 55. KRS 431.650 is amended to read as follows:

(1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.

(2) The commission shall be comprised of the following members:

(a) The commissioner of the Department for ***Community Based***[~~Social~~] Services or a designee;

(b) The commissioner of the Department for Mental Health and Mental Retardation Services or a designee;

(c) One (1) ***social***[~~family~~] service worker who is employed by the Department for ***Community Based***[~~Social~~] Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Families and Children;

(d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for Families and Children;

(e) The commissioner of the Kentucky State Police or a designee;

(f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice Cabinet;

(g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;

(h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;

(i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;

(j) The commissioner of the Department of Education or a designee;

(k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education; and

(l) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.

(3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

(4) The commission shall elect a chairperson annually from its membership.

Section 56. KRS 508.025 is amended to read as follows:

(1) A person is guilty of assault in the third degree when the actor:

(a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:

1. A state, county, city, or federal peace officer;

2. An employee of a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;

3. An employee of the Department for ***Community Based***~~[Social]~~ Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or

4. A probation and parole officer; or

(b) Being a person confined in a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces or urine to be thrown upon an employee of the facility.

(2) Assault in the third degree is a Class D felony.

Section 57. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

(a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

(b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);

(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

(g) Abandons or exploits the child; or

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other

person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

(2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(3) "Cabinet" means the Cabinet for Families and Children;

(4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;

(5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(6) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;

(10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating,

entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(14) "Deadly weapon" has the same meaning as it does in KRS 500.080;

(15) "Department" means the Department for ***Community Based***~~[Social]~~ Services;

(16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention;

(18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;

(21)~~["Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;~~

~~(22)]~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;

(22)~~[(23)]~~ "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(23)~~[(24)]~~ "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(24)~~[(25)]~~ "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(25)~~[(26)]~~ "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(26)~~[(27)]~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(27)[~~(28)~~] "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(28)[~~(29)~~] "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(29)[~~(30)~~] "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(30)[~~(31)~~] "Juvenile holding facility" means a physically secure setting, approved by the Department of Juvenile Justice, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;

(31)[~~(32)~~] "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(32)[~~(33)~~] "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(33)[~~(34)~~] ""Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;

(34)[~~(35)~~] Needs of the child" means necessary food, clothing, health, shelter, and education.

(35)[~~(36)~~] "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(36)[~~(37)~~] "Parent" means the biological or adoptive mother or father of a child;

(37)[~~(38)~~] "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(38)[~~(39)~~] "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(39)[~~(40)~~] "Physical injury" means substantial physical pain or any impairment of physical condition;

(40)[~~(41)~~] "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(41)[~~(42)~~] "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(42)[~~(43)~~] "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

(43)[~~(44)~~] "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(44)[~~(45)~~] "School personnel" means those certified persons under the supervision of the local public or private education agency;

(45)[~~(46)~~] "Secretary" means the secretary of the Cabinet for Families and Children;

(46)[~~(47)~~] "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building

which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(47)[~~(48)~~] "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(48)[~~(49)~~] "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(49)[~~(50)~~] "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(50)[~~(51)~~] "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(51)[~~(52)~~] ***"Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;***

(52) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(53) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(54) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(55) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and

(56) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 58. KRS 605.110 is amended to read as follows:

(1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available, at a cost not to exceed the Medicaid reimbursement rate, to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Families and Children, residential, day treatment, clinical, and group home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Families and Children and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Families and Children, Department for ***Community Based***~~[Social]~~ Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children. The biennial plan shall include strategies to assure that teacher preparation programs include content related to working with state agency children and that adequate professional development opportunities for better meeting the needs of these students are available for teachers and schools.

(b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;

2. A per-pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children;

3. A per-pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;

4. A per-pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;

5. The funding for school services for state agency children authorized by KRS 158.135; and

6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.

(d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:

1. Provide for the development and implementation of interagency agreements that:

   a. Define the financial responsibility of each state and local agency for providing services to state agency children;

   b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Families and Children.

(e) When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or

educational facility, present the educational passport to the receiving school or educational facility.

(f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 59. KRS 620.270 is amended to read as follows:

(1) Subject to the provisions of KRS 620.230, the local citizen foster care review board shall review the case of each child placed in the custody of the cabinet by an order of temporary custody or commitment by the court in the county or counties which the local board serves. The review shall occur at least once every six (6) months until the child is no longer in the custody of the cabinet or until an adoption proceeding becomes final.

(2) During each six (6) month review, the local citizen foster care review board shall review:

(a) The past, current, and future status of the child and his placement as shown through the case permanency plan, case record, case progress reports submitted by the cabinet, and other information as the board may require;

(b) The efforts or adjustment the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time considering the age of the child;

(c) The efforts of the cabinet to locate and provide services to the biological parents of the child;

(d) The efforts of the cabinet and other agencies to facilitate the return of the child to the home or to find an alternative permanent placement if reunion with the parent or previous custodian is not feasible. The cabinet shall report to the board all factors which either favor or mitigate against any decision or alternative with regard to these matters; and

(e) Any problems, solutions, or alternatives which may be capable of exploration, or other matters with regard to the child as the cabinet or the board determine to be explored with regard to the best interests of the state or of the child.

(3) Upon completion of a training curriculum developed and provided jointly by the Administrative Office of the Courts and by the Department for ***Community Based***~~[Social]~~ Services and approved by the state review board in regard to child sexual abuse, the local citizen foster care review board may review, at the discretion of the board, a sample of all petitions filed in the District Court of the county served by the board alleging sexual abuse of any child, not to exceed two hundred (200) petitions per year statewide, in order to determine the adequacy of the investigation, and the appropriateness of findings, adjudication, and disposition of the court. The board shall have access to all records of the cabinet, medical professionals, and law enforcement agencies pertaining to these cases. The board shall provide the cabinet and the court a full report of the findings and recommendations concerning the review.

Section 60. KRS 199.801 is amended to read as follows:

(1) The department shall establish a procedure throughout the state that is designed to determine and expedite the placement of children who are in the custody of the department. The

procedure shall utilize a statewide placement coordinator and district placement coordinators who may be state employees or employees of a contracted entity, and who shall be assigned and located in each of the department's districts.

(2) Upon determining that a child shall be removed from the current living arrangement, the ***social service***~~[family services]~~ worker with responsibility for the child shall contact the district placement coordinator to facilitate the placement. In consultation with the ***social service***~~[family services]~~ worker, the district placement coordinator shall determine the appropriate type of placement according to the child's circumstances and needs and shall attempt to locate the appropriate placement within the child's home county.

(3) The living arrangement and placement selected for the child shall be the type of facility that is determined to be the best alternative for the child that is in the closest proximity to the child's home county.

(4) If the type of placement that best suits the child's needs is not available in the child's home county, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in another county located within the home district of the child.

(5) If the type of placement that best suits the child's needs is not available in the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in surrounding districts by contacting the statewide placement coordinator.

(6) If the type of placement that best suits the child's needs is not available in the districts surrounding the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in any district within the state by contacting the statewide placement coordinator.

(7) If the type of placement that best suits the child's needs is not available within the state, the statewide placement coordinator shall contact the commissioner of the department or the commissioner's designee to explore placement options.

(8) The statewide placement coordinator and every district placement coordinator shall compile information that identifies the unmet needs for their jurisdiction, and shall submit the data and recommendations for meeting the unmet needs to the commissioner of the department.

(9) The commissioner shall develop a state placement resource plan that identifies areas of unmet need and strategies to meet the need. The plan shall be used to guide and, if necessary, restrict the development of new facilities, the expansion of existing facilities, and the geographic location of placement alternatives.

(10) The commissioner and the statewide planning coordinator shall assist the Statewide Strategic Planning Committee for Children in Placement, created in KRS 194B.102, in the development of a statewide facilities services plan.

Section 61. KRS 211.684 is amended to read as follows:

(1) For the purposes of KRS Chapter 211:

(a) "Child fatality" means the death of a person under the age of eighteen (18) years; and

(b) "Local child fatality response team" and "local team" means a community team composed of representatives of agencies, offices, and institutions that investigate child deaths, including but not limited to, coroners, ***social***~~[family]~~ service workers, medical professionals, law enforcement officials, and Commonwealth's and county attorneys.

(2) The Department for Public Health may establish a state child fatality review team. The state team may include representatives of public health, social services, law enforcement, prosecution, coroners, health-care providers, and other agencies or professions deemed appropriate by the commissioner of the department.

(3) If a state team is created, the duties of the state team may include the following:

(a) Develop and distribute a model protocol for local child fatality response teams for the investigation of child fatalities;

(b) Facilitate the development of local child fatality response teams which may include, but is not limited to, providing joint training opportunities and, upon request, providing technical assistance;

(c) Review and approve local protocols prepared and submitted by local teams;

(d) Receive data and information on child fatalities and analyze the information to identify trends, patterns, and risk factors;

(e) Evaluate the effectiveness of prevention and intervention strategies adopted; and

(f) Recommend changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate strategies for prevention and reduce the number of child fatalities.

(4) The department shall prepare an annual report to be submitted no later than November 1 of each year to the Governor, the Legislative Research Commission, the Chief Justice of the Kentucky Supreme Court, and to be made available to the citizens of the Commonwealth. The report shall include a statistical analysis of the incidence and causes of child fatalities in the Commonwealth during the past fiscal year and recommendations for action. The report shall not include any information which would identify specific child fatality cases.

Section 62. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;

(b) Placed in the home of the child's parents, in the home of a relative, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a ***social***~~[family]~~ service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that: No child committed under the provisions of KRS 610.010(1)(b), (c), or (d) shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) Treated as provided in KRS Chapter 645;

(f) Following the transfer or placement of a child pursuant to paragraphs (b), (c), (d), or (e) of this subsection, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.

(2) No child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;

(3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of the child's parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the ***social***~~[family]~~ service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the ***social***~~[family]~~ service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the ***social***~~[family]~~ service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a ***social***~~[family]~~ service worker finds a committed, unattended child who is too young to take care of himself, the ***social***~~[family]~~ service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the ***social***~~[family]~~ service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the ***social***~~[family]~~ service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(4) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(5) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(6) The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the most current case plan, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.

(7) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual

courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 63. KRS 620.040 is amended to read as follows:

(1) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall forthwith notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source. The cabinet shall investigate the matter immediately and within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action which has been taken on the matter. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.

(2) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall forthwith notify the cabinet or its designated representative. The cabinet shall investigate reports of alleged dependency not later than forty-eight (48) hours after receipt of the report but need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of such reports. If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative may participate in an investigation of noncustodial abuse at the request of the local law enforcement agency or the Kentucky State Police.

(3) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(4) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be issued by the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for

the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(5) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include, but is not limited to, ***social***~~[family]~~ service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.

(c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

(d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

(e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.

(f) Multidisciplinary team members, and anyone invited by the multidisciplinary team to participate in a meeting, shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members, and others attending meetings, shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

Section 64. To the extent the following executive orders are not otherwise confirmed or superseded by this Act, the General Assembly hereby confirms these executive orders relating to the reorganization of the Cabinet for Families and Children:

(1) Executive Order 98-731, dated June 16, 1998, relating to the internal structure of the Cabinet for Families and Children. In that executive order, the Department for Community Based Services is established and the Department for Social Services and the Department for Social Insurance are abolished; the Office of Performance Enhancement is established; the Division of Operations and Resource Management in the Office of Program Support is abolished and is replaced by the Division of Personnel, which is created within the Office of Program Support; the Division of Technical Support and the Division of Systems Support are created within the Office of Technology Services; the Division of Outcome Based Contracts and the Division of Quality Development are created within the Office of Performance Enhancement; the Divisions of Policy Development, Protection and Permanency, Family Support, Child Care, Child Support, Disability Determinations Services, and Service Regions are all established within the Department for Community Based Services; the Divisions of Management and Development, Field Services, Administrative Review, Child Support Enforcement, and Disabilities Determinations are all abolished from the Department for Social Insurance; the Divisions of Program Management and Family Services are abolished from the Department for Social Services.

(2) Executive Order 99-203, dated February 11, 1999, relating to the internal structure of the Cabinet for Families and Children. In that executive order, the Division for Disability Determinations Services within the Department for Community Based Services in the Cabinet for Families and Children is abolished and the Department for Disability Determination Services is established.

(3) Executive Order 99-1200, dated August 30, 1999, relating to the internal structure of the Cabinet for Families and Children. That executive order appoints the commissioner for Community Based Services, or the commissioner's designee, and the commissioner of the Department for Juvenile Justice, or the commissioner's designee, as permanent members of the State Interagency Council for Services to Children with emotional disabilities.

(4) Executive Order 99-255, dated March 1, 1999, relating to the internal structure of the Cabinet for Families and Children. That executive order transfers the staff and appropriations for the Case Inquiry and Response functions in the Office of the Ombudsman to the Department for Community Based Services, Division of Family Support; transfers the administrative hearings function and its staff from the Department for Community Based Services, Division of Family Support, to the Office of Performance Enhancement, Division of Quality Development; transfers the maintenance of the L&N Building in Jefferson County from the Office of Program Support to the Department for Community Based Services; transfers the implementation function of the Empower Transportation Initiative from the Office of Technology Services to the Department for Community Based Services; transfers the maintenance and requests of state exchange funds from the United States Department of Agriculture, Food and Nutrition Service, and the mediation and liaison between family support staff and quality control from the Office of Performance Enhancement to the Department for Community Based Services; transfers the special projects, policy and legislative coordination, and leasing and design functions from the Department for Community Based Services to the Office of Program Support; transfers

systems support from the Department for Community Based Services to the Office of Technology Services; transfers the legal secretarial support from the Department for Community Based Services to the Office of the General Counsel; transfers the functions of the federal compliance monitoring and the training for Temporary Assistance for Needy Families, food stamp, and medical assistance programs from the Department for Community Based Services to the Office of Performance Enhancement.

Section 65. It is the intention of the General Assembly that any separate legislation that is enacted to confirm Executive Order 99-80, relating to the transfer of the Office of Aging Services from the Cabinet for Families and Children to the Cabinet for Health Services along with all related programs and services, shall be given effect, and the Reviser of Statutes is directed to take action to implement both acts in order to give effect to both. The Reviser of Statutes is authorized to consult with and receive the advice of the secretaries of the Cabinet for Families and Children and the Cabinet for Health Services, or their designees, as may be necessary to accomplish this objective.

Approved February 15, 2000

CHAPTER 15

(HB 147)

AN ACT relating to the issuance of bonds for low cost housing by the Kentucky Housing Corporation.

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

Section 1. KRS 198A.090 is amended to read as follows:

(1) Except as provided in subsection (6) of this section, the corporation may provide for the issuance, at one (1) time or from time to time, of bonds of the corporation if the cumulative outstanding indebtedness of the corporation's bonds does not exceed ***two billion five hundred million dollars ($2,500,000,000)***~~[one billion one hundred twenty-five million dollars ($1,125,000,000)]~~, in order to carry out and effectuate its corporate purposes and powers.

(2) In anticipation of the issuance of bonds, the corporation may provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on the bonds or notes shall be payable solely from the funds provided for the payment. Notes may be made payable from the proceeds of bonds or renewal notes or, if bond or renewal note proceeds are not available, notes may be paid from any available revenues or assets of the corporation.

(3) The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at a price and under terms and conditions determined by the corporation. Bonds or notes shall bear interest at a rate determined by the corporation. Notes shall mature at a time not exceeding ten (10) years from their date and bonds shall mature at a time not exceeding forty (40) years from their date, as determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination and the place of payment of principal and interest, which may be any bank or trust company within or without the Commonwealth. If an officer whose signature or a

facsimile of whose signature appears on any bonds, notes, or coupons attached to them shall cease to be an officer before the delivery thereof, the signature or facsimile shall be valid and sufficient for all purposes as if he had remained in office until delivery. The corporation may provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation, authorizing the sale of its bonds or notes, the bonds or notes may be sold in a manner, either at public or private sale, and for a price the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter, if the sale is approved by the corporation.

(4) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued and shall be disbursed in the manner and under the restrictions, if any, the corporation may provide in the resolution authorizing the issuance of bonds or notes or in the trust agreement securing the same.

(5) Prior to the preparation of definitive bonds, the corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The corporation may also provide for the replacement of any bonds or notes which become mutilated, destroyed, or lost.

(6) (a) Prior to the issuance of any bonds or notes that are not secured by:

1. Direct obligations or obligations guaranteed by the United States of America; or

2. Obligations of federal agencies to the extent that the obligations are backed by the full faith and credit of the United States of America; or

3. Repurchase agreements with any primary dealer in securities fully secured by obligations described in subparagraphs 1 and 2 if the market value of the security is maintained at one hundred three percent (103%) of the principal amount of the repurchase agreement and the security is held by an independent third party custodian financial institution; or

4. Insured or guaranteed construction loans or mortgage loans as defined by KRS 198A.010(9) and (10); or

5. Guaranty insurance policies which guarantee payment of the principal and interest on the bonds issued by a nationally recognized entity authorized to issue guarantees and rated in the highest rating category by at least one (1) of the nationally recognized rating services;

the corporation shall obtain the approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1), unless the provisions of paragraph (b) of this subsection apply. This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bonds or notes.

(b) The corporation may provide for the issuance, at any one (1) time or from time to time, of bonds which do not satisfy the requirements of paragraph (a) of this subsection without approval of the issuance by the General Assembly if the cumulative outstanding indebtedness of the corporation that does not meet the requirements of paragraph (a) of this subsection does not exceed thirty million dollars ($30,000,000).

(c) The corporation shall annually report on its housing and bonding programs to the Interim Joint Committee on Appropriations and Revenue.

(7) The Finance and Administration Cabinet shall provide to the corporation fiscal consultant services regarding revenue bond management as necessary.

Approved February 18, 2000

CHAPTER 16

(HB 49)

AN ACT related to the use of automated external defibrillators.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

It is the intent of the legislature that an automated external defibrillator may be used for the purpose of saving the life of another person in cardiac arrest when used in accordance with the provisions of Section 3 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 of this Act, unless the context requires otherwise:

(1) "Automated external defibrillator" or "AED" means an external defibrillator capable of cardiac rhythm analysis which will charge and, with or without further operator action, deliver a shock after electronically detecting and assessing ventricular fibrillation or rapid ventricular tachycardia. These devices are known as fully or semiautomatic defibrillators;

(2) "Cardiopulmonary resuscitation" or "CPR" means a basic emergency procedure for life support, consisting of artificial respiration and manual external cardiac massage; and

(3) "Emergency medical service system" means the same as in KRS 211.950.

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

In order to ensure public health and safety:

(1) A person or entity who acquires an AED shall ensure that:

(a) Expected AED users receive American Heart Association or American Red Cross training in CPR and AED use, or an equivalent nationally recognized course in CPR and AED use;

(b) The AED is maintained and tested according to the manufacturer's operational guidelines;

(c) There is medical oversight of the AED program by a physician licensed in Kentucky to ensure compliance with requirements for training, maintenance, notification, and communication with the local emergency medical services system. The physician providing oversight shall also work with the AED site to establish protocols for AED deployment and conduct a review of each use of an AED; and

(d) Any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activates the local emergency medical services system as soon as possible and, if an entity with an AED program, reports any clinical use of the AED to the licensed physician.

(2) Any person or entity who acquires an AED shall notify an agent of the local emergency medical services system and the local emergency communications or vehicle dispatch center of the existence, location, and type of AED acquired.

SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) Any person or entity, who in good faith and without compensation, renders emergency care or treatment by the use of an AED shall be immune from civil liability for any personal injury as a result of the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as a ordinary, reasonable prudent person would have acted under the same or similar circumstances.

(2) The immunity from civil liability for any personal injury under subsection (1) of this section includes the licensed physician who is involved with AED site placement, the person or entity who provides the CPR and AED site placement, the person or entity who provides the CPR and AED training, and the person or entity responsible for the site where the AED is located.

(3) The immunity from civil liability under subsection (1) of this section does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the emergency care.

(4) The requirements of Section 3 of this Act shall not apply to any individual using an AED in an emergency setting if that individual is acting as a good Samaritan under KRS 411.148 and KRS 313.257.

SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of Sections 1 to 4 of this Act shall not apply to the use of an AED by:

(a) Physicians, podiatrists, or osteopaths licensed under KRS Chapter 311 or chiropractors licensed under KRS Chapter 312;

(b) Physician Assistants as defined in KRS 311.550;

(c) Registered nurses, practical nurses, or advanced registered nurse practitioners licensed under KRS Chapter 314;

(d) Dentists licensed under KRS Chapter 313; or

(e) Paramedics certified under KRS 311.654, or emergency medical technicians certified under KRS 211.964.

(2) Nothing in this section shall preclude the licensing boards referred to in Subsection (1) of this section from requiring continuing education or training on the use of an AED.

Approved February 18, 2000

CHAPTER 17

(HB 3)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context requires otherwise:

(a) "Casualty insurance" has the meaning set forth in KRS 304.5-070;

(b) "Domestic violence and abuse" has the meaning set forth in KRS 403.720;

(c) "Innocent co-insured" means an individual who did not cooperate in or contribute to the creation of the loss;

(d) "Insurer" means an insurer licensed to write property or casualty insurance in Kentucky; and

(e) "Property insurance" has the meaning set forth in KRS 304.5-050.

(2) (a) No insurer shall use the fact that an applicant or insured incurred bodily injury as a result of domestic violence and abuse committed against him or her as the sole reason for rating or underwriting decisions, refusing to insure, refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an applicant or insured.

(b) If a property or casualty insurance policy excludes property coverage for intentional acts, the insurer shall not deny payment to an innocent co-insured if the loss arose out of a pattern of domestic violence and abuse and the perpetrator of the loss is criminally prosecuted for the act causing the loss. Payment to the innocent co-insured may be limited to his or her ownership interests in the property as reduced by any payments to a mortgage or other secured interest.

Approved February 21, 2000

CHAPTER 18

(HB 9)

AN ACT relating to health insurance.

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

Section 1. KRS 304.17-316 is amended to read as follows:

(1) The term "mammogram" shall mean an x-ray examination of the breast using equipment dedicated specifically for mammography, including, but not limited to, the x-ray tube, filter, compression device, screens, film**,** and cassettes, with two (2) views of each breast and with an average radiation exposure at the current recommended level as set forth in guidelines of the American College of Radiology.

(2) ***(a)*** All insurers issuing individual health insurance policies in this Commonwealth ***that***~~[which]~~ provide coverage on an expense-incurred basis for surgical services for a mastectomy and ***that***~~[which]~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for low-dose mammography screening for persons who have no sign or symptom of breast cancer and when performed on dedicated equipment which meets the guidelines established by the American College of Radiology and upon self-referral or on referral by a health care practitioner acting within the scope of ***the***~~[such]~~ practitioner's licensure. The coverage shall make available one (1) screening mammogram to persons age thirty-five (35) through thirty-nine (39); one (1) mammogram every two (2) years for persons ages forty (40) through forty-nine (49); and one (1) mammogram per year for a person fifty (50) years of age and over and may be limited to a benefit of fifty dollars ($50) per screening mammogram. Any deductibles and coinsurance factors shall be no less favorable than for coverage for physical illness generally.

(b) All insurers issuing individual health insurance policies in this Commonwealth that provide coverage on an expense-incurred basis for surgical services for a mastectomy and that are delivered, issued for delivery, amended, or renewed on or after the effective date of this Act, shall also provide coverage for mammograms, performed on dedicated equipment that meets the guidelines established by the American College of Radiology, for any covered person, regardless of age, who has been diagnosed with breast disease upon referral by a health care practitioner acting within the scope of the practitioner's licensure. The coverage provided under this paragraph shall be subject to the same annual deductibles or coinsurance established for other coverages within the policy.

(3) The mammogram shall be performed by a Kentucky State Certified General Certificate Radiographer or an American Registry of Radiologic Technology Registered Radiographer, interpreted by a qualified radiologist, and performed under the direction of a person licensed to practice medicine and certified by the American Board of Radiology. Two (2) copies of the mammogram report shall be sent to the health care practitioner who ordered it, one (1) copy of which shall be given to the patient. In case of self-referral, one (1) copy of the mammogram report shall be given to the patient upon request. The mammography film shall be retained by the facility performing the examination in accordance with guidelines of the American College of Radiology.

(4) Effective July 15, 1990, any facility in which mammograms are performed for reimbursement under this section, KRS 304.18-098, 304.32-1591, or 304.38-1935 shall meet current criteria of the American College of Radiology Mammography Accreditation Program.

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All insurers issuing health benefit plans in this Commonwealth that provide coverage for surgical services for a mastectomy and that are delivered, issued for delivery, amended, or renewed on or after the effective date of this Act, shall also provide coverage for mammograms under Section 1 of this Act. The coverage shall meet the standards set forth in Section 1 of this Act.

Section 3. KRS 304.18-098 is amended to read as follows:

All insurers issuing group or blanket health insurance policies and certificates in this Commonwealth ***that provide***~~[providing]~~ coverage on an expense-incurred basis for surgical services for a mastectomy and ***that***~~[which]~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for ***mammograms under***~~[low-dose mammography screening as provided in]~~ KRS 304.17-316. The coverage shall meet the standards set forth in KRS 304.17-316.

Section 4. KRS 304.32-1591 is amended to read as follows:

All nonprofit hospital, medical-surgical, dental, and health service corporations issuing contracts in this Commonwealth ***that***~~[which]~~ provide hospital, medical, or surgical expense benefits for a mastectomy and ***that***~~[which]~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for ***mammograms***~~[low-dose mammography screening as provided]~~ under KRS 304.17-316. The coverage shall meet the standards set forth in KRS 304.17-316.

Section 5. KRS 304.38-1935 is amended to read as follows:

Health maintenance organizations issuing contracts in this Commonwealth ***that***~~[which]~~ provide hospital, medical, or surgical expense benefits for surgical services for a mastectomy and ***that***~~[which]~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for ***mammograms***~~[low-dose mammography screening as provided]~~ under KRS 304.17-316. The coverage shall meet the minimum standards set forth in KRS 304.17-316.

Approved February 21, 2000

CHAPTER 19

(HB 72)

AN ACT relating to unemployment insurance.

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

Section 1. KRS 341.390 is amended to read as follows:

There shall be deducted from the benefit rate determined for a worker in accordance with subsection (2) of KRS 341.380:

(1) Eighty percent (80%), adjusted to the nearest multiple of one dollar ($1), of the amount of wages earned by such worker during the week of unemployment with respect to which he claims benefits. For the purpose of this subsection, wages shall also include amounts earned by benefit claimants in self employment provided such earnings otherwise meet the definition of wages as contained in KRS 341.030;

(2) The amount of remuneration which the worker has received or is receiving with respect to such week of unemployment (adjusted to the nearest multiple of one dollar ($1)***)*** in the form of remuneration in lieu of notice; and

(3) (a) The amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment under a plan maintained or contributed to a chargeable or base-period employer, shall be reduced (but not below zero (0)) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week; except that ***this reduction shall not be made if***~~[the secretary may provide for limitations on the amount of any such deduction to take into account contributions made by]~~ the worker ***contributed to***~~[for]~~ the pension, retirement or retired pay, annuity, or other similar periodic payment.~~[The weekly benefit amount payable to a claimant for a week shall be reduced, but not below zero, by no part of a Social Security retirement pension if fifty percent (50%) or more of the contributions to the plan were provided by the claimant during the claimant's base period.]~~

(b) No reduction shall be made under this section by reason of the receipt of a pension if the services performed by the worker during the base period (or remuneration received for such services) for such employer did not affect the worker's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment. The conditions specified by this subsection shall not apply to pensions paid under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law). Payments made under such acts shall be treated solely in the manner specified by paragraph (a) of this subsection.

(c) If Public Law 94-566, Public Law 96-364 or the federal act which amends either for any cause shall become inoperative in its application, or stayed pendente lite, as to deductions of such compensation, then~~[,]~~ subsection (3) of this section, by virtue of that fact, shall likewise and to the same extent~~[,]~~ become inoperative as to such deductions.

Approved February 21, 2000

CHAPTER 20

(HB 82)

AN ACT relating to reorganization.

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

Section 1. KRS 194A.135 is amended to read as follows:

(1) The Developmental Disabilities~~[Planning]~~ Council is created within the cabinet.

(2) The Developmental Disabilities~~[Planning]~~ Council is established to comply with the requirements of the Developmental Disabilities Act of 1984 and any subsequent amendment to that act.

(3) The members of the Developmental Disabilities Planning Council shall be appointed by the Governor to serve as advocates for persons with developmental disabilities. The council shall be composed of ***twenty-six (26)***~~[twenty-four (24)]~~ members***.***~~[, of whom]~~

(a) ***Ten (10) members shall be***~~[twelve (12) are]~~ representatives of: the principal state agencies administering funds provided under the Rehabilitation Act of 1973 ***as amended***; the state agency that administers funds provided under the ***Individuals with Disabilities Education Act (IDEA)***~~[Education of the Handicapped Act]~~; the state agency that administers funds provided under the Older Americans Act of 1965 ***as amended***; the single state agency designated by the Governor for administration of Title XIX of the Social Security Act for persons with developmental disabilities; higher education training facilities, each university-affiliated program or satellite center in the Commonwealth; ***and*** the protection and advocacy system established under Public Law 101-496***. These members shall represent the following:***

1. Department for Vocational Rehabilitation;

2. Department for the Blind;

3. Division of Exceptional Children, within the Department of Education;

4. Office of Aging Services;

5. Department for Medicaid Services;

6. Department of Public Advocacy, Protection and Advocacy Division;

7. University-affiliated programs;

8. Council on Postsecondary Education;

9. Department for Mental Health/Mental Retardation Services; and

10. Department for Public Health, Division of Adult and Child Health~~[; and local agencies, nongovernmental agencies, and private, nonprofit groups concerned with services to persons with developmental disabilities]~~.

(b)~~[(a)]~~ At least ***sixty percent (60%)***~~[twelve (12)]~~ of the members of the council shall be composed of persons with developmental disabilities or the parents or guardians of persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not managing employees or persons with ownership or controlling interest in any other entity that receives funds or provides services under the Developmental Disabilities Act of 1984 ***as amended*** and who are not employees of a state agency that receives funds or provides services under this section. Of these members, ***five (5)***~~[at least four (4)]~~ members shall be persons with developmental disabilities, and ***five (5)***~~[at least four (4)]~~ members shall be ***parents or guardians of children with developmental disabilities or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. Six (6) members shall be a combination of individuals in these two (2) groups, and***~~[the immediate relatives or guardians of persons with mentally impairing developmental disabilities meeting the conditions listed in this subsection.]~~ at least one (1) of these ***members***~~[relatives or guardians]~~ shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability ***or an individual with a developmental disability who resides in an institution or who previously resided in an institution***~~[.~~

~~At least one (1) member of the council shall represent and advocate for the interests and rights of disabled, newborn infants~~].

(c)[~~(b)~~] Members not representing principal state agencies shall be appointed for a term of three (3) years***. Members shall serve no more than two (2) consecutive three (3) year terms. Members shall serve until their successors are appointed or until they are removed for cause***[~~, except the initial appointments shall be made in the following manner: four (4) members shall be appointed for a term of three (3) years, four (4) members shall be appointed for a term of two (2) years, and four (4) members shall be appointed for a term of one (1) year~~].

(d)[~~(c)~~] The[~~ planning~~] council shall elect its own chair, adopt bylaws, and operate in accordance with its bylaws. Members of the council who are not state employees shall be reimbursed for necessary and actual expenses. The cabinet shall provide personnel adequate to insure that the council has the capacity to fulfill its responsibilities. ***The council shall be headed by an executive director. If the executive director position becomes vacant, the council shall be responsible for the recruitment and hiring of a new executive director.***

(4) The Developmental Disabilities[~~ Planning~~] Council shall***:***

(a) Develop***, in consultation***[~~ jointly~~] with the cabinet***, and implement***[~~ and any other agencies designated to administer or supervise the administration of~~] the state plan as required by Part B of the Developmental Disabilities Act of 1984, ***as amended***[~~Public Law 98-527~~], including the specification of priority services required by that plan;

(b) Monitor, review, and evaluate, not less often than annually, the implementation ***and effectiveness*** of ***the state plan in meeting the plan's objectives***[~~ this plan~~];

(c) To the maximum extent feasible, review and comment on all state plans that relate to persons with developmental disabilities;[~~ and~~]

(d) Submit to the secretary of the cabinet***, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Secretary of the United States Department of Health and Human Services*** any periodic reports on its activities as required by the United States Department of Health and Human Services and keep records and afford access as the cabinet finds necessary to verify the reports***;***

(e) Serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that promote systematic change and capacity building;

(f) Examine, not less than once every three (3) years, the provision of and need for federal and state priority areas to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families; and

(g) Prepare, approve, and implement a budget that includes amounts paid to the state under the Developmental Disabilities Act of 1984, as amended, to fund all programs, projects, and activities under that Act.

Section 2. KRS 210.775 is amended to read as follows:

(1) There is hereby created the State Supported Living Council for services to persons with a disability and their families.

(2) (a) The State Supported Living Council shall be composed of ten (10) members. The commissioner of the Department for Mental Health and Mental Retardation Services and the executive director of the Kentucky Housing Corporation or their designees shall be ex-officio members.

(b) Eight (8) of the members shall be volunteers and shall be appointed by the Governor from a list of nominees in the following manner:

1. Three (3) of the appointed members shall represent family members of persons with a disability. One (1) member shall be selected from each of three (3) lists containing two (2) nominees submitted by each of the following associations: the Kentucky Association for Retarded Citizens, the Association for Persons with Severe Handicaps, and the Mental Health Coalition;

2. One (1) of the appointed members shall represent family members of persons with a disability who reside in an intermediate care facility for mental retardation or developmental disabilities. The nominee shall be selected from a list containing two (2) nominees submitted by each of the following associations: Concerned Parents of Hazelwood, Parents and Relatives of Oakwood Facility, and Concerned Parents of Outwood;

3. Two (2) of the appointed members shall be persons with a disability. They shall be selected from a list containing two (2) nominees submitted by each of the following associations: the Kentucky Campaign for Personal Attendant Care, the Kentucky Association for Retarded Citizens, the Mental Health Coalition, and the Kentucky Disabilities Coalition;

4. One (1) of the appointed members shall represent professionals and providers of services to persons with a disability. The nominee shall be selected from a list containing two (2) nominees submitted by each of the following associations: the Kentucky Association of Private Residential Resources and the Kentucky Association on Mental Retardation; and

5. One (1) of the appointed members shall represent advocates for persons with a disability. The nominee shall be selected from a list containing two (2) nominees submitted by each of the following entities: the Division of Protection and Advocacy and the Kentucky Developmental Disabilities~~[Planning]~~ Council.

(3) The appointed members may serve on the council for three (3) years. Members may be reappointed for a maximum of two (2) consecutive terms. The Governor shall fill any vacancy occurring in the council in the manner prescribed in subsection (2) of this section.

(4) The Department for Mental Health and Mental Retardation Services shall provide staff assistance to the State Supported Living Council.

(5) The chairman of the State Supported Living Council shall be elected from among the members. A majority of the members shall constitute a quorum.

(6) The State Supported Living Council shall meet as often as necessary but no less frequently than every other month.

Section 3. The General Assembly hereby confirms Executive Order 98-892, dated July 14, 1998, to the extent it is not otherwise confirmed or superseded by this Act.

Approved February 21, 2000

CHAPTER 21

(HB 107)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-37, dated January 11, 1999, relating to the Public Protection and Regulation Cabinet, Department of Insurance, that: creates the Division of Health Insurance Policy and Managed Care to be headed by a director, appointed in accordance with KRS 12.050 and KRS 304.2-060; and, changes the name of the Life and Health Division to the Life Insurance Division, this division to be headed by a director appointed in accordance with KRS 12.050 and KRS 304.2-060. The newly created Division of Health Insurance Policy and Managed Care and the renamed Life Insurance Division shall be composed of such personnel, equipment, files, and funding as may be set forth by administrative order of the Department of Insurance, in accordance with Executive Order 99-37.

Approved February 21, 2000

CHAPTER 22

(SB 26)

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context indicates otherwise:

(1) "Authority" means the Appalachian/Kentucky Artisans Gateway Center Authority;

(2) "Board" means the board of directors of the Appalachian/Kentucky Artisans Gateway Center Authority; and

(3) "Center" means the Appalachian/Kentucky Artisans Gateway Center.

SECTION 2. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

The Appalachian/Kentucky Artisans Gateway Center Authority is created and established as an independent, de jure municipal corporation and political subdivision of the Commonwealth that shall be a public body corporate and politic. The authority shall develop, operate, and manage the Appalachian/Kentucky Artisans Gateway Center funded by 1998 Ky. Acts ch. 615, Part X, under the reference "Artisans Center--Berea." The authority shall be attached to the Tourism Development Cabinet for administrative purposes.

SECTION 3. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

(1) The authority shall be governed by a board of directors consisting of thirteen (13) members as follows:

(a) Secretary of the Tourism Development Cabinet, or his or her designee;

(b) Secretary of the Transportation Cabinet, or his or her designee;

(c) Secretary of the Education, Arts, and Humanities Cabinet, or his or her designee;

(d) Secretary of the Finance and Administration Cabinet, or his or her designee;

(e) Three (3) members appointed by the Governor, one (1) to be a representative of the Kentucky Arts Council, and two (2) to be at-large members; and

(f) Six (6) members appointed by the mayor of the city of Berea to include two (2) representatives of Berea city government, two (2) representatives of Berea College recommended by the president of Berea College, one (1) representative of Eastern Kentucky University recommended by the president of Eastern Kentucky University, and one (1) at-large member.

(2) Members shall serve for staggered terms of four (4) years beginning August 1, 2000, except that of the initial appointments:

(a) One (1) appointment by the Governor and two (2) appointments by the mayor of the city of Berea shall each serve a term of four (4) years;

(b) Two (2) appointments by the mayor of the city of Berea and one (1) appointment by the Governor shall each serve a term of three (3) years;

(c) One (1) appointment by the Governor and one (1) appointment by the mayor of the city of Berea shall each serve a term of two (2) years; and

(d) One (1) appointment by the mayor of the city of Berea shall serve a term of one (1) year.

(3) The Governor shall appoint a chair from among the members of the board.

(4) A quorum of the board shall consist of seven (7) members, with a majority of members present authorized to act upon any matter legally before the authority.

(5) A member may be removed by the appointing authority only for neglect of duty, misfeasance, or malfeasance, and after being afforded an opportunity for a hearing in accordance with KRS Chapter 13B, relating to administrative hearings.

SECTION 4. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

(1) An executive director shall be appointed in accordance with KRS 12.050.

(a) The executive director shall at all times attempt to accommodate the desires expressed by the board of directors.

(b) The executive director shall keep all minutes, records, and orders of the authority and shall be responsible for the preservation of all the documents. The documents shall be public records subject to KRS 61.870 to 61.884, relating to open records.

(2) The staff of the authority, including its executive director, shall be employees of the Tourism Development Cabinet.

SECTION 5. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

(1) The board shall develop articles of incorporation and appropriate documentation to establish its existence as a nonprofit corporation under KRS 58.180.

(2) The board may establish from among its membership an executive committee, which shall have full authority to act between board meetings to the extent delegated by the board.

(3) The board may enact bylaws concerning the election of officers and other administrative procedures it deems necessary.

SECTION 6. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

The authority shall have the following duties and authorities:

(1) The authority shall supervise the design, construction, and operation of the center and shall provide all management functions for the facility and for any other property acquired or leased under its powers established by law.

(2) The authority shall promote the growth and development of statewide tourism related to arts and crafts destinations throughout the state and shall ensure that its efforts conform to marketing and promotion strategies devised by the Tourism Cabinet.

(3) The authority shall have the exclusive control of scheduling all exhibitions, performances, retail activities, and concessions in the center. The authority shall have a prior lien upon the property of any private exhibitor, concessionaire, or other person holding an exhibition or performance or operating a concession in the center and may sell the property upon ten (10) days' notice to satisfy any indebtedness.

(4) The authority shall participate with local hotels and the travel industry to develop tourist packages and additional services to attract events, conferences, and conventions to the region.

(5) The authority may take, acquire, and hold property, and all interests therein, by deed, purchase, gift, devise, bequest, or lease, or by transfer from the State Property and Buildings Commission and may dispose of any property so acquired in any manner provided by law.

(6) The authority may adopt administrative regulations in accordance with KRS Chapter 13A only for governing the operation, maintenance, or use of property under its custody and control.

(7) The authority may levy a surcharge on tickets for functions held within the center to contribute to operating revenue.

(8) The authority may sue and be sued and maintain and defend legal actions in its name.

(9) Members of the authority shall serve without compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. The

reimbursement shall be in accordance with administrative regulations promulgated under KRS Chapter 13A by the Finance and Administration Cabinet.

SECTION 7. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

All revenues derived by the authority from the use of the center and from contributions to the center from other sources, and any additional revenues derived by the authority from any other source, shall be used solely for the expenses of the center, including payment on debt; the cost of management and operation of its facilities; the creation of an adequate reserve for repair, replacement, debt service, and capital improvements; the procurement of insurance; and promotional activities.

Section 8. The General Assembly confirms Executive Order 99-331, dated March 12, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

Approved February 21, 2000

CHAPTER 23

(HB 250)

AN ACT relating to motor vehicle dealers and declaring an emergency.

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

Section 1. KRS 190.010 is amended to read as follows:

As used in KRS 190.010 to 190.990:

(1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:

(a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.

(b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers.

(c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of

his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers.

(d) "Distributor branch" which means a branch office similarly maintained by a distributor or wholesaler for the same purposes.

(e) "Distributor representative" which means a representative similarly employed by a distributor, distributor branch, or wholesaler.

(2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto.

(3) The term "motor vehicle dealer" shall not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;

(b) Public officers while performing their official duties; or

(c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees.

(4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles.

(5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles.

(6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties.

(7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers.

(8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation.

(9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles. Motorcycles shall not include mopeds as defined in this section.

(10) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction.

(11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction.

(12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, that is self propelled, but shall not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

(13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer.

(14) "Moped" means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

(15) "Commission" means the Motor Vehicle Commission.

(16) "Commissioner" means the commissioner of the department.

(17) "Department" means the Department of Vehicle Regulation.

(18) "Licensor" means the commission.

(19) "Established place of business" means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances.

(20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or other legal entity.

(21) "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product.

(22) "Good faith" means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b).

(23) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership

interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

(24) "Fraud" means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact.

(25) "Sale" means the issuance, transfer, agreement for transfer, exchange, ***lease,*** pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise.

Section 2. 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 Revenue Cabinet;

(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;

(m) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of the motor vehicle manufacturer

or factory branch, who has induced, coerced, or attempted to induce or coerce any automobile dealer to accept delivery of any motor vehicle, vehicles, parts, accessories, or any other commodities that shall not have been ordered by the dealer;

(n) Being a manufacturer of motor 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 automobile 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 or factory branch,*** or wholesaler who makes, attempts to make, or aids or abets the making of a sale of a motor vehicle to a person other than a licensed motor vehicle dealer. This section shall not prevent any license holder from selling any motor vehicle to any of its employees;

(q) Being a dealer who advertises for sale a new motor 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 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 the Franklin Circuit Court and to the Court of Appeals in the manner provided by KRS Chapter 13B.

Section 3. KRS 190.045 is amended to read as follows:

(1) Notwithstanding the terms, provisions, or conditions of any franchise or notwithstanding the terms or provisions of any waiver, ***a***~~[no]~~ manufacturer shall ***not*** cancel, terminate, or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:

(a) Satisfied the notice requirement of subsection (4) of this section;

(b) Has good cause for cancellation, termination, or nonrenewal;

(c) Has acted in good faith as defined in KRS 190.010(22); and

(d) Has established the requirements of this subsection in proceedings before the licensor if the action is protested by the new motor vehicle dealer within fifteen (15) days after receiving notice of the cancellation, termination, or nonrenewal.

When a protest is filed, the licensor shall inform the manufacturer, distributor, factory branch, or factory representative that a timely protest has been filed and that the manufacturer, distributor, factory branch, or factory representative shall not cancel, terminate, or fail to renew any franchise with the licensed new motor vehicle dealer until the licensor has held a hearing and the licensor has determined that the manufacturer has met its burden under this section.

(2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or nonrenewal when:

(a) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship, provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days after the manufacturer first acquired knowledge of ***the***~~[such]~~ failure.

(b) If the failure by the new motor vehicle dealer, defined in paragraph (a) of this subsection, relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer, if the new motor vehicle dealer was apprised by the manufacturer in writing of ***a***~~[such]~~ failure, and

1. ***The***~~[Said]~~ notification stated that notice was provided of failure of performance pursuant to this section;

2. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than six (6) months, to comply with ***the***~~[such]~~ criteria; and

3. The new motor vehicle dealer did not demonstrate substantial progress toward compliance with the manufacturer's performance criteria during ***the designated***~~[such]~~ period.

(3) The manufacturer shall have the burden of proof under this section.

(4) Notwithstanding the terms, provisions, or conditions of any franchise prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notification of ***a***~~[such]~~ termination, cancellation, or nonrenewal to the new motor vehicle dealer as follows:

(a) In the manner described in subsection (2)(b) of this section; and

(b) In not less than ninety (90) days prior to the effective date of ***the***~~[such]~~ termination, cancellation or nonrenewal; or

(c) In not less than fifteen (15) days prior to the effective date of ***a***~~[such]~~ termination, cancellation, or nonrenewal with respect to any of the following:

1. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

2. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

3. Fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor which is material to the franchise;

4. Conviction of the new motor vehicle dealer, or any owner or operator thereof, of any felony which is punishable by imprisonment; or

5. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

(d) In not less than one hundred eighty (180) days prior to the effective date of ***a***~~[such]~~ termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

(5) Notification under this section shall be in writing by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

(a) A statement of intent to terminate, cancel, or not to renew the franchise; and

(b) A statement of the reasons for the termination, cancellation, or nonrenewal; and

(c) The date on which ***the***~~[such]~~ termination, cancellation, or nonrenewal takes effect.

(6) Upon the termination, nonrenewal, or cancellation of any franchise, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

(a) New current model year motor vehicle inventory which has been acquired from the manufacturer, and which has not been damaged or altered while in the dealer's possession;

(b) Supplies and parts which have been acquired from the manufacturer;

(c) Equipment and furnishings provided the new motor vehicle dealer purchased from the manufacturer or its approved sources; and

(d) Special tools.

~~[Such]~~Fair and reasonable compensation shall be paid by the manufacturer within ninety (90) days of the effective date of termination, cancellation, or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.

(7) In the event of a termination, cancellation, or nonrenewal under this section, and the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, or owns the dealership facilities, the manufacturer shall pay a reasonable rent to the dealer in accordance with and subject to subsection (8) of this section.

(8) (a) ~~[Such]~~Reasonable rental value shall be paid only to the extent the dealership premises are recognized in the franchise and only if they are:

1. Used solely for performance in accordance with the franchise; and

2. Not substantially in excess of those facilities recommended by the manufacturer.

(b) If the facilities are owned by the dealer, the manufacturer will either:

1. Locate a purchaser who will offer to purchase the dealership facilities at a reasonable price; or

2. Locate a lessee who will offer to lease the premises for a reasonable term at a reasonable rent; or

3. Failing the foregoing, lease the dealership facilities at a reasonable rental value for one (1) year.

(c) If the facilities are leased by the dealer, the manufacturer will either:

1. Locate a tenant or tenants satisfactory to the lessor, who will sublet or assume the balance of the lease; or

2. Arrange with the lessor for the cancellation of the lease without penalty to the dealer; or

3. Failing the foregoing, lease the dealership facilities at a reasonable rent for one (1) year.

(d) The manufacturer shall not be obligated to provide assistance under this section if the dealer:

1. Fails to accept a bona fide offer from a prospective purchaser, sublessee or assignee; or

2. Refuses to execute a settlement agreement with the lessor if ***the***~~[such]~~ agreement would be without cost to the dealer; or

3. Fails to make ***a*** written request for assistance under this section within one (1) month of the termination, cancellation, or nonrenewal.

(e) If, in an action for damages under this section, the manufacturer or distributor fails to prove either that the manufacturer or distributor has acted in good faith or that there was good cause for the franchise termination, cancellation, or nonrenewal, then the manufacturer or distributor may terminate, cancel, or fail to renew the franchise upon payment to the new motor vehicle dealer of an amount equal to the value of the dealership as an ongoing business location.

(9) Notice of termination to a dealer shall entitle the dealer to continue the franchise and the dealer may attempt to sell the franchise until all of the dealer's appeal rights have been exhausted.

Section 4. KRS 190.046 is amended to read as follows:

(1) Notwithstanding the terms of any franchise agreement, each motor vehicle manufacturer or distributor, doing business within this Commonwealth, shall assume all responsibility for and shall defend, indemnify, and hold harmless its motor vehicle dealers against any loss, damages, and expenses, including legal costs, arising out of complaints, claims, ***recall repairs or modifications or factory authorized or directed repairs,*** or lawsuits resulting from warranty defects, which shall include structural or production defects; defects in the assembly; or design of motor vehicles, parts, accessories; or other functions beyond the control of the dealer, including without limitation, the selection of parts or components for the vehicle. Each manufacturer or distributor shall pay reasonable compensation to any authorized dealer who performs work to repair defects, or to repair any damage to the manufacturer's or distributor's product sustained while the product is in transit to the dealer, when the carrier or the means of transportation is designated by the manufacturer or distributor. Each manufacturer or distributor shall provide to its dealers with each model year a schedule of time allowances for the performance of warranty repair work and services, which shall include time allowances for the diagnosis and performance of warranty work and service time, and shall be reasonable and adequate for the work to be performed.

(2) In the determination of what constitutes "reasonable compensation" under this section, the principal factor to be considered shall be the amount of money that the dealer is charging its other customers for the same type service or repair work. Other factors may be considered, including the compensation being paid by other manufacturers or distributors to their dealers for work; and the prevailing amount of money being paid or charged by the dealers in the city or community in which the authorized dealer is doing business. "Reasonable compensation" shall include diagnosing the defect; repair service; labor; parts and administrative and clerical costs. The compensation of a dealer shall not be less than the amount charged by the dealer for like services and parts, which minimum compensation for parts shall be dealer cost plus thirty percent (30%) gross profit, to retail customers for nonwarranty service and repairs, or less than the amounts indicated for work on the schedule of warranty compensation required to be filed by the manufacturer with the commission as a part of the manufacturer's license application by KRS 190.030.

(3) A manufacturer or distributor shall not require unreasonable proof to establish "reasonable compensation" or delay reimbursement of payment to the dealer beyond thirty-five (35) days from the submission by mail of a valid warranty claim. If a valid warranty claim is not paid within forty-five (45) days, the dealer may give the manufacturer one (1) copy of the dealer's related repair order bearing the customer's signature, the dealer's signature, the date the work was completed, the vehicle serial number or identification number, the odometer reading, the date of delivery of the vehicle, a list of the parts and supplies used if applicable, a brief general description of the defect, and the amount of money charged the manufacturer or distributor for the work. If, after fifteen (15) days, the valid warranty claim is still not paid, the dealer may deduct a like amount from any moneys due or owing to the manufacturer or distributor. The dealer shall hold the defective part for inspection by the manufacturer or distributor for a period of time not to exceed ninety (90) days from the time the warranty claim is submitted. The manufacturer or distributor shall not unfairly discriminate against any dealer in the application of warranty, policy, and procedure or deny any valid warranty order claim submitted by a franchised dealer within thirty (30) days from completion of the work or longer if existing manufacturer-dealer relationships apply. Upon the written request of the dealer for valid reasons, the manufacturer shall extend the submission time. Any

dispute between the dealer and the manufacturer or distributor shall be subject to the provisions of KRS 190.057.

(4) All audits by a manufacturer shall be limited to a period of one (1) year prior to the date of the audit.

Section 5. KRS 190.0491 is amended to read as follows:

(1) "Delivery" of a motor vehicle to a dealer by a manufacturer or distributor for the purposes of this section shall be accomplished by the:

(a) Tender of the motor vehicle and any documents necessary to enable the dealer to obtain title and possession of the motor vehicle at the dealer's place of business or designated place of delivery, and

(b) The giving of notice of ***the***~~[such]~~ tender of the motor vehicle and documents to the dealer.

(2) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

(a) Notify the manufacturer or distributor of ***the***~~[such]~~ damage within three (3) working days of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

(b) ~~[Must]~~Request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

~~[Such]~~Notification of damage by the dealer must be by certified mail, with a notice of delivery requested to be returned to the dealer, and shall be presumed to have occurred upon deposit of the notice with the United States Postal Service.

(3) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of ***the***~~[any such]~~ damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for ***the***~~[such]~~ damage to the motor vehicle. In determining when ***the***~~[such]~~ notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.

(4) In computing the lapse of three (3) working days under this section, the day of the occurrence of delivery of the motor vehicle to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, or the day of notification of the damage to the manufacturer or distributor by the dealer, as described in subsection (3) of this section, ***shall***~~[is]~~ not~~[to]~~ be included, but the last working day of the period so computed ***shall***~~[is to]~~ be included.

(5) Prior to the sale of any motor vehicle damaged prior to delivery to the dealer as described in subsection (2) of this section, excluding damage to glass, tires, and bumpers when replaced by identical manufacturer's original equipment and any damage not exceeding six percent (6%) of the sticker price of the vehicle, the occurrence and extent of ***the***~~[such]~~ damage must be disclosed by the dealer to the consumer, and upon repair of the damage sustained, or

replacement of the parts or accessories damaged, the manufacturer and/or dealer, must certify to the consumer that the motor vehicle has been repaired or remanufactured to the manufacturer's standards; if the dealer makes the certification he shall be indemnified by the manufacturer. Upon ***this***~~[such]~~ certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.

(6) Whenever a motor vehicle is damaged resulting in repairs or repair estimates that exceed ***one thousand dollars ($1,000)***~~[three hundred dollars ($300)]~~ after delivery to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, but before sale by the dealer to the consumer, the occurrence and extent of ***the***~~[such]~~ damage must be disclosed by the dealer to the consumer prior to ***a***~~[such]~~ sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards. Upon ***this***~~[such]~~ certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.

(7) Notwithstanding the terms of any franchise agreement, it shall be a violation of this section for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims, or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale as is defined in KRS 355.2-608, to the extent that the judgment or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions by the manufacturer, beyond the control of the dealer.

Section 6. KRS 190.070 is amended to read as follows:

(1) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative licensed under this chapter to require any new motor vehicle dealer in the Commonwealth:

(a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliances, equipment, or any other product not required by law, which shall not have been voluntarily ordered by the new motor vehicle dealer; except that this section is not intended to modify or supersede any terms or provisions of the franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising.

(b) To order or accept delivery of any new motor vehicle with special features, appliances, accessories, or equipment not included in the list price of ***the***~~[such]~~ motor ***vehicle***~~[vehicles]~~, as publicly advertised by the manufacturer or distributor.

(c) To order for any person any parts, accessories, equipment, machinery tools, appliance, or any commodity whatsoever not required in connection with a recall campaign.

(d) To participate monetarily in an advertising campaign or contest, any promotional materials, training materials, showroom or other display decorations, or materials, at the expense of the dealer, without the consent of the dealer.

(e) To enter into any agreement with the manufacturer, distributor, factory branch, or factory representative, or to do any other act prejudicial to the new motor vehicle

dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer, distributor, factory branch, or factory representative. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of ***the dealer's***~~[such]~~ franchise, or contractual agreement shall not constitute a violation of this law.

(f) To change the capital structure of the dealership, or the means by or through which the dealer finances the operation of the dealership, provided that the dealership at all times meets any reasonable capital standards agreed to by the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.

(g) To refrain from participation in the management or investment in, or the acquisition of any other line of new motor vehicle or related products; provided, however, that this section does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facility requirements of the manufacturer, and no change is made in the principal management of the new motor vehicle dealership.

(h) To change location of the dealership, or to, during the course of the agreement, make any substantial alterations to the dealership premises, when to do so, would be unreasonable in light of the current economic, political, and social considerations.

(i) To prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this law, or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the Commonwealth or the United States of America, or to the commissioner, if ***the***~~[such]~~ referral would be binding upon the dealer.

(j) To establish or maintain exclusive facilities, personnel, display space, or signage for a new motor vehicle make or line.

(k) To expand facilities without making available a sufficient supply of new motor vehicles to support the expansion in light of the market and economic conditions.

(2) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative:

(a) To delay, refuse, or fail to deliver motor vehicles, or vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, but in any case no more than sixty (60) days, after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts, or accessories to new vehicles as are covered by ***the***~~[such]~~ franchise, if ***the***~~[such]~~ vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who had placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed

delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within sixty (60) days, without cause. This section is not violated, however, if ***the***~~[such]~~ failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(b) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the relevant market areas.

(c) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall ***not*** be ***a***~~[no]~~ transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.

(d) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and ***the***~~[such]~~ other person, other than for compensation for services rendered, unless ***the***~~[such]~~ benefit is promptly accounted for, and transmitted to, the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.

(e) To increase prices of motor vehicles which the dealer had ordered for private retail customers prior to the dealer's receipt of the written official price increase notification, a sales contract signed by a private retail consumer shall constitute evidence of each~~[such]~~ order, provided that the vehicle is in fact delivered to the customer. In the event of manufacturer price reductions, the amount of ***a***~~[any such]~~ reduction received by a dealer shall be passed on to the private retail consumer by the dealer, if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by the following shall not be subject to the provisions of this section:

1. The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

2. Revaluation of the United States dollar, in the case of foreign-make vehicles or components;

3. Increased transportation charges due to an increase in the rate charged by common carrier or transporter.

(f) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof, without making the same offer, upon written request, to all other dealers in the same line make within the relevant market area.

(g) To release to any outside party, except under subpoena, any administrative, judicial or arbitration proceedings, or any business, financial, or personal information which may be, from time to time, provided by the dealer to the manufacturer, without the express written consent of the dealer.

(h) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(i) ***To establish or maintain a relationship, on the part of a manufacturer, distributor, factory branch, or factory representative, where the voting rights exceed a simple majority.***

(j) To own, operate, or control any motor vehicle dealership in the Commonwealth; however, this subsection shall not prohibit:

1. The operation by any manufacturer of a dealership for a temporary period, not to exceed one (1) year, during the transition from one (1) owner to another;

2. The ownership or control of a dealership by a manufacturer while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or

3. The ownership, operation, or control of a dealership by a manufacturer if the licensor determines after a hearing at the request of any party, that there is not a dealer who is independent of the manufacturer available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.

(k) To compete without good faith with a new motor vehicle dealer in the same line make, operating under an agreement or franchise from the aforementioned manufacturer, distributor, factory branch, or factory representative in the relevant market area. A manufacturer, distributor, factory branch, or factory representative shall not, however, be deemed to be competing when operating a dealership, either temporarily for a reasonable period, ***not to exceed one (1) year,*** or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment, subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

(l)~~[(j)]~~ To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new motor vehicle dealers to make warranty adjustment with retail customers.

(m)~~[(k)]~~ To fail to give consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state; provided that consent may be withheld when in light of other circumstances, granting the consent would be unreasonable.

(n)~~[(l)]~~ To fail to be licensed as provided in this chapter, and to maintain a bond in an amount as determined by this chapter.

(3) It shall be unlawful for a manufacturer, either directly or indirectly, or in combination with or through any subsidiary or affiliated entity, to discriminate in favor of one (1) dealer against another dealer holding a franchise for the same line make of motor vehicle by furnishing to only one (1) dealer any of the following:

(a) Any vehicle, part, or other product that is not available to each dealer at the same price, including discounts, rebates, incentives, or other payments or allowances affecting the net price of the product;

(b) Any vehicle, part, or other product that is not made available to each dealer in quantities proportionate to the demand for the vehicle, part, or other product;

(c) Any vehicle, part, or other product that is not made available to each dealer on comparable delivery terms, including time of delivery after placement of an order;

(d) Any promotional or advertising payment or allowance that is not made available to each dealer on proportionally equal terms;

(e) Any opportunity to purchase or lease from the manufacturer the dealer's facility that is not made available to each dealer on terms proportionate to the respective values of its facilities;

(f) Any personnel training that is not made available to each dealer on proportionally equal terms;

(g) Any inventory or other financing that is not made available to each dealer on proportionally equal terms, except that a manufacturer, subsidiary, or affiliated entity shall not be obligated to make available financing to a dealer who does not meet reasonable credit standards uniformly applied by the manufacturer, subsidiary, or affiliated entity;

(h) Any opportunity to perform work for which the dealer is entitled to be compensated under this chapter that is not made available to each dealer under uniformly applied standards;

(i) Any opportunity to sell products or services distributed by the manufacturer for resale in connection with the line make of the motor vehicle covered by the franchise that is not made available to each dealer on proportionally equal terms;

(j) Any opportunity to establish an additional sales, service, or parts outlet that is not made available to each dealer in whose relevant market area the sales, service, or parts outlet will be located;

(k) Any information concerning the manufacturer's products, prices or other terms of sale, or promotional programs that is not contemporaneously furnished to the dealer;

(l) Any improvement to, or payment to the dealer for an improvement to, the dealer's facilities that is not made available to each dealer on proportionally equal terms;

(m) Any opportunity to sell or assign retail installment contracts or consumer leases to the manufacturer or the manufacturer's sales finance company subsidiary that is not made available to each dealer on proportionally equal terms, except that a manufacturer or sales finance company shall not be obligated to purchase any retail installment contract or consumer lease that does not meet reasonable credit terms uniformly applied by the manufacturer or sales finance company subsidiary;

(n) Any product assistance, service, or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms; or

(o) Any payment for any service or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms.

(4) It shall not be a defense to an alleged violation of subsection (3) of this section, that an item or opportunity was offered to a dealer if the offer was conditioned upon the dealer meeting one (1) or more requirements that are not reasonable and necessary to fulfill the dealer's obligations under the franchise. The manufacturer shall have the burden of proving that any requirement upon which an offer was conditioned was reasonable and necessary to fulfill the dealer's obligations under the franchise when the offer was made. A requirement shall not be found to be reasonable and necessary to fulfill the dealer's obligations under the franchise if the manufacturer cannot prove that it was within the control of each dealer to meet the requirement imposed on the dealer as a condition of the offer.

(5) A dealer who alleges a good faith belief that the dealer has been, or is being, discriminated against in violation of subsection (3) of this section, may demand in writing that the manufacturer furnish the dealer with pertinent information reasonably necessary for the dealer to determine if discrimination exists. If the manufacturer fails to furnish the dealer with the information demanded within thirty (30) days of the manufacturer's receipt of the dealer's written demand, the manufacturer shall have, in any subsequent legal proceeding, the burden of proving that the alleged violation has not occurred.

(6) Any dealer who is discriminated against by a manufacturer in violation of subsection (3) of this section shall recover three (3) times an amount equal to the value of what the dealer would have received if the manufacturer had complied with subsection (3) of this section upon furnishing any item or opportunity to another dealer.

Section 7. KRS 186A.540 is amended to read as follows:

An individual or a dealer required to be licensed pursuant to KRS Chapter 190 shall disclose all damages to a motor vehicle which result in repairs or repair estimates that exceed ***one thousand dollars ($1,000)***~~[three hundred dollars ($300)]~~ and that occur while the motor vehicle is in his possession and prior to delivery to a purchaser. Disclosure shall be in writing and shall require the purchaser's signature acknowledging the disclosure of damages.

Section 8. Whereas motor vehicle dealers across the Commonwealth have legitimate concerns that manufacturers will move swiftly to retaliate against motor vehicle dealers before the provisions of this Act could become effective, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved February 22, 2000

CHAPTER 24

(HB 257)

AN ACT changing the classification of the City of Union, in Boone County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Union, in Boone County, is such as to justify its being classified as a city of the fifth class;

NOW, THEREFORE,

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

Section 1. The City of Union, in Boone County, is transferred from the sixth to the fifth class of cities.

Approved February 22, 2000

CHAPTER 25

(HB 312)

AN ACT relating to emergency medical technicians.

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

Section 1. KRS 211.964 is amended to read as follows:

(1) The Cabinet for Health Services shall promulgate administrative regulations relating to emergency medical technicians. The regulations may include the classification and certification of emergency medical technicians, instructors, instructor-trainers, and students and trainees; examinations; standards of training and experience; curricula standards; issuance, renewal, suspension, denial, revocation, probation, and restriction of certificates; hearing of appeals; and other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services. Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. No additional testing or examinations shall be required for recertification, except for proficiency testing of new skills or knowledge, or areas in which there is documented evidence of deterioration of skills.

(2) Recertification programs shall be organized to include continuing education and in-service training approved by the cabinet. The continuing education program shall be subject to the requirements of KRS 214.610(1).

(3) ***On or after the effective date of this Act, a new emergency medical technician shall, for initial certification, be certified using the requirements and testing established by the National Registry of Emergency Medical Technicians.***

(4) On or after the effective date of this Act, a certified emergency medical technician who seeks recertification shall recertify under the requirements established and maintained by the cabinet. These requirements shall contain a minimum of sixteen (16) hours of required topics and eight (8) hours of elective topics over a two (2) year recertification period. The cabinet shall also recertify any emergency medical technician who chooses to recertify under the requirements established by the National Registry of Emergency Medical Technicians in lieu of the standards established by the cabinet~~[In lieu of the continuing education and in-service training requirement specified by the cabinet for recertification, an emergency medical technician, certified as of July 15, 1996, or within one (1) year of July 15, 1996, may elect to recertify utilizing the continuing education and in-service training required by the National Registry of Emergency Medical Technicians or its successor organization. Upon successful completion of the National Registry recertification requirements, the emergency medical technician shall be recertified for the period of time specified by law.~~

~~(4) Emergency medical technicians certifying later than one (1) year after July 15, 1996, shall, in lieu of the certification requirements specified by the cabinet under subsection (1) of this~~

~~section, successfully complete the National Registry of Emergency Medical Technicians final examination for certification and shall maintain National Registry of Emergency Medical Technicians credentials in order to be recertified.~~

~~(5) A person who has chosen to recertify as an emergency medical technician utilizing the National Registry of Emergency Medical Technicians or its successor organization's requirements shall not be permitted to recertify utilizing the cabinet's requirements, unless the National Registry of Emergency Medical Technicians and its successor organization ceases business or there is no successor organization]~~.

(5)~~[(6)]~~ Other than the requirements of KRS 214.610(1), the cabinet shall not require any additional course work, in-service training, testing, or examinations of a person who chooses the National Registry of Emergency Medical Technicians or its successor organization for certification or recertification as an emergency medical technician.

(6)~~[(7)]~~ Other than the requirements of KRS 214.610(1), any person certified by the State Board of Medical Licensure as a paramedic shall be certified as an emergency medical technician by the cabinet. The certification shall be issued without fee, without additional training, in-service training, testing, or examination. The emergency medical technician certification shall be issued and expire at the same time that paramedic certification is issued or expires, and if a paramedic voluntarily gives up his certification prior to the expiration of his paramedic certification, his emergency medical technician certification shall be unaffected thereby. If a paramedic chooses not to recertify as a paramedic but chooses to retain his emergency medical technician certification, the paramedic shall, prior to the expiration of his paramedic certification, recertify as an emergency medical technician utilizing one (1) of the methods provided for in this section.

(7)~~[(8)]~~ A paramedic whose certification as a paramedic is suspended, revoked, or denied by the State Board of Medical Licensure shall have the same action taken automatically by the cabinet with regard to his emergency medical technician certification.

Approved February 24, 2000

CHAPTER 26

(HB 98)

AN ACT relating to reorganization.

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

Section 1. KRS 11.182 is amended to read as follows:

(1) The membership of the commission shall consist of ***forty-eight (48)***~~[forty-five (45)]~~ members who have the resources to accomplish the goals set forth in Kentucky's Appalachian Development Plan created under KRS 11.180(1).

(a) Ex-officio members shall be: the Governor; secretary of the Governor's Executive Cabinet; secretary of the Cabinet for Economic Development; secretary of the Transportation Cabinet; secretary of the Natural Resources and Environmental Protection Cabinet; secretary of the Tourism Development Cabinet; secretary of the Cabinet for Families and Children; secretary of the Cabinet for Health Services;

secretary of the Cabinet for Workforce Development; secretary of the Education, Arts, and Humanities Cabinet; commissioner of the Department of Agriculture; ***president of the Council on Postsecondary Education; president of the Kentucky Community and Technical College System;*** commissioner of the Department of Education; commissioner of the Department for Local Government; executive director of the Kentucky Housing Corporation; Governor's alternate to the Appalachian Regional Commission; president of Morehead State University; executive director of the University of Kentucky Appalachian Center; director of the Center for Kentucky Rural Economic Development; state director of Rural Development of the United States Department of Agriculture; executive director of the East Kentucky Corporation; chair of the Kentucky Appalachian Advisory Council's steering committee; and two (2) vice chairs of the Kentucky Appalachian Advisory Council's Steering Committee.

(b) Members appointed by the Governor shall be:

1. A county judge/executive, mayor, executive director of an area development district, president of a community college, member of the House of Representatives, member of the Senate, and member of the state's judicial branch, all of whom shall be currently serving in the Appalachian region of the Commonwealth. The members who are a representative, a senator, and a representative of the judicial branch shall serve in a nonvoting capacity;~~[and]~~

2. Nine (9) at-large members***; and***

3. One (1) member representing the Community Action Agencies of Appalachian Kentucky.

(c) Members appointed by and representing certain entities shall be: two (2) members of the Kentucky Appalachian Advisory Council; one (1) member of the University of Kentucky Office of Management and Budget; one (1) member from the Christian Appalachian Project; one (1) member appointed by the United States Representative from the Fifth Congressional District; and one (1) member appointed by the East Kentucky Leadership Foundation's board of directors.

(2) Members listed in subsection (1)(a) and (b)1. of this section shall serve during their terms of office or appointment. Members listed in subsection (1)(b)2.***, (1)(b)3.,*** and~~[subsection]~~ (1)(c) of this section shall serve four (4) year staggered terms and may be reappointed.

(3) Members of the commission who are not state employees shall receive reimbursement for actual and necessary expenses incurred in the performance of their duties.

(4) Each member of the commission may designate in writing over his signature an alternate with full authority, in the absence of the designating member for any reason, to attend any properly convened meeting of the commission and to participate in the consideration of any business and transactions of the commission. Any designation of an alternate may, in the discretion of the designating member, be limited to be effective only for a designated meeting or only for specified business. An alternate shall not be entitled to vote upon any business or transactions of the commission.

Section 2. The General Assembly confirms Executive Order 99-42, dated January 12, 1999, relating to increasing the membership of the Kentucky Appalachian Commission from forty-five (45) members to forty-eight (48) members, to the extent it is not otherwise confirmed by this Act.

Approved February 25, 2000

CHAPTER 27

(HB 129)

AN ACT relating to durable powers of attorney.

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

Section 1. KRS 386.093 is amended to read as follows:

(1) As used in this section, "durable power of attorney" means a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time", or "This power of attorney shall become effective upon the disability or incapacity of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

(2) All acts done by an attorney in fact under a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

(3) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(4) The disability or incapacity of the principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) If the power of attorney is to become effective upon the disability or incapacity of the principal, the principal may specify the conditions under which the power is to become effective and may designate the person, persons, or institution responsible for making the determination of disability or incapacity. If the principal fails to so specify, the power shall become effective upon a written determination by two (2) physicians that the principal is unable, by reason of physical or mental disability, to prudently manage or care for the principal's person or property, which written determination shall be conclusive proof of the

attorney in fact's power to act pursuant to the power of attorney. The two (2) physicians making the determination shall be licensed to practice medicine.

(6) Notwithstanding any provision of law to the contrary, a durable power of attorney may authorize an attorney in fact to make a gift of the principal's real or personal property to the attorney in fact or to others if the intent of the principal to do so is unambiguously stated on the face of the instrument.

Became law February 26, 2000, without Govenor's signature

CHAPTER 28

(HB 160)

AN ACT relating to the Department of Law.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The Financial Integrity Division is created in the Department of Law. The division shall:

(a) Investigate illegal redemption of food stamp benefits in cooperation with the United States Department of Agriculture and the Cabinet for Families and Children;

(b) Verify eligibility of food stamp program applicants as to past criminal history;

(c) Investigate the illegal distribution of counterfeit merchandise; and

(d) Investigate the use of personal identification by persons for the purpose of theft, or fraud, or both theft and fraud, and other illegal or fraudulent activity which may involve electronic commerce.

(2) The Office of the Attorney General shall coordinate with the Department of Financial Institutions, the United States Secret Service, the Kentucky Bankers' Association, and any other agency or organization to prepare and disseminate information to prevent identity theft.

Section 2. KRS 15.010 is amended to read as follows:

(1) The Attorney General is the head of the Department of Law.

(2) The Department of Law shall include the following major organizational units:

(a) Criminal Appellate Division;

(b) Consumer Protection Division;

(c) Special Investigations Division;

(d) Special Prosecutions Division;

(e) Prosecutors Advisory Council Services Division;

(f) Medicaid Fraud and Abuse Control Division;

(g) Civil and Environmental Law Division;

(h) Victims Advocacy Division;

(i) Child Support Enforcement Commission;

(j) Administrative Hearings Division;

(k) Office of Rate Intervention;~~[and]~~

(l) Administrative Services Division***; and***

(m) Financial Integrity Enforcement Division.

Section 3. The General Assembly confirms Executive Order 98-04 issued by the Attorney General on October 1, 1998, to the extent that it is not otherwise confirmed by this Act.

Became law February 26, 2000, without Governor's signature

CHAPTER 29

(HB 214)

AN ACT relating to reorganization.

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

Section 1. KRS 154.12-222 is amended to read as follows:

(1) There is created within the Cabinet for Economic Development the Department of Administration and Support. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall provide cabinet-wide support in fiscal management, information resources, personnel support, budgetary implementation and control, and research development.

(2) The Department of Administration and Support shall include***:***

(a) The Office of~~[an]~~ Information Resources ***to be headed by an executive director appointed in accordance with KRS 12.050;***~~[Section]~~ and

(b) The following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:

1.~~[(a)]~~ The Division of Administrative Services, which shall be responsible for fiscal management, personnel, and payroll functions; and

2.~~[(b)]~~ The Division of Research, which shall be responsible for general research, economic development library, map sales, and community brochures activities.

Section 2. The General Assembly confirms Resolution 98-1 of the Kentucky Economic Development Partnership, dated April 29, 1998, relating to the reorganization of the Cabinet for Economic Development, to the extent it is not otherwise confirmed by this Act, this Resolution having been made by the Kentucky Economic Development Partnership under the powers and authorities granted to the partnership by KRS 154.010, 154.030, an 12.028. The Resolution abolishes the Information Resources Section within the cabinet's Department of Administration and Support and creates the Office of Information Resources (OIR) within that same Department. All personnel, equipment, files and funding of the Information Resources Section shall be transferred to the newly created OIR and the Secretary is authorized to create such new positions or transfer any additional personnel necessary to effectuate the implementation of this executive order.

Approved February 25, 2000

CHAPTER 30

(HB 164)

AN ACT relating to compensation for returning fugitives from justice.

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

Section 1. KRS 440.090 is amended to read as follows:

When the Governor of this state makes requisition upon the Governor of another state for a fugitive from justice, the person named in the requisition as the agent of this state shall, unless a different condition is contained in his commission, be allowed as compensation from the State Treasury for his services a mileage allowance at the same rate fixed by regulations adopted by the secretary of the Finance and Administration Cabinet pursuant to KRS 44.060, plus an additional sum calculated at the rate of five cents ($0.05) per mile for the distance he travels to and from the jail of the county designated in the proclamation to the place where the fugitive is arrested, and any other necessary expenses he pays in reclaiming and returning the fugitive. ***If, in attempting to reclaim the fugitive, the agent is acting within the course and scope of his employment, the amount due shall be paid over to the agent's employer instead of the agent.*** When a fugitive is to be returned to this state from a location out of state which is in excess of five hundred (500) miles from the jail to which he is to be returned, commercial air transportation may be utilized in lieu of ground transportation, unless the agent undertaking the transportation decides to utilize ground transportation. Payment for air transportation shall be in lieu of the mileage payment for ground transportation only for that portion of the journey for which air transportation is used. Ground transportation and other expenses shall be paid as authorized herein. If the agent is not given possession of the fugitive for reasons beyond the agent's control, he***, or his employer,*** shall nevertheless be allowed the compensation prescribed by this section. Upon the return of the fugitive to the county in which the jail named in the proclamation is located, the person having him in charge shall go before a judge, who shall issue a mittimus to the jailer to receive the prisoner and keep him until he is discharged.

Section 2. KRS 440.380 is amended to read as follows:

(1) When a person charged with commission of a felony in this state or with having been convicted of a felony here and having escaped from confinement or broken the terms of his bail, probation or parole is arrested in another state and waives extradition proceedings, the county judge/executive of the county in which the felony was committed, or from which the

escape was made, may, upon filing of a verified application by the Commonwealth's attorney or county attorney setting forth the fact of waiver and making all statements required by subsection (1) or subsection (2) of KRS 440.370, enter an order designating an officer to return the fugitive to this state without benefit of any procedure incidental to extradition proceedings. Upon entry of such order the officer so designated shall be authorized to go after and return the fugitive as the agent of this state and shall receive from the State Treasury the same payment for his expenses as is provided by KRS 440.090 for agents acting under requisition of the Governor. ***If, in attempting to reclaim the fugitive, the agent is acting within the course and scope of his employment, the amount due shall be paid over to the agent's employer instead of the agent.*** Claims for reimbursement of expenses under this subsection shall be accompanied by certified copies of the verified application for appointment of the agent and the order of appointment, together with a copy of any process showing delivery of the fugitive to the jailer upon return to this state. If the agent is not given possession of the fugitive for reasons beyond the agent's control, he***, or his employer,*** shall nevertheless be reimbursed as provided herein, if it is shown that prior to his appointment as agent and before departure from the state the fugitive had executed in the presence of any officer authorized to administer an oath a written waiver stating that he consents to return to this state without extradition.

(2) All legal costs incurred in apprehending and securing in this state a fugitive wanted in another state shall be paid by the agent of the state demanding him before the agent is permitted to remove him or receive him into custody.

Approved February 25, 2000

CHAPTER 31

(HB 215)

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.

2. Lieutenant Governor.

3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
   (a) Department of State Police.
   (b) Department of Criminal Justice Training.
   (c) Department of Corrections.
   (d) Department of Juvenile Justice.
   (e) Office of the Secretary.
   (f) Offices of the Deputy Secretaries.
   (g) Office of General Counsel.
   (h) Division of Kentucky State Medical Examiners Office.
   (i) Parole Board.
   (j) Kentucky State Corrections Commission.
   (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
   (a) Department of Education.
      (1) Kentucky Board of Education.
      (2) Education Professional Standards Board.
   (b) Department for Libraries and Archives.
   (c) Kentucky Arts Council.
   (d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department ***for Business***~~[of Job]~~ Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 2. KRS 154.12-225 is amended to read as follows:

(1) There is created within the Cabinet for Economic Development the Department ***for Business***~~[of Job]~~ Development. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall coordinate the recruitment of industries that will enhance the overall viability of Kentucky's economy.

(2) The Department ***for Business***~~[of Job]~~ Development shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:

(a) The Industrial Development Division; and

(b) The Site Evaluation Division.

(3) Kentucky's representative development offices located in other states and countries shall be assigned to the Department ***for Business***~~[of Job]~~ Development.

Section 3. The General Assembly confirms Resolution 99-1 of the Kentucky Economic Development partnership, dated April 1, 1999, relating to the reorganization of the Cabinet for Economic Development, to the extent it is not otherwise confirmed by this Act, this Resolution having been made by the Kentucky Economic Development partnership under the powers and authorities granted to the partnership by KRS 154.010, 154.030, and 12.028. This Resolution changes the name of the Department of Job Development within the Cabinet for Economic Development to the Department for Business Development. All personnel, equipment, files, and funding, as well as all duties, responsibilities, and obligations of the Department of Job Development shall remain in full force and effect and shall be a part of the newly named Department for Business Development.

Approved February 25, 2000

CHAPTER 32

(HB 232)

AN ACT relating to unemployment insurance.

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

Section 1. KRS 341.540 is amended to read as follows:

(1) Any employing unit which succeeds to or acquires the organization, trade, or business of a subject employer shall assume the resources and liabilities of the predecessor's reserve account, including interest, and shall continue the payment of all contributions and interest due under this chapter, except that the successor or acquirer shall not be required to assume the liability of any delinquent contributions and interest of a predecessor or predecessors unless the cabinet notifies the successor or acquirer of ***the***~~[such]~~ delinquency within six (6) months after the department has notice of the succession or acquisition.

(2) The liability for delinquent contributions and interest imposed upon the successor or acquirer by subsection (1) of this section shall be secondary to the liability of the

predecessor or predecessors, and if the delinquency has been reduced to judgment, the order of execution on ***the***~~[such]~~ judgment shall be as follows:

(a) Against the assets, both real and personal, of the predecessor or predecessors;

(b) Against the assets, both real and personal, of the business acquired; and

(c) Against the assets, both real and personal, of the successor or acquirer.

(3) Notwithstanding the provisions of subsection (1), any employing unit which succeeds to or acquires a segregable and identifiable portion of the organization, trade, or business from a subject employer, and who is, or by reason of ***the***~~[such]~~ succession or acquisition becomes, a subject employer, shall assume the position of ***an***~~[such]~~ employer with respect to the resources and liabilities of ***the***~~[such]~~ reserve account in proportion to the percentage of the payroll or employees assignable to the transferred portion***. In calculating the transferred portion, the secretary shall utilize the last four (4) calendar quarters, preceding the date of succession or acquisition, for workers employed by the successor subsequent to that date.***~~[as determined by the secretary, and]~~ The taxable payroll, benefit charges and the potential benefit charges shall likewise be assumed by the successors or acquirers in interest in a like proportion.

(4) (a) The contribution rate of a successor or acquirer employing unit, whether in whole or in part, which was a subject employer prior to such succession or acquisition, shall not be affected by the transfer of the reserve account for the remainder of the rate year in which such succession or acquisition occurred.

(b) The contribution rate of a successor or acquirer employing unit, either in whole or in part, which was not a subject employer prior to such succession or acquisition, shall be, for the calendar year in which such succession or acquisition occurred, the same rate as that of its predecessor.

(c) The contribution rate for a successor or acquirer employing unit, which was not a subject employer prior to the simultaneous succession to or acquisition of two (2) or more predecessor reserve accounts, either in whole or in part, shall be the rate determined in accordance with the provisions of KRS 341.270, by combining the reserve accounts succeeded to or acquired as they existed as of the computation date for determining rates for the calendar year in which such succession or acquisition occurred.

(d) The contribution rate of a successor or acquirer employing unit which succeeds to or acquires, either in whole or in part, a predecessor's reserve account after a computation date but prior to the beginning of the calendar year immediately following such computation date shall be the rate determined, in accordance with KRS 341.270, by effecting the transfer of such reserve account as of the computation date immediately preceding the date of such succession or acquisition.

Approved February 25, 2000

CHAPTER 33

(HB 242)

AN ACT relating to reorganization.

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

Section 1. KRS 151B.030 is amended to read as follows:

The Department for Technical Education shall be divided according to the following organizational structure:

(1) The commissioner of the Department for Technical Education shall appoint a deputy commissioner for technical education pursuant to KRS 12.050, who shall serve as secretary to the State Board for Adult and Technical Education.

(2) There is hereby created a Division of Administrative Services within the Department for Technical Education. The division shall be headed by a director appointed by the commissioner of the Department for Technical Education. The division shall be composed of organizational entities as deemed appropriate by the commissioner of the Department for Technical Education as set forth by administrative order.

(3) There is hereby created ***a Division of School Services within the Department for Technical Education. The Division of School Services shall be headed by a director appointed by the commissioner of the Department for Technical Education under KRS 12.050. The Division of School Services shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Workforce Development as set forth by administrative order***[~~an Office of Area Vocational Education and Technology Centers within the Department for Technical Education. The office shall be headed by an office head appointed by the commissioner of the Department for Technical Education pursuant to KRS 12.050. The office head shall be an individual with a background in school administration and supervision and shall be otherwise reasonably qualified to carry out the duties of the office. The office shall be comprised of the system of state-operated secondary area vocational education and technology centers. The office shall be composed of the Division of School Management, the Division of Curriculum Services, an Ombudsman, and an assistant for budget analysis. Each division shall be headed by a director appointed by the commissioner of the Department for Technical Education and shall be composed of such organizational entities as deemed appropriate by the commissioner of the Department for Technical Education as set forth by administrative order~~].

(4) The commissioner shall appoint an Ombudsman, and specify his functions and duties.

Section 2. The General Assembly confirms Executive Order 98-1595, dated December 3, 1998, as amended by Executive Order 99-1597, dated December 3, 1999, to the extent that it is not otherwise confirmed by this Act.

Approved February 25, 2000

CHAPTER 34

(HB 266)

AN ACT relating to personal telecommunications devices in public schools.

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

Section 1. KRS 158.165 is amended to read as follows:

(1) ~~[A student in a public school shall not possess a paging device while on school property or while attending a school-sponsored or school-related activity on or off school property unless the student is in attendance in the capacity of an active member of a volunteer firefighting organization or a volunteer emergency medical services organization.~~

~~(2)]~~The board of ***education of*** each school district shall ***develop a policy regarding the possession and use of a personal telecommunications device by a student while on school property or while attending a school-sponsored or school-related activity on or off school property, and shall*** include the ***policy***~~[prohibition in subsection (1) of this section]~~ in the district's written standards of student conduct. A student who violates the ***policy***~~[prohibition]~~ shall be subject to discipline as provided by board policy~~[, consistent with this section]~~.

(2)~~[(3) A person who discovers a student in possession of a paging device in violation of this section shall report the violation to the appropriate school administrator, as determined by school policy, who shall order a peace officer or appropriate school employee to confiscate the device, which is forfeited to the school district.~~

~~(4)]~~ In this section, ***"personal telecommunications device"***~~["paging device"]~~ means a ~~[telecommunications]~~device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor***, including but not limited to a paging device and a cellular telephone***.

Approved February 25, 2000

CHAPTER 35

(HB 357)

AN ACT relating to fish and wildlife.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

In addition to the game permits issued under Section 3 of this Act, the commission may issue a special permit to an incorporated nonprofit wildlife conservation organization. In a license year, no more than two (2) special permits may be issued per species for which a game permit is required. An organization that receives a special permit issued under this section may sell and transfer the permit if all proceeds of the sale are used in Kentucky for wildlife management.

SECTION 2. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

(1) In this section "recreational activity" means hunting, fishing, or trapping for sport.

(2) For a special department-sponsored event or program involving a recreational activity, the commission may waive the requirement that participants hold licenses required under this chapter if the commission finds that:

(a) The special event or program will provide education in or appreciation of the recreational activity; and

(b) The waiver of the license requirement will not result in a substantial loss of revenue to the department.

(3) The department shall, for one (1) weekend each year, suspend enforcement of the requirement that persons fishing in the waters of the Commonwealth buy and hold a license.

Section 3. KRS 150.175 is amended to read as follows:

(1) The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:

(a) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, gigging, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;

(b) A short-term sport fishing license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;

(c) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;

(d) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;

(e) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;

(f) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;

(g) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;

(h) A junior statewide hunting license, which may be issued to a person before he has reached his sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;

(i) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his own lands or upon the lands of another person, if the holder of the license shall have first obtained a written consent as provided in KRS 150.092;

(j) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;

(k) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;

(l) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;

(m) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;

(n) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;

(o) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;

(p) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license or a nonresident shooting preserve license;

(q) A special license to nonresidents for the purpose of hunting on licensed hunting preserves. This license shall be good only for the preserve for which it was issued and shall remain in effect only for one (1) year. These licenses shall be issued in ink by the preserve manager, and he shall ensure that each hunter is properly licensed before going into the field. When the hunter owns either a nonresident or resident statewide hunting license for the current year, the special license shall not be required. The commissioner, with the approval of the commission, may establish and regulate hunting preserves, either private or commercial;

(r) ~~[A big]~~Game ***permits***~~[permit]~~ and~~[a]~~ junior~~[big]~~ game ***permits***~~[permit]~~, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue ***the specified game species***~~[deer, bear, or wild turkey,]~~ in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;

(s) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;

(t) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;

(u) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;

(v) A short-term hunting license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide hunting license~~[, except for hunting big game species for which an annual nonresident hunting license shall be required, and]~~ according to the provisions of the laws and administrative regulations of the department;

(w) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;

(x) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;

(y) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged;

(z) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds;~~[and]~~

(aa) A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl, or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:

1. Sixty-five (65) years of age or older; ***or***

2. An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or

3. Declared permanently and totally disabled by the Federal Social Security Administration, the Department of Workers' Claims, or its equivalent from another state, or the United States Railroad Retirement Board.

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license***; and***

(bb) A sportsman's license for residents that includes an annual hunting and fishing license and such permits as allowed by administrative regulations promulgated by the department.

Section 4. KRS 150.300 is amended to read as follows:

(1) No person shall, without first securing the permission of the commissioner, enter upon the premises of a propagation farm, game farm or game refuge or fish hatchery and take wildlife; or, without the consent of the property owner, enter upon any pond and take wildlife or foul the waters of any pond or farm with a substance injurious to life or growth of wildlife, or break or destroy any dam, reservoir or embankment or divert the waters or otherwise willfully damage the farm or pond.~~[No person, except bona fide employees in line of duty, shall go upon the premises of any propagation farm, state game farm, or game refuge or fish hatchery accompanied by a dog of any type or description or while carrying firearms upon or about his person.]~~

(2) It is unlawful for any person to mar, deface, destroy or in any wise damage, or attempt to mar, deface, destroy or damage any sign or posted notice upon any game farm, game or wildlife refuge or fish hatchery in the state.

Section 5. KRS 150.620 is amended to read as follows:

For the purpose of encouraging and developing public interest in wildlife and carrying out the policy of the Commonwealth of Kentucky under KRS Chapter 150, the Department of Fish and Wildlife Resources Commission, as a state agency, and based upon investigations and recommendations of the commission, is hereby authorized to acquire lands including any improvements thereon by purchase, condemnation or lease from the State Property and Buildings Commission or from others, and partly by any or all of such means, and to thereafter establish, improve, maintain and operate public shooting and fishing grounds and similar or related recreational facilities thereon, and for the purpose of paying the cost of any such purchase or condemnation and the maintenance and operation expenses may use and apply any funds available for that purpose. The payments under each such lease shall be deemed an administrative and operating expense of the department, and such payments may be secured by a pledge of and made from all or any part of the funds coming under the control of the department including the game and fish fund, as may be provided and specified in the lease. The commissioner, with the approval of the commission may sublease any lands and improvements thereon acquired under the provisions of this chapter for agricultural and for any purpose deemed by the commission to be incidental or beneficial to the maintenance and operation of the balance of said lands and improvements for the purpose herein stated. The commission may impose and enforce special

regulations in the maintenance and operation of the facilities and lands acquired under the provisions of this section ***or lands that are managed by the department under a cooperative agreement*** and charge such rates as may be deemed fair and reasonable for the use of and participation of the public in the facilities and lands and lease payments aforesaid may be made a first charge on the income and revenues from the maintenance and operation of the facilities and lands and from the sublease of any portion thereof, to be supplemented with any other funds available for that purpose.

Approved February 25, 2000

CHAPTER 36

(HB 56)

AN ACT changing the classification of the city of Hollow Creek, in Jefferson County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Hollow Creek , in Jefferson County, is such as to justify its being classified as a city of the fifth class;

NOW THEREFORE,

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

Section 1. The City of Hollow Creek, in Jefferson County, is transferred from the sixth to the fifth class of cities.

Approved February 25, 2000

CHAPTER 37

(HB 90)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-324, dated March 11, 1999, which creates, abolishes, and renames several divisions within the Kentucky Employees Retirement System. The Division of Equity Assets and the Division of Fixed Assets are created and assume the functions of the Division of Investments, which is abolished. The Division of Employment Services, the Division of Retiree Services, the Division of Support Services, the Division of Membership Support, and the Division of Disabilities are created and assume the functions of the Division of Records and Employer Services and the Division of Employee Benefits, which are abolished. The Division of Data Processing is renamed the Division of Information Technology and its Imaging Branch is moved to the new Division of Support Services.

Approved February 25, 2000

CHAPTER 38

(HB 109)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-1199, dated August 30, 1999, which creates the position of General Counsel within the Department for Local Government.

Approved February 25, 2000

CHAPTER 39

(HB 137)

AN ACT relating to the Kentucky Long-Term Policy Research Center.

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

Section 1. KRS 7B.030 is amended to read as follows:

(1) The board of the Kentucky Long-Term Policy Research Center shall consist of twenty-one (21) members, including ten (10) members selected from state government and eleven (11) at-large members selected from the private and civic sectors, universities, and local governments.

(a) State government members shall be appointed as follows:

1. Three (3) members of the House of Representatives and three (3) members of the Senate shall be appointed by the Legislative Research Commission; and

2. Four (4) members from the executive branch shall be appointed by the Governor.

(b) At-large members shall be appointed as follows:

1. Five (5) members shall be appointed by the Legislative Research Commission and confirmed by the House of Representatives and the Senate; and

2. Six (6) members shall be appointed by the Governor and confirmed by the House of Representatives and the Senate;

3. ~~[Initial at-large appointees may serve prior to confirmation; thereafter, persons appointed to fill expired terms of at-large members shall be confirmed prior to assuming board membership, and board members with expiring terms shall serve until their replacements have been confirmed;~~

~~4.]~~Persons appointed~~[to fill vacancies in unexpired terms of at-large members]~~ may serve prior to confirmation, but shall continue to serve only if confirmed at the next regular session, or special session if the matter is included in the call therefor of the General Assembly;

4.~~[5.]~~The provisions of KRS 11.160 shall apply to Senate and House of Representatives confirmation of at-large members appointed by the Legislative Research Commission and the Governor.

(2) Board members shall serve four (4) year terms, except initial appointments shall be for terms as follows:

(a) The Legislative Research Commission shall initially appoint two (2) legislators for terms of two (2) years, two (2) legislators for terms of three (3) years and two (2) legislators for terms of four (4) years; and shall initially appoint one (1) at-large member for a two (2) year term, two (2) at-large members for three (3) year terms, and two (2) at-large members for four (4) year terms.

(b) The Governor shall initially appoint two (2) members from the executive branch for terms of two (2) years, one (1) for a three (3) year term, and one (1) for a four (4) year term, and shall initially appoint two (2) at-large members for terms of two (2) years, two (2) for three (3) year terms, and two (2) for four (4) year terms.

(3) Members of the board shall meet the same age and state residency requirements as provided in Section 32 of the Kentucky Constitution for members of the House of Representatives, shall represent the cultural diversity of Kentucky, and shall have demonstrated an interest in the well-being and development of the Commonwealth.

(4) The chair shall be elected annually by the board and shall alternate between the members selected from state government and the at-large members. If the chair is a member selected from state government, the vice chair shall be an at-large member, and if the chair is an at-large member, the vice chair shall be a member selected from state government.

(5) Board members who miss three (3) consecutive meetings ***may***~~[shall]~~ be ~~[automatically]~~removed from the board ***by a majority vote of the board at any regularly scheduled meeting in which a quorum is present.***~~[,]~~ The position shall ***then*** be declared vacant and shall be filled in the same manner as it was originally appointed.

(6) If vacancies are not filled by the original appointing authority within thirty (30) days of the occurrence of the vacancy, the board ***may***~~[shall]~~ fill the vacancy.

Approved February 25, 2000

CHAPTER 40

(HB 205)

AN ACT relating to the Consumers' Advisory Council.

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

Section 1. KRS 367.130 is amended to read as follows:

(1) The members of the Consumers' Advisory Council shall be sixteen (16) in number and shall be appointed by the Governor and shall include citizens of Kentucky generally knowledgeable in consumer affairs.

(2) In addition to the members appointed by the Governor, the Attorney General shall be an ex officio member and shall serve as the chairman of the Consumers' Advisory Council.

(3) The members of the council other than the Attorney General shall be appointed ***or reappointed*** by the Governor within sixty (60) days after July 1, ***2000***[~~1972~~]. Each member shall serve for a ***three (3)***[~~one (1)~~] year term***, except that of the members first appointed or reappointed after July 1, 2000, six (6) shall be appointed for a term of one (1) year, five (5) shall be appointed for a term of two (2) years, and five (5) shall be appointed for a term of three (3) years. Members of the council***[~~ and~~] shall be eligible for reappointment by the Governor.

(4) Each member of the Consumers' Advisory Council shall be a resident of Kentucky, and except for the Attorney General, shall not be in the employ of the Commonwealth, except as a faculty member or on the staff of a school.

Approved February 25, 2000

CHAPTER 41

(HB 22)

AN ACT relating to the Legislative Research Commission.

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

Section 1. KRS 7.100 is amended to read as follows:

It shall be the duty of the Legislative Research Commission to:

(1) Maintain in the State Capitol or State Capitol Annex for the use and information of the General Assembly, a legislative reference room and working library; collect, summarize**,** and index information of a legislative and governmental nature relating to legislation and legislative policies and index all bills introduced in the General Assembly. Permanent office space for the Legislative Research Commission and for the director thereof and employees or subcommittees shall be provided on the third floor of the State Capitol. When the General Assembly is not in session, the Commission shall have jurisdiction over the use of the House and Senate chambers and over the allocation of all rooms used by the General Assembly while in session. The Commission may provide for such other office space as it may deem necessary.

(2) Make or cause to be made such investigations into statute law, legislation, governmental agencies and institutions**,** and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and economical manner. In making such studies and investigations between the regular sessions of the General Assembly, the Commission shall give priority to those subjects requested by the General Assembly. ***The Commission shall promptly consider any requests of the General Assembly by bill or resolution for the creation of task forces, committees, subcommittees, or other entities for the purpose of studying or reviewing issues or subjects. Provisions of the bill or resolution to the contrary notwithstanding, the Commission, in its sole discretion, may grant or deny the request to create an entity or alternatively assign the subject matter of the proposed study or review to an existing committee or task force, including interim joint subcommittees of the Commission.***

(3) Afford to any member of the General Assembly or any committee of either house of the General Assembly such information and assistance as may be practicable in the preparation

of bills, memorials, resolutions, amendments, alterations and changes thereto**,** and revisions and substitutes thereof, proposed to be introduced into the General Assembly.

(4) The Commission, at the close of each legislative session, shall assume custody of all furniture, equipment, records, materials and supplies, and printed copies of bills in the possession of the clerks of the Senate and House. Immediately prior to the convening of the next session, the Commission shall transfer all furniture, equipment, materials**,** and supplies to the clerks of the respective houses. The Commission may, when the General Assembly is not in session, authorize the expenditure of funds appropriated to the General Assembly for the purchase, repair**,** or maintenance of furniture, equipment, materials**,** and supplies and contract for services needed by the General Assembly.

(5) The Commission shall prepare and publish or contract for the preparation and publishing of a daily index and digest of the content of and legislative action on all measures introduced in the General Assembly.

(6) After each election the Commission shall conduct a pre-session orientation conference for members of the General Assembly.

(7) The Commission shall notify the members of the General Assembly of the reports filed with the Commission for distribution to the members of the General Assembly and of the reports and publications of the Commission which are available for the members of the General Assembly. Each member of the General Assembly shall indicate upon a form provided by the Commission which reports shall be forwarded to the member.

(8) Conduct, while the General Assembly is not in session, any and all business of the legislative department of government, except for the passage of legislation, which could be conducted by the legislative department of government or the General Assembly if the General Assembly ***were***~~[was]~~ in session.

(9) Conduct such other business and possess such other powers and duties as may be assigned or authorized by the General Assembly by statute or otherwise.

Approved February 25, 2000

CHAPTER 42

(HB 342)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A domestic mutual insurer may convert to a stock insurer by amendment of its articles of incorporation and upon compliance with the requirements of Sections 1 to 14 of this Act and the applicable requirements of this subtitle and Subtitle 3 of this chapter.

(2) A domestic mutual insurer shall only convert to a stock insurer in accordance with a plan of conversion approved by the commissioner.

SECTION 2. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 14 of this Act, unless the context requires otherwise:

(1) "Converting mutual" means a domestic mutual insurer that adopts a plan of conversion under Section 3 of this Act that will result in the insurer converting into a domestic stock insurer.

(2) "Eligible member" means:

(a) Any person who is a member of the converting mutual on the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion;

(b) Any person who has been a member of the converting mutual within the last three (3) years prior to the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion; and

(c) Any person who is a certificate holder under a group policy if the person meets the condition in paragraph (a) or (b) of this subsection and inclusion of the certificate holder as an eligible member is necessary for a fair and equitable distribution.

(3) "Former mutual" means the domestic stock insurer resulting from the conversion of a converting mutual to a stock insurer pursuant to a plan of conversion in accordance with Sections 1 to 14 of this Act.

(4) "Membership interests" means:

(a) The voting rights of members of a domestic mutual insurer as provided by law and by the insurer's articles of incorporation and bylaws; and

(b) The rights of members of a domestic mutual insurer to receive cash, stock, or other consideration in the event of a conversion to a stock insurer under Sections 1 to 14 of this Act or a dissolution under KRS 304.24-430.

(5) "Plan of conversion" means the plan of conversion described in Section 3 of this Act and includes the proposed amendment to the converting mutual's articles of incorporation, unless the context requires otherwise.

SECTION 3. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The board of directors of the converting mutual shall adopt a resolution proposing the amendment of its articles of incorporation in accordance with KRS 304.24-080 and proposing a plan of conversion.

(2) The plan of conversion shall:

(a) Describe the manner in which the proposed conversion shall occur and the insurer and any other business entity that will result from or be directly affected by the conversion, including the former mutual and any affiliate;

(b) Provide that the membership interests in the converting mutual shall be extinguished as of the effective date of the conversion;

(c) Require the fair and equitable distribution of aggregate consideration to the eligible members, upon the extinguishing of their membership interests, which shall be equal to the fair value of the converting mutual as determined under a fair formula:

1. Describe the manner in which the fair value of the converting mutual shall be determined or established;

2. Describe the form or forms of consideration that shall be distributed to the eligible members; and

3. Specify relevant classes, categories, or groups of eligible members, and describe the method or formula that shall be used for the equitable allocation of the aggregate consideration among the eligible members;

(d) Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends that shall be implemented through establishment of a closed block or other method acceptable to the commissioner in compliance with Sections 1 to 14 of this Act;

(e) Specify the effective date of the plan of conversion and distributions to eligible members; and

(f) Include all other provisions that are necessary for, or material to, the implementation of the conversion.

(3) The plan of conversion may include any other provisions that the converting mutual deems necessary or reasonable.

SECTION 4. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The converting mutual shall file with the commissioner an application for approval of the plan of conversion.

(2) The application shall consist of the following:

(a) The plan of conversion;

(b) A certificate of the secretary of the converting mutual regarding the adoption of the plan of conversion;

(c) A statement of the reasons for the proposed conversion and why it is in the best interests of the converting mutual and its eligible members, including an analysis of the risks and benefits to the converting mutual and its members and a comparison of the risks and benefits of reasonable alternatives to a conversion;

(d) A five (5) year business plan of the former mutual, including five (5) year financial projections, detailed descriptive narrative, and all relevant assumptions;

(e) Any plans or proposals that the former mutual or any affiliate company may have to raise additional capital through the issuance of stock or otherwise; and any other plans that the former mutual or any affiliate company may have to sell or otherwise issue stock to any person, including the adoption of any employee compensation or benefit plan under which stock may be issued;

(f) Any plans or proposals that the former mutual or any affiliate company may have to liquidate or dissolve any company, to sell any material assets, or to merge or consolidate with any person, or to make any other material change in investment policy, business, corporate structure, or management;

(g) Any plans or arrangement for a delayed distribution of consideration to eligible members, or restrictions on sale or transfer of stock or other securities;

(h) A plan of operation for any closed block established for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends;

(i) Copies of the current articles of incorporation and bylaws of the converting mutual;

(j) Copies of any proposed articles of incorporation and bylaws of the former mutual;

(k) A list of individuals who are or have been selected to become directors or officers of the former mutual and of any affiliate, or the individuals who perform or will perform duties customarily performed by a director or officer, including the following information:

1. The individual's principal occupation;

2. All offices and positions the individual has held in the preceding five (5) years;

3. Any criminal convictions of the individual;

4. Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;

5. Information concerning the supervision, rehabilitation, or liquidation of any insurer or the bankruptcy of any corporation or other entity of which the individual was an officer or director;

6. Information concerning any state or federal securities law allegations against the individual that resulted in a determination that the individual violated the state or federal securities law, a plea of nolo contendere, or a consent decree;

7. Information concerning the revocation of any state or federal license issued to the individual; and

8. Information as to whether the individual was refused a fidelity or other bond during the previous ten (10) years.

(l) A fairness opinion addressed to the board of directors of the converting mutual from a qualified independent financial advisor, that the provision of stock, cash, policy benefits, or other forms of consideration upon extinguishing the converting mutual's membership interests under the plan of conversion, is fair and equitable to the eligible members, as a group, from a financial point of view;

(m) An actuarial opinion and supporting memorandum;

(n) A description of the plans of the former mutual or its affiliates to assure that an active trading market for any stock or other securities distributed to eligible members will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort. These plans may consist of:

1. Appointing a registrar and transfer agent for the stock or other securities;

2. Making filings, applications, or registrations for the stock or other securities with the Federal Securities and Exchange Commission and with appropriate state securities regulators;

3. Listing the stock or other securities on a national or other securities exchange;

4. Facilitating coverage of the stock or other securities by research analysts and securing the commitment of at least one (1) market maker to make a market in the stock or other securities;

5. Conducting an underwritten public offering of the same class of stock or other securities, promptly following the effective date of the plan of conversion, in order to facilitate the development of a public market; and

6. Making available a procedure for eligible members holding small numbers or amounts of stock or other securities to sell their stock or other securities to the former mutual or an affiliate at market value without the payment of brokerage commissions or similar fees, or to sell their stock or other securities in the market through a broker with discounted brokerage commissions or fees;

(o) Any additional information, documents, or materials that the converting mutual deems necessary or reasonable; and

(p) Any other additional information, documents, or materials that the commissioner may request in writing.

(3) (a) The actuarial opinion shall address whether:

1. The methodology or formulas used to determine the total aggregate consideration to be distributed to eligible members is reasonable and appropriate;

2. The methodology or formulas used to allocate consideration among the eligible members is reasonable and appropriate;

3. The financial condition of the former mutual will not be adversely diminished; and

4. If a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of the policy dividends, the plan of operation, and the sufficiency of the assets allocated to the closed block, is reasonable.

(b) The actuarial opinion shall be provided by a qualified and independent actuary who is a member of the American Academy of Actuaries. The opinion shall be given in accordance with professional standards and practices generally accepted by the actuarial profession and those other factors as the actuary believes are reasonable and appropriate in the exercise of professional judgment at the time the opinion is given.

(c) The opinion shall be supported by a memorandum of the actuary, describing the calculations made and the assumptions used in the calculations.

SECTION 5. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall have ninety (90) days to review the plan of conversion after it is filed. Upon completion of the review, the commissioner shall schedule a public hearing on the plan of conversion.

(2) The commissioner shall hold a hearing upon the plan of conversion in accordance with KRS 304.2-310.

(3) The converting insurer shall present evidence that the plan of conversion complies with Sections 1 to 14 of this Act.

(4) Persons wishing to make comments and submit information may submit written statements prior to the public hearing and may appear and be heard at the hearing. These comments shall be part of the record and shall be considered by the commissioner before issuing an order on the plan of conversion.

(5) At least forty-five (45) days prior to the hearing date, the converting mutual shall provide information regarding the hearing to the eligible members and its other policyholders and certificate holders. The information provided shall include a brief statement of the subject of the hearing, the date, time, and location of the hearing, a description of members eligible to vote on the plan of conversion, and a statement indicating the location at which the public portion of the application may be examined. This information shall be provided by mail or by other means approved by the commissioner.

(6) Following the hearing, the commissioner shall, by order, approve, conditionally approve, or disapprove the plan of conversion. The commissioner may require, as a condition of approval of the plan of conversion, modification of the proposed plan of conversion. The insurer shall file the amendments required by the conditional approval within thirty (30) days of the date of the order. The commissioner may grant an extension for filing amendments for good cause shown. If the applicant does not timely file the required amendments, the plan of conversion shall be deemed disapproved.

SECTION 6. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall approve the plan of conversion if the commissioner finds, following the hearing, that the plan of conversion:

(a) Complies with the provisions of this chapter and all other applicable laws;

(b) Is fair and equitable to the eligible members and the other policyholders of the converting mutual;

(c) Is actuarially reasonable and appropriate;

(d) Will not jeopardize the financial stability of the former mutual or prejudice the interest of its policyholders; and

(e) Provides that the former mutual shall be able to satisfy the requirements for issuance of a certificate of authority to write the kinds of insurance for which the converting mutual is presently authorized.

(2) The commissioner shall, at the converting mutual's expense, hire accountants, actuaries, attorneys, financial advisors, investment bankers, and other experts as may be necessary to assist the commissioner in reviewing all matters under Sections 1 to 14 of this Act that are related to the plan of conversion and the application. The commissioner may at any

time require the converting mutual to deposit an amount of money with the department in anticipation of expenses to be incurred by the commissioner under this subsection.

(3) The commissioner may consider the effect of any action taken by the converting insurer within a three (3) year period immediately prior to the filing of the plan of conversion if the action taken by the insurer has a material effect on the fairness and equity of the plan of conversion.

SECTION 7. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual shall be submitted to a vote of the members of the converting mutual, as provided in this section and in KRS 304.24-095.

(2) The meeting of members shall be held no later than ninety (90) days after the issuance of the commissioner's order of approval of the plan of conversion or after the filing of all amendments in compliance with the order of conditional approval of the plan of conversion.

(3) The converting mutual shall give written notice of the right to vote on the plan of conversion to the members of the converting mutual entitled to vote. The notice shall be accompanied by explanatory information concerning the plan of conversion and may be accompanied by proxy solicitation materials. The notice and accompanying information and materials shall not be provided to the members until approved by the commissioner. The notice and accompanying materials shall include:

(a) A brief statement of the subject of the meeting;

(b) The date, time, and location of the meeting;

(c) A description of the member's right to attend and participate in the meeting;

(d) A description of the nature and amount of consideration that will be provided to the eligible members upon completion of the conversion;

(e) If reasonably ascertainable by the converting mutual, a description of the form and amount or approximate amount of consideration to be provided to the particular member to whom the notice is addressed;

(f) A copy of the plan of conversion and summary of the plan; and

(g) A reference to the applicable statutory provisions.

(4) The notice required by subsection (3) of this section shall achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner.

(5) The notice shall be mailed, or provided by some other method or methods as may be approved by the commissioner, not less than thirty (30) days before the date of the meeting of members to vote on the plan of conversion.

(6) Only persons who are members of the converting mutual on both the date the converting mutual's board of directors adopts the resolution proposing the plan of conversion and the record date for the meeting established by the board of directors shall be entitled to vote on the plan of conversion and the proposed amendment to the articles of

incorporation of the converting mutual. Each voting member shall be entitled to vote in accordance with KRS 304.24-210.

(7) Notwithstanding KRS 304.24-210, a member may vote by proxy only if:

(a) The proxy was solicited and obtained from the member for the express and sole purpose of voting on the plan of conversion, amendments to the articles of incorporation and bylaws, and any other matter materially related to the plan of conversion; and

(b) The proxy solicitation materials were provided to the commissioner prior to sending the materials to the members.

(8) The plan of conversion and the proposed amendment to the converting mutual's articles of incorporation shall be approved by the members upon receiving the affirmative votes of at least two-thirds (2/3) of the members voting at the meeting in person or by proxy.

SECTION 8. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Upon the effective date of the plan of conversion:

(a) The converting mutual shall be converted from a domestic mutual insurer to a domestic stock insurer, and the former mutual shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a stock insurer existing under this chapter;

(b) The membership interests of every member and policyholder of the converting mutual shall be extinguished and cease; and

(c) The rights of every policyholder, certificate holder, and other insured of the converting mutual under any contract of insurance shall continue in force in accordance with the terms, provisions, and conditions of the contract, including rights, if any, to dividends.

(2) The former mutual shall be a continuation of the existence of the original converting mutual. The conversion in no way shall annul, modify, or change any of the original converting mutual's existing suits, rights, contracts, or liabilities. The former mutual shall be vested in all the rights, franchises, and interests of the converting mutual in and to every species of property without any deed or transfer, and the former mutual shall succeed to all the obligations and liabilities of the converting mutual and retain all rights and contracts existing prior to effectiveness of the conversion.

SECTION 9. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The total aggregate consideration to be distributed to the eligible members shall be determined under a fair formula. The total aggregate consideration shall not be less than the converting mutual's total surplus or surplus as regards policyholders; plus the value of all nonadmitted assets; plus a reasonable present equity in reserves, if any; minus any adjustments for contributed or borrowed surplus.

(2) The consideration to be distributed to the eligible members shall be cash, stock, or other securities of the former mutual or of an affiliate, additional paid up insurance or annuity

benefits, or any combination of these forms of consideration or other forms of consideration described in the plan of conversion and approved by the commissioner.

(3) The form of consideration to be distributed to a class, category, or group of eligible members may differ from the form of consideration to be distributed to another class, category, or group of eligible members. The choice of the form of consideration may take into account such factors as the type of policies with respect to which the consideration is being distributed, the country or state of residence or tax status of the eligible members, the length of time that eligible members have been members of the converting mutual, or other appropriate factors or circumstances described in the plan of conversion.

(4) Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. That period of time shall not exceed six (6) months, unless approved by the commissioner.

SECTION 10. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

In determining whether the method or formula in the plan of conversion is fair and equitable, the commissioner may consider the following factors:

(1) Voting rights;

(2) Number of eligible members;

(3) Length of membership in the converting mutual;

(4) Premiums paid by members;

(5) Policy limits;

(6) Risk of line of insurance;

(7) Sources of the proportionate contributions to historical surplus, based on such groupings, classification, historical information, assumptions, and projections as are actuarially sound and reasonable;

(8) For a converting mutual that is a property and casualty company, the net earned premiums each eligible member has paid to the converting mutual, compared to the total net earned premiums paid by all eligible members, in each case during the period of time specified in the plan of conversion; and

(9) Any other relevant factors the commissioner may deem appropriate.

SECTION 11. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) No dividend preservation provisions shall provide in any way or substitute for the distribution of consideration to eligible members upon extinguishing their membership interests.

(2) Any dividend preservation provision may be limited to participating individual life insurance policies and participating individual annuity contracts in force or deemed to be in force by the plan of conversion on the effective date of the plan of conversion for which the converting mutual insurer has an experience-based dividend scale due, paid, or

accrued by action of the board of directors of the converting mutual in the year in which the plan of reorganization is adopted, except that:

(a) Policies that would be included but for the fact that their recent issuance results in no dividends for an initial period, may be included;

(b) Policies that are in force as extended term insurance may be included; and

(c) Other categories of policies and benefits not described in this subsection may be included or excluded with approval of the commissioner.

SECTION 12. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of this section apply if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders.

(2) The converting mutual shall prepare a written plan of operation for the closed block, consistent with the requirements of this section and the other applicable requirements of Sections 1 to 14 of this Act.

(3) The closed block shall be operated for the exclusive benefit of policies and contracts included in it. No costs or expenses incurred in connection with the conversion shall be charged to the closed block.

(4) The assets allocated to the closed block, together with the revenue from the closed block, shall be calculated to be reasonably sufficient to support the business in the closed block until the last policy in the closed block has terminated, including payment of claims and those expenses and taxes as are specified in the plan of conversion, and to provide for continuation of dividend scales in effect on the adoption date of the plan of conversion, if the experience underlying those scales continues and for appropriate adjustments in the scales if the experience changes.

(5) The assets to a closed block shall be specified in the plan of operation and must consist of:

(a) A list of designated assets of the converting mutual's general account or specified segments, which list shall change periodically to reflect the acquisition and disposition of assets;

(b) A designated portion of each asset of the converting mutual's general account or specified segments thereof, which portion shall change periodically to reflect the cash flows of the closed block; or

(c) Assets designated by a combination of the methods described in paragraphs (a) and (b) of this subsection.

(6) The plan of operation shall specify which of those methods of assignment of closed block assets is being used and shall set forth the methods by which the designations referred to in subsection (5) of this section are changed during the course of closed block operations.

(7) The former mutual shall submit to the commissioner annual reports, in a form acceptable to the commissioner, that account for and describe the operations of the closed block; and as specified in the plan of operation provide for annual reviews of, and reports and opinions on, the closed block by an independent actuary.

(8) The plan of operation shall provide for the conditions under which the former mutual may terminate the closed block.

(9) The former mutual shall not distribute any residual assets of the closed block until the plan for distribution of the residual assets is approved by the commissioner.

SECTION 13. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Except as specifically provided in the plan of conversion, for a period of five (5) years following the effective date of the conversion, no person or persons acting in concert, other than the former mutual, any affiliate, any employee benefit plans, or trusts sponsored by the former mutual or affiliate, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent (5%) or more of any class of a voting security of the former mutual or any affiliate company without the prior approval by the commissioner of a statement filed by that person with the commissioner. The statement shall contain the information required by subsection (2) of Section 15 of this Act and any other information required by the commissioner.

(2) The commissioner shall not approve the acquisition if the commissioner finds that:

(a) The requirements of subsection (4)(a) of Section 15 of this Act have not been satisfied;

(b) The acquisition will frustrate the fair and equitable plan of conversion as approved by the members and the commissioner;

(c) The acquisition or change of control will result in unjust enrichment of the acquiring persons to the detriment of the eligible members of the converting mutual; and

(d) The acquisition would not be in the best interest of the present and future policyholders of the former mutual, without regard to any interest of policyholders as shareholders of the former mutual or any affiliate company.

(3) The requirements of this section shall be in addition and supplemental to any other filings or approvals required by this chapter or otherwise by law.

SECTION 14. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

During the one (1) year period following the effective date of the plan of conversion, neither the former mutual nor any affiliate company shall sell or issue, or adopt any plan or benefit program providing for the sale or issuance of, any stock or other equity security except:

(1) As disclosed in the approved plan of conversion; or

(2) As otherwise approved by the commissioner, upon a finding that the stock transaction:

(a) Will not frustrate the plan of conversion as approved by the members and the commissioner; and

(b) Is not adverse to the best interests of the policyholders of the former mutual, without regard to any interests of policyholders as shareholders of the former mutual or any affiliate company.

Section 15. KRS 304.37-120 is amended to read as follows:

(1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.

(a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information required in KRS 304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the acquisition. The person who fails to file a preacquisition notification shall be subject to the penalty set out in KRS 304.99-151. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected; and

1. If the person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or

2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that the person and any predecessors have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these functions. The list shall include for each individual the information required by subparagraph 1. of this paragraph.

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for merger or other acquisition of control, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; but if a source of the

consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subsection (1) of this section which the acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method used to determine the fairness of the proposal.

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned, or concerning any security referred to in subsection (1) of this section which there is a right to acquire beneficial ownership of by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid.

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and of additional soliciting material distributed which relates.

(k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section.

(l) Any additional information as the commissioner may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(m) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

(n) If any material change occurs in the facts in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.

(3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize those documents in furnishing the information required by the statement referred to in subsection (1) of this section.

(4) (a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing he finds that:

1. After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;

2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:

a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;

b. The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by KRS 304.37-130(4)(c) exist; and

c. The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

5. The competence, experience, and integrity of persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(b) The public hearing required by this section shall be conducted as directed in KRS Chapter 304.2.

(c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff that may be necessary to assist the commissioner in reviewing the proposed acquisition of control.

(5) The provisions of this section shall not apply to:

(a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing with the merger or consolidation of a domestic insurer; or

(b) Any offer, request, invitation, agreement, or acquisition which the commissioner, by order, shall exempt from the section as not having been made or entered into for the purpose of and not having the effect of changing or influencing the control of, a domestic insurer, or not comprehended within the purposes of this section***; or***

(c) Any acquisition of stock of a former mutual by an affiliate company that occurs in connection with the conversion of a mutual insurer to a stock insurer under Sections 1 to 14 of this Act, provided that no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in Section 2 of this Act.

(6) The following shall be violations of this section:

(a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval.

(7) The courts of this state shall have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his last known address by the Secretary of State in the same manner as service of process on foreign insurers.

Section 16. KRS 304.37-150 is amended to read as follows:

(1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this ***chapter***~~[subtitle]~~ or of any rule, administrative regulation, or order issued by the commissioner may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at the meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this ***chapter***~~[subtitle]~~ or of any rule, administrative regulation, or order issued by the commissioner, the insurer or the commissioner may apply to the Circuit Court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of KRS 304.37-130 or ***any other provision of this chapter, or*** any rule, administrative regulation, or order issued by the commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as required by the nature of the case and the interest of the insurer's policyholders, creditors, shareholders, or the public.

(2) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this ***chapter***~~[subtitle]~~ or any rule, administrative regulation, or order issued by the commissioner, the Circuit Court for Franklin County or the Circuit Court for the county in which the insurer has its principal place of business may, upon notice the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the appropriate order to effectuate the provisions of this subtitle.

(3) Notwithstanding any other provisions of law, for the purposes of this ***chapter***~~[subtitle]~~ the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 17. KRS 304.37-525 is amended to read as follows:

(1) ***Sections 1 to 14 of this Act are***~~[KRS 304.24-380 is]~~ not applicable to a reorganization or merger under KRS 304.37-505 and 304.37-510.

(2) ***Sections 1 to 14 of this Act are***~~[KRS 304.24-380 is]~~ applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company organized under Subtitle 24 of this chapter as if it were a mutual insurance company.

Section 18. Sections 1 to 14 of this Act may be cited as the Kentucky Insurer Demutualization Act.

Section 19. The following KRS section is repealed:

304.24-380 Converting mutual insurer.

Approved February 25, 2000

CHAPTER 43

(HB 81)

AN ACT relating to reorganization.

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

Section 1. KRS 209.200 is amended to read as follows:

(1) "Assisted living residence" means an apartment or home-style housing unit residence which provides assisted living to two (2) or more adult persons who are not related within the third degree of consanguinity to the owner or operator of the apartment or residence, and which provides supportive services within the residence or on the grounds of the residence. For purposes of this section:

(a) "Apartment" means a residence which shall offer at least one (1) unfurnished room, a private bathroom with a bathtub or shower, a kitchenette, a lockable door, and individual thermostat controls.

(b) "Home-style housing unit" means a residence which shall offer at least one (1) unfurnished room, a semiprivate bathroom with a bathtub or shower, free use of kitchen facilities, and a lockable door to the room entrance.

(c) "Supportive services" means assistance with household chores, cleaning, shopping, meals, laundry, transportation, twenty-four (24) hour supervision and organized social and recreational activities. Other services, including but not limited to assistance with health related services, may be arranged through a licensed or cabinet-approved service provider.

(2) The Cabinet ***for Health Services*** shall, after consultation with the director of the Kentucky Housing Corporation to assure compliance with federal law, including but not limited to 12 U.S.C. sec. 1715b, 12 U.S.C. sec. 1715w, or 42 U.S.C. sec. 3535(d), as amended, or federal regulations promulgated under those statutes, establish by promulgation of administrative regulation pursuant to KRS Chapter 13A the requirements for certification of an assisted living residence. Certification of an assisted living residence shall be voluntary.

(3) The Cabinet ***for Health Services*** may issue a certificate to any assisted living residence meeting standards provided for under subsection (2) of this section. The Cabinet ***for Health Services*** may deny, revoke, suspend, or modify an assisted living residence certificate for failure to comply with standards or when it determines the health, safety, or security of residents is in jeopardy. Actions to deny, revoke, suspend, or modify a certificate may be appealed to the Cabinet ***for Health Services*** within thirty (30) days of receipt of notification of intent. The Cabinet ***for Health Services*** shall, by administrative regulation in accordance with KRS Chapter 13A, establish procedures for the conduct of hearings upon appeals assuring reasonable notice and an opportunity to be heard pursuant to KRS Chapter 13B. Certification of an assisted living residence shall be voluntary.

(4) No Medical Assistance or general fund moneys shall be used to pay for new classifications of services authorized by this section. Nothing in this section or KRS 216B.020 shall be construed to prohibit payment for services solely because the services may be performed in an assisted living facility if the services are otherwise eligible for Medical Assistance or general fund payment.

Section 2. The General Assembly hereby confirms Executive Order 98-791, dated June 24, 1998, to the extent it is not otherwise confirmed by this Act. The confirmation shall include: (1) requiring a separate budget identification number be assigned to the Office of the Inspector General of the Cabinet for Health Services; and (2) transferring the voluntary assisted living certification program for assisted living facilities which is administered by the Kentucky Housing Authority under state and federal law from the Cabinet for Families and Children to the Cabinet for Health Services, Office of the Inspector General.

Approved March 3, 2000

CHAPTER 44

(HB 168)

AN ACT relating to child support.

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

Section 1. KRS 405.467 is amended to read as follows:

(1) All support orders issued by the Cabinet for Families and Children, including those issued pursuant to Part D, Title IV of the Federal Social Security Act, shall provide for immediate withholding of earnings of the parent or parents obligated to pay child support and medical support as is necessary to pay the child support obligation, except where one (1) of the parties demonstrates, and the court or administrative order finds that there is good cause not to require immediate income withholding, or a written agreement is reached by both parties which provides for an alternative arrangement.

(2) In any case in which a support order was issued in the state~~[prior to October 1, 1994,]~~ and in which a parent is required to pay court-ordered or administratively determined child support, medical support, maintenance, and medical support insurance, and wage withholding is not in effect, and an arrearage accrues that is equal to the amount of support payment for one (1) month, upon request of the absent parent, request of the custodial parent, or upon administrative determination, the secretary shall issue an order for withholding of earnings of the parent as is necessary to comply with the order plus interest at the legal rate on the arrearage, if any, without the need for a judicial or administrative hearing.

(3) In any case in which a parent is required either by court order or administrative order to provide medical insurance coverage for the child and the parent has failed to make application to obtain coverage for the child, the secretary shall issue an order for withholding of the employee's share, if any, of premiums for health coverage and to pay the share of premiums to the insurer, without the need for a judicial or administrative hearing.

(4) The cabinet shall advise the obligated parent that a wage withholding has commenced by sending a copy of the order to withhold at the same time that the order is sent to the employer. The only basis for contesting the withholding shall be a mistake of fact or law. If the parent contests the withholding, the cabinet shall give the obligor an opportunity to present his or her case at an administrative hearing conducted in accordance with KRS Chapter 13B and decide if the withholding will continue.

(5) The cabinet shall combine any administrative or judicial wage withholding order, or multiple administrative or judicial orders for child support and medical support into a single wage withholding order when payable through the cabinet to a single family or to multiple family units.

(6) The cabinet shall serve the order to withhold earnings or notice of multiple wage withholding orders specifying wage withholding requirements on the employer of an obligor by certified mail, return receipt requested. The order shall state the amount to be withheld, or the requirement to enroll the child under the health insurance coverage, including amounts to be applied to arrearages, plus interest at the legal rate on the arrearage, if any, and the date the withholding is to begin. The total amount to be withheld, including current support and payment on arrearages plus interest, and medical insurance coverage may not exceed the limit permitted under the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b).

(7) If there is more than one (1) notice for child support withholding against a single absent parent, the cabinet shall allocate amounts available for withholding, giving priority to current child support, up to the limits imposed under Section 303(b) of the Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b). The allocation by the cabinet shall not result in a withholding for one (1) of the support obligations not being implemented. Amounts resulting from wage withholding shall be allocated on a proportionate basis between multiple family units. Any custodial parent adversely affected by the provisions of this subsection shall have standing to challenge any proportionate allocations and, for good cause shown, a District Court, Circuit Court, or family court of competent jurisdiction may set aside the cabinet's proportional allocations as to the custodial parent.

(8) If the amounts to be withheld preclude collection of the total amount of combined child support and medical support due to the limits of the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b), the actual amount received shall be applied first to the current monthly child support obligation amount. Any payment exceeding the current monthly child support obligation shall then be applied by the cabinet to the administratively ordered or judicially ordered medical support obligation.

(9) The employer shall forward to the Cabinet for Families and Children that portion of salary or wages of the parent due and to be due in the future as will be sufficient to pay the child support amount ordered.

(10) The employer shall be held liable to the cabinet for any amount which the employer fails to withhold from earnings due an obligor following receipt of an order to withhold earnings.

(11) Any order to withhold earnings under this section shall have priority as against any attachment, execution, or other assignment, notwithstanding any state statute or administrative regulation to the contrary.

(12) No withholding under this section shall be grounds for discharging from employment, refusing to employ, or taking disciplinary action against any obligor subject to withholding required by this section.

(13) The remedies provided for in this section shall also be available for applicable support orders issued in other states.

(14) Interstate requests for withholding of earnings shall be processed by the cabinet.

Approved March 3, 2000

CHAPTER 45

(HB 284)

AN ACT relating to eminent domain by boards of education.

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

Section 1. KRS 416.560 is amended to read as follows:

(1) Notwithstanding any other provision of the law, a department, instrumentality or agency of city, county**,** or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class, having a right of eminent domain under other statutes shall exercise such right only by requesting the governing body of the city, county**,** or urban-county to institute condemnation proceedings on its behalf. If the governing body of the city, county**,** or urban-county agrees, it shall institute such proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality**,** or agency requesting the condemnation.

(2) If any department, instrumentality or agency of a city, county**,** or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class, operates in more than one (1) governmental unit, it shall request the governing body of the city, county**,** or urban-county government wherein the largest part of the individual tract of the property sought to be condemned lies, to institute condemnation proceedings on its behalf.

(3) A department, instrumentality**,** or agency of the Commonwealth of Kentucky, other than the Transportation Cabinet ***and local boards of education***, having a right of eminent domain under other statutes shall exercise such right only by requesting the Finance and Administration Cabinet to institute condemnation proceedings on its behalf. If the Finance and Administration Cabinet agrees, it shall institute such proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality**,** or agency requesting the condemnation.

(4) Prior to the filing of the petition to condemn, the condemnor or its employees or agents shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, sounding**,** and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten (10) days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or the court may refer the matter to commissioners to ascertain and assess the damages sustained by the condemnee, which award shall be subject to appeal.

Approved March 3, 2000

CHAPTER 46

(HB 374)

AN ACT relating to reorganization.

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

Section 1. KRS 11.068 is amended to read as follows:

(1) There is created an agency of state government known as the Office of State Budget Director. The office shall be attached for administrative purposes to the Office of the Governor.

(2) The office shall include the following major organizational units:

(a) The Office of State Budget Director, headed by the state budget director. The state budget director shall be appointed by the Governor pursuant to KRS 11.040 and shall serve, under direction of the Governor, as state budget director and secretary of the state planning committee. The office shall include such principal assistants and supporting personnel appointed pursuant to KRS Chapter 12 as may be necessary to carry out the functions of the office. The office shall have such duties, rights and responsibilities as are necessary to perform, without being limited to, the following functions:

1. Functions relative to the preparation, administration, and evaluation of the executive budget as provided in KRS Chapters 45 and 48 and in other laws, including but not limited to, capital construction budgeting, evaluation of state programs, program monitoring, financial and policy analysis and issue review, and executive policy implementation and compliance;

2. Continuous evaluation of statewide management and administrative procedures and practices, including but not limited to, organizational analysis and review, economic forecasting, technical assistance to state agencies, forms control, and special analytic studies as directed by the Governor; and

3. Staff planning functions of the state planning committee and evaluation of statewide management and administrative practices and procedures.

(b) Governor's Office for Policy and Management, headed by the state budget director, who shall report to the Governor. The state budget director shall maintain staff employed pursuant to KRS Chapter 18A sufficient to carry out the functions of the office relating to state budgeting as provided in paragraph (a) of this subsection and state planning as provided in KRS Chapter 147, review of administrative regulations proposed by executive agencies prior to filing pursuant to KRS Chapter 13A and such other duties as may be assigned by the Governor.

(c) Governor's Office for ***Policy Research headed by***~~[Program Administration, which shall assist]~~ the state budget director***. The Governor's Office for Policy Research shall assist the state budget director*** in ***providing policy research data, information, and analysis to the Governor on public policy issues that impact the Commonwealth. The state budget director shall identify and direct the research to be completed and provided by the office. The state budget director shall maintain***

staff employed in accordance with KRS Chapter 18A sufficient to carry out the functions of the office[~~ carrying out his functions and duties pertaining to the coordination of activities of state government for their effective and efficient administration. The office shall be headed by an executive director appointed by the Governor pursuant to KRS 12.040. The executive director shall report to the Governor through the state budget director. The organization of the office shall be established by the executive director with the approval of the state budget director. Persons employed in the office shall be deemed to be employees of the Governor within the meaning of KRS Chapters 11, 12, and 18A~~].

(d) Governor's Office for Economic Analysis headed by the state budget director who shall report to the Governor. The state budget director shall maintain staff employed in accordance with KRS Chapter 18A sufficient to carry out the functions of the office. The Governor's Office for Economic Analysis shall carry out the revenue estimating and economic analysis functions and responsibilities, including but not limited to the functions and responsibilities assigned to the Office of State Budget Director by KRS 48.115, 48.117, 48.120, 48.400, and 48.600. The Governor's Office for Economic Analysis shall perform the tax administrative function of using tax data to provide the Revenue Cabinet with studies, projections, statistical analyses, and any other information that will assist the Revenue Cabinet in performing its tax administrative functions.

Section 2. KRS 7B.080 is amended to read as follows:

(1) The operation of the center shall be funded from the restricted agency fund established in subsection (3) of this section.

(2) There is hereby established a fiduciary fund to be entitled the Kentucky Long-Term Policy Research Center fund. The fund may receive appropriations, gifts, grants, and federal funds. Moneys in the fund shall not lapse back to the General Fund at the end of any fiscal year. Moneys in the fund shall be invested by the Office of Financial Management[~~ and Economic Analysis~~], consistent with the provisions of KRS Chapter 42.

(3) A restricted agency fund account is established to receive the interest on the fiduciary fund and any other resources made available to the center. Interest from the fiduciary fund shall be credited to the restricted agency fund account on a monthly basis for the center's operations. Moneys in the account shall be invested by the Office of Financial Management[~~ and Economic Analysis~~], consistent with the provisions of KRS Chapter 42.

(4) Any appropriation by the General Assembly to the fiduciary fund shall remain intact and shall not be available to the board, and should the center and its functions terminate, the principal and any remaining interest from other accumulated funds shall revert to the general fund of the Commonwealth or to the donor.

Section 3. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to

which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   (a) Department of State Police.
   (b) Department of Criminal Justice Training.
   (c) Department of Corrections.
   (d) Department of Juvenile Justice.
   (e) Office of the Secretary.
   (f) Offices of the Deputy Secretaries.
   (g) Office of General Counsel.
   (h) Division of Kentucky State Medical Examiners Office.
   (i) Parole Board.
   (j) Kentucky State Corrections Commission.
   (k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:
   (a) Department of Education.
      (1) Kentucky Board of Education.
      (2) Education Professional Standards Board.
   (b) Department for Libraries and Archives.
   (c) Kentucky Arts Council.
   (d) Kentucky Educational Television.
   (e) Kentucky Historical Society.
   (f) Kentucky Teachers' Retirement System Board of Trustees.
   (g) Kentucky Center for the Arts.
   (h) Kentucky Craft Marketing Program.
   (i) Kentucky Commission on the Deaf and Hard of Hearing.
   (j) Governor's Scholars Program.
   (k) Governor's School for the Arts.
   (l) Operations and Development Office.
   (m) Kentucky Heritage Council.
   (n) Kentucky African-American Heritage Commission.
   (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
   (a) Environmental Quality Commission.
   (b) Kentucky Nature Preserves Commission.
   (c) Department for Environmental Protection.
   (d) Department for Natural Resources.
   (e) Department for Surface Mining Reclamation and Enforcement.
   (f) Office of Legal Services.
   (g) Office of Information Services.
4. Transportation Cabinet:
   (a) Department of Highways.
   (b) Department of Vehicle Regulation.
   (c) Department of Administrative Services.
   (d) Department of Fiscal Management.
   (e) Department of Rural and Municipal Aid.
   (f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management~~[and Economic Analysis]~~.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

   (a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 4. KRS 42.014 is amended to read as follows:

(1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and Budget, the Office of Financial Management~~[and Economic Analysis]~~, the Office of Capital Plaza Operations, and the Office of the Controller, each of which offices shall be headed by an executive director, the Department for Administration, the Department for Facilities Management, and the Department of Information Systems each of which shall be headed by a commissioner appointed by the secretary, upon the approval of the Governor, and responsible to the secretary. Each of these departments may have at least one (1) major assistant not in the classified service.

(2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into the offices, bureaus, divisions, or other units the secretary deems necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 5. KRS 42.0201 is amended to read as follows:

(1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration Cabinet for administrative and reporting purposes.

(2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.

(3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.

(4) The state controller; the executive director of the Office of Financial Management~~[and Economic Analysis]~~, Finance and Administration Cabinet; and the state budget director

designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.

(5) There are established in the Office of the Controller the Division of Accounts and the Division of Social Security.

(a) The Division of Accounts shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for:

1. The performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and

2. The state government's duties and functions relating to the county fee system for local entities.

(b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to 61.500.

Section 6. KRS 42.400 is amended to read as follows:

(1) There is established within the Finance and Administration Cabinet an Office of Financial Management~~[and Economic Analysis]~~, which shall be headed by an executive director responsible to the secretary of the Finance and Administration Cabinet, and appointed by the secretary upon approval of the Governor in accordance with the provisions of KRS 12.050.

(2) There is included in the Office of Financial Management~~[and Economic Analysis]~~ the positions of deputy executive ***directors***~~[director]~~ for investment and debt management ***who***~~[, and deputy executive director for revenue estimating and economic analysis, which]~~ shall be employed in the classified service as set forth in KRS Chapter 18A.

Section 7. KRS 42.409 is amended to read as follows:

As used in KRS 42.410 and 45.760, unless the context requires otherwise:

(1) "State total personal income" means the measure of all income received by or on behalf of persons in the Commonwealth, as most recently published in the Survey of Current Business by the United States Department of Commerce, Bureau of Economic Analysis.

(2) "Estimated state total personal income" means the personal income figure used by the ***Governor's Office for Economic Analysis***~~[Finance and Administration Cabinet]~~ to generate final detailed revenue estimates.

(3) "Total revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended.

(4) "Anticipated total revenues" means final estimates of revenues, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended.

(5) "Available revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.

(6) "Anticipated available revenues" means final estimates of revenues, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.

(7) "Total assessed value of property" means state total net assessed value of property for taxes due, as obtained from the Revenue Cabinet.

(8) "Per capita" means per unit of population, where population figures are the most recent available from the University of Louisville, Kentucky State Data Center.

(9) "Appropriation-supported debt service" means the amount of an appropriation identified to be expended for debt service purposes in the executive budget recommendation, and the amount of an appropriation expended for debt services in a completed fiscal year.

(10) "Appropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is appropriated by the General Assembly.

(11) "Nonappropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is not appropriated by the General Assembly.

(12) "Statutorily dedicated receipts" means revenues credited to the general fund and road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account, which are required by an enacted statute to be used for a specific purpose. Statutorily dedicated receipts include, but are not limited to, the following:

(a) Receipts credited to the general fund which are subject to KRS 24A.191, KRS 24A.192, KRS 42.450 to 42.495, KRS 278.130 to 278.150, or KRS 350.139;

(b) Receipts credited to the road fund which are subject to KRS 175.505, KRS 177.320, KRS 177.365 to 177.369, KRS 177.9771 to 177.979, KRS 186.531, or KRS 186.535; and

(c) Receipts credited to a restricted agency fund account in accordance with any applicable statute.

(13) "True interest cost" means the bond yield according to issue price without a reduction for related administrative costs, and is the same figure as the arbitrage yield calculation described in the United States Tax Reform Act of 1986.

Section 8. KRS 42.410 is amended to read as follows:

(1) The Office of Financial Management~~[and Economic Analysis]~~ established in KRS 42.400 shall, subject to the provisions of KRS 41.020 to 41.375 and KRS 42.500, have and perform functions and duties as follows:

(a) The analysis and management of short and long-term cash flow requirements;

(b) The maximization of the return on state investments given the cash flow and liquidity requirements;

(c) The coordination and monitoring of cash needs relative to investment and debt activity;

(d) The development of a long-term debt plan including criteria for the issuance of debt and an evaluation of how much total state debt is justified;

(e)[~~ The evaluation of revenue projections relative to proposed revenue bond issues;~~

~~(f) The performance of the cabinet's revenue estimating and economic analysis functions and responsibilities, including, but not limited to, those functions and responsibilities assigned to the cabinet by KRS 48.120;~~

~~(g)~~] The responsibility for liaison with the General Assembly on all investment and debt matters, including, but not limited to, new bond issues, the status of state debt, and the status of state investments;

[~~(h) The tax administrative function of utilizing tax data to provide the Revenue Cabinet with studies, projections, statistical analyses, and any other information that will assist the Revenue Cabinet in performing its tax administrative functions;~~] and

(f)[~~(i)~~] All other functions of the cabinet relative to state investment and debt management including, but not limited to, the making of debt service payments, the sale of bonds, and staff assistance to the State Property and Buildings Commission and the State Investment Commission.

(2) The Office of Financial Management[~~ and Economic Analysis~~] shall render monthly written reports concerning the performance of each investment to the State Investment Commission.

(3) The Office of Financial Management[~~ and Economic Analysis~~] shall review state appropriation-supported bond issues every six (6) months for possible debt service savings through advanced refundings.

(4) The Office of Financial Management[~~ and Economic Analysis~~] shall submit a report within forty-five (45) days after the publication of the Comprehensive Annual Financial Report to the Legislative Research Commission, for referral to the appropriate committee, indicating the bond issues refunded, original and new interest rates, estimated savings, original and new amortization schedules, issuance costs, debt reserves, disposition of savings, and information on economic, fiscal, and market indicators of the Commonwealth's debt position.

(5) The state debt report shall include, but not be limited to, economic, fiscal, and market indicators of debt position as set forth in this section. Indicators shall be presented in tabular and, where appropriate, graphical form. Indicators shall be presented for the fiscal year just ended and, if data is available and except as otherwise noted, for the preceding nine (9) fiscal years.

(6) Economic indicators shall include:

(a) Nonappropriation-supported debt as a percent of state total personal income;

(b) Nonappropriation-supported debt as a percent of total assessed value of property;

(c) Nonappropriation-supported debt per capita;

(d) Appropriation-supported debt as a percent of state total personal income;

(e) Appropriation-supported debt as a percent of total assessed value of property;

(f) Appropriation-supported debt per capita;

(g) Appropriation-supported debt service as a percent of total state personal income;

(h) Appropriation-supported debt service as a percent of total assessed value of property; and

(i) Appropriation-supported debt service per capita.

(7) Fiscal indicators shall be reported separately and in total for the general fund, the road fund, and each restricted fund account from which debt service is expended.

(8) Fiscal indicators shall include:

(a) Annual appropriation-supported debt service as a percent of total revenues; and

(b) Annual appropriation-supported debt service as a percent of available revenues.

(9) Market indicators shall include:

(a) The rating assigned by Moody's Investors Services, Inc., or a comparable rating agency, to each nonappropriation-supported bond issued in the fiscal year just ended;

(b) The rating assigned by Moody's Investors Services, Inc., or a comparable rating agency, to each appropriation-supported bond issued in the fiscal year just ended;

(c) A comparison of the difference between the true interest cost of each nonappropriation-supported bond issued and the value of a selected revenue bond index, as published by the Bond Buyer Weekly, the Delphis Hanover Corporation, or other comparable service on a date relevant to the bond issue; and

(d) A comparison of the difference between the true interest cost of each appropriation-supported bond issued and the value of a selected municipal bond index, as published by the Bond Buyer Weekly, the Delphis Hanover Corporation, or other comparable service on a date relevant to the bond issue.

(10) The state debt report shall contain a complete description of the sources of data used to prepare the report. This description shall include, but not be limited to, an enumeration, by fund and restricted fund account, of all debt, debt service, and revenue figures; the source and publication date of figures used for state total personal income, total assessed value of property, population, and selected bond indexes.

(11) If the sources of data used in a current report differ substantially from those used in the report of the preceding year, the report shall include a detailed explanation of the change. If possible, data presented in the current report for previous years shall be calculated so that, in any one (1) report, indicators for all years are calculated using consistent data categories. The use of any inconsistent data shall be noted and explained.

(12) Nothing in this section shall authorize any act inconsistent with the authority granted the State Investment Commission by KRS 42.500 and 42.525.

Section 9. KRS 42.420 is amended to read as follows:

All other provisions of the Kentucky Revised Statutes notwithstanding, all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, shall submit all proposed bond issues, bond anticipation notes, or interim debt financing to the Office of Financial Management~~[Economic Analysis]~~ for review and approval prior to issuance of such debt.

Section 10. KRS 42.560 is amended to read as follows:

(1) There is established in the Treasury of the Commonwealth a trust fund to be known as the "Energy Assistance Trust Fund" referred to in KRS 42.560 to 42.572 as the "trust fund."

(2) The trust fund shall consist of any oil overcharge refunds which become available to the state as a result of litigation for alleged overcharges for crude oil or refined petroleum products sold during the period of time in which federal price controls on such products were in effect, any moneys as may be appropriated by the general fund, and any investment interest earned on the fund.

(3) The fund shall be managed by the state Office of Financial Management~~[and Economic Analysis]~~ and all moneys in excess of the amount to be disbursed in a given fiscal year shall be invested to maximize returns. The principal and any interest earnings of the trust fund shall at no time lapse to the general fund.

(4) The trust fund and all accumulated interest shall be disbursed over a period of time not exceeding ten (10) years from February 19, 1988. Interest accumulated during the 1987-88 fiscal year shall immediately be available for disbursement. Fifty thousand dollars ($50,000) of the interest shall be allocated to the Legislative Research Commission for consultant costs for a study of energy conservation and weatherization programs as directed by the 1988 General Assembly. The remainder of the accumulated interest shall be made available to the Cabinet for Families and Children with fifty percent (50%) of the interest allocated to weatherization services to low-income households and fifty percent (50%) of the interest allocated to low-income energy assistance services. The funds to be available for expenditure in any fiscal year shall be appropriated by the General Assembly from the trust fund as provided in KRS 48.300.

Section 11. KRS 42.572 is amended to read as follows:

The State Office of Financial Management~~[and Economic Analysis]~~ shall prepare and submit to the Legislative Research Commission a report by July 30 of each year on the operational and financial status of the fund.

Section 12. KRS 45A.840 is amended to read as follows:

As used in KRS 45A.840 to 45A.879, unless the context requires otherwise:

(1) "Bond counsel" means an attorney who provides legal counsel to a bond issuing agency with regard to bond issuance and provides an unqualified legal opinion to the agency with respect to validity and tax treatment;

(2) "Bond issuance" means the formulation, authorization, and issuance of bonds by a bond issuing agency;

(3) "Bond issuing agency" means the State Property and Buildings Commission, Kentucky Asset/Liability Commission, Turnpike Authority of Kentucky, Kentucky Housing Corporation, Kentucky Infrastructure Authority, Kentucky Higher Education Student Loan

Corporation, Kentucky River Authority, Kentucky Agricultural Finance Corporation, Kentucky Local Correctional Facilities Construction Authority, School Facilities Construction Commission, Murray State University, Western Kentucky University, University of Louisville when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Northern Kentucky University, Kentucky State University, University of Kentucky when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Morehead State University, Eastern Kentucky University, the Kentucky Community and Technical College System for the Technical Institutions' Branch, and the University of Kentucky for the University of Kentucky Community College System;

(4) "Bonds" means the revenue bonds, notes, or other debt obligations issued by a bond issuing agency;

(5) "Executive director" means the executive director of the Office of Financial Management~~[and Economic Analysis]~~;

(6) "Office" means the Office of Financial Management~~[and Economic Analysis]~~ established by KRS 42.400;

(7) "Underwriter" means:

(a) The financial institution which structures and underwrites the bond issuing agency's issuance of bonds; or

(b) The financial advisor or fiscal agent which provides advice or services to the bond issuing agency with respect to the structure, timing, terms, or other matters concerning bond issuance;

(8) "Underwriter's counsel" means an attorney who provides legal counsel to an underwriter with respect to its work on behalf of a bond issuing agency.

Section 13. KRS 45A.843 is amended to read as follows:

(1) One (1) or more selection committees shall be created in the Office of Financial Management~~[and Economic Analysis]~~. Each selection committee shall have the authority to participate in the selection of both underwriters and bond counsel.

(2) Except as provided in KRS 45A.867 and 45A.870, a selection committee shall participate in every instance of a bond issuing agency hiring an underwriter or bond counsel on behalf of a bond issuing agency.

(3) A selection committee created in the office shall consist of the following six (6) or more members selected in the manner specified within each paragraph:

(a) Three (3) employees of the office other than the executive director. The executive director shall select the three (3) employees;

(b) Two (2) employees of the bond issuing agency appointed by the head of that agency to participate in the hiring of an underwriter or a bond counsel for that agency. However, at the discretion of the head of the bond issuing agency, he may substitute for one (1) of his employees an employee of the agency whose project will be funded by the bond proceeds; and

(c) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor. The merit employees shall serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee shall attend all committee

proceedings. If more than one (1) employee is appointed, then at least one (1) of the employees shall attend any committee proceeding.

(4) (a) All selection committee members shall have experience which qualifies them to serve on the committee.

(b) Any individual appointed to serve by the executive director or the Auditor of Public Accounts shall serve an initial one (1) year term and may be reappointed to serve for additional successive one (1) year terms. He shall serve until his successor is appointed and qualified. A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

(c) A selection committee member appointed by the head of a bond issuing agency shall serve for the duration of the selection committee's participation in the hiring of an underwriter and a bond counsel for his agency. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

Section 14. KRS 48.115 is amended to read as follows:

(1) Except as provided for in subsection (4) of this section, the detailed revenue estimates for the general fund and the road fund required by KRS 48.120 shall be based on a consensus revenue forecast. The consensus revenue forecast shall be developed by the consensus forecasting group. The members of the consensus forecasting group shall be jointly selected by the ***state budget director***[~~secretary of the Finance and Administration Cabinet~~] and the Legislative Research Commission. The members shall be knowledgeable about the state and national economy and the revenue and financial conditions of the Commonwealth.

(2) If, after the revenue estimates made as required under KRS 48.120, the ***state budget director***[~~secretary of the Finance and Administration Cabinet~~] determines that a revision to the revenue estimates is needed, the ***state budget director***[~~secretary of the Finance and Administration Cabinet~~] shall request a revision from the consensus forecasting group. The revised revenue estimates shall become the official revenue estimates.

(3) The ***state budget director***[~~secretary of the Finance and Administration Cabinet~~] shall coordinate with the Revenue Cabinet and the Transportation Cabinet to ensure that the financial and revenue data required for the forecasting process is made available to the consensus forecasting group.

(4) If the consensus forecasting group cannot agree on a consensus revenue forecast for the detailed revenue estimates required under KRS 48.120 or the revised revenue estimates as provided for under subsection (2) of this section, the official revenue estimates required by law shall be provided by the ***Governor's Office for Economic Analysis***[~~Finance and Administration Cabinet~~].

Section 15. KRS 48.117 is amended to read as follows:

(1) On or before August 15 of 1999 and of each subsequent odd-numbered year, the ***Office of State Budget Director***[~~Finance and Administration Cabinet~~], in conjunction with the consensus forecasting group created by KRS 48.115, shall provide to each branch of government a budget planning report to include:

(a) A baseline analysis and projections of economic conditions and outlook;

(b) Any potential consequences of the analysis and projections for the Commonwealth's fiscal condition; and

(c) The revenue implications for the general fund and road fund for the current fiscal year and next four (4) fiscal years.

(2) The budget planning report shall include, but not be limited to, projections of personal income, employment, and preliminary planning estimates of general fund and road fund revenues to be used in the development of budgetary policy and guidelines for budget unit requests under KRS 48.040 and 48.050 for the next fiscal biennium.

Section 16. KRS 48.120 is amended to read as follows:

(1) By October 15 of each odd-numbered year, the ***Office of State Budget Director***[~~Finance and Administration Cabinet~~] shall provide to each branch of government the preliminary detailed revenue estimates made in accordance with the provisions of KRS 48.115 for the general fund and road fund for the current and next two (2) fiscal years, including explanatory statements, and a comparative record of the actual revenues of these funds for each of the last two (2) years concluded.

(2) On or before the fifteenth legislative day, the ***Office of State Budget Director***[~~Finance and Administration Cabinet~~] shall certify and present to the General Assembly the final detailed revenue estimates made in accordance with the provisions of KRS 48.115 for these funds.

(3) Appropriations made in the branch budget bills enacted for each branch of government shall be based upon the revenue estimates presented to the General Assembly by the ***Office of State Budget Director***[~~Finance and Administration Cabinet~~] under subsection (2) of this section, as modified by the appropriations committees of the General Assembly.

Section 17. KRS 48.130 is amended to read as follows:

(1) The branch budget recommendation submitted by each branch of government shall include a plan for the reduction of the respective budget recommendations, by budget unit, if projected or actual tax receipts accruing to the general fund or road fund are five percent (5%) or less than the revenue estimates for these funds as determined under subsection (3) of KRS 48.120.

(2) (a) In recommending budget reductions, the Governor, the Chief Justice, and the Legislative Research Commission shall not recommend universal percentage reductions, but shall weigh the needs of all budget units and shall strive to protect the highest possible level of service in their respective branches. Services which are not essential to constitutional functions shall be subject to reduction. Transfer of funds may be authorized by the budget reduction plan;

(b) In recommending budget reductions for the executive branch, the budget reduction plan provided for by subsection (1) of this section shall comply with the provisions of KRS 18A.1132;

(c) A layoff of state employees in the executive branch under the budget reduction plan enacted by the General Assembly shall comply with the provisions of KRS 18A.1132; and

(d) A layoff of state employees in the executive branch required by an actual or projected deficit in tax receipts contemplated by subsection (5) of this section shall comply with the provisions of KRS 18A.1132.

(3) The plan shall be enacted as modified by the General Assembly in each branch budget bill.

(4) Based upon the information provided in KRS 48.400 and in the event of an actual or projected deficit in tax receipts provided for by this section, the ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~ shall notify all branches of government:

(a) If funds that have accrued to the surplus accounts of the general or road funds are not sufficient to meet these deficits, the allotments to the respective branches shall be reduced according to the reduction provisions embodied in the branch budget bill, and the Governor, the Chief Justice, and the Legislative Research Commission shall automatically implement budget reductions for their respective branches according to the reduction provisions embodied in the branch budget bill; and

(b) In the event funds that have accrued to the surplus accounts of the general or road funds are sufficient to meet these deficits, transfers from these surplus accounts shall be made, as appropriate, and the budget reduction provisions embodied in the branch budget bill shall not be implemented.

(5) Based upon the information provided in KRS 48.400 and in the event of an actual or projected deficit in tax receipts of five percent (5%) or less, the Governor, the Chief Justice, and the Legislative Research Commission shall implement budget reductions for their respective branches consistent with the provisions of the enacted branch budget bills.

(6) The budget reduction plan shall provide that the annual increment granted state employees under KRS 18A.355 shall be reduced as provided by KRS 18A.355. Any such reduction of the annual increment shall be uniform for all employees.

(7) If general fund or road fund tax receipts increase over the estimated deficits, then services shall be restored in the reverse order of the reduced services.

(8) This section shall not preclude the General Assembly, in regular or special session, from amending a branch budget bill requiring budget reductions nor shall it preclude the Governor from calling a special session of the General Assembly at any time the budget reduction plan is in effect.

(9) No budget reduction action shall be taken by any branch head in excess of the actual or projected deficit.

Section 18. KRS 48.400 is amended to read as follows:

(1) The ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~ shall continuously monitor the financial situation of the Commonwealth. Based upon reports from budget units and its own estimates, the ***office***~~[cabinet]~~ shall no later than the tenth day of each month or more often if necessary, report to the Governor, Chief Justice, and the Legislative Research Commission on the financial condition of the Commonwealth and its budget units.

(2) Within thirty (30) days of the close of each fiscal quarter, the ***state budget director***~~[secretary of the Finance and Administration Cabinet]~~ shall report to the head of each branch budget the actual revenue receipts from the just-concluded quarter, as well as the projected revenue receipts for the next three (3) fiscal quarters. The report shall include a comparison with the estimated revenue receipts upon which the branch budget bills were developed pursuant to KRS 48.120 and shall note any potential consequences to the Commonwealth's fiscal

condition as a result of actual or projected revenue receipts that differ from those used in the development of the branch budget bills.

(3) In the event there is an actual or anticipated surplus or decrease in total estimated tax receipts, as determined under KRS 48.120(3) and subsection (2) of this section, immediate notification shall be given to all branches of government.

Section 19. KRS 48.600 is amended to read as follows:

(1) In the event of an actual or projected deficit, as determined by the ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~, in total tax receipts, as specified in KRS 48.130, of five percent (5%) or less, the Governor, the Chief Justice, and the Legislative Research Commission shall make any allotment reductions for the budget units of their respective branches of government that are deemed necessary and shall take any steps to revise allotments for their respective branches that are necessary to prevent a cash deficit.

(2) No budget revision action shall be taken by any branch head in excess of the actual or projected deficit.

(3) Allotment revisions shall be reported to the standing Appropriations and Revenue Committees of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate.

Section 20. KRS 48.705 is amended to read as follows:

(1) A budget reserve trust fund account is hereby created in the general fund, pursuant to KRS 45.305. The budget reserve trust fund account shall be funded through direct appropriations, surplus revenue receipts in the general fund, and certain unexpended appropriations. Moneys in the account shall remain unallotted unless required by the provisions of this section.

(2) (a) Beginning with the fiscal year starting on July 1, 1995, and for each fiscal year thereafter, except as provided in subsection (3) of this section, within thirty (30) days of the end of each fiscal year, the secretary of the Finance and Administration Cabinet shall cause to be deposited to the budget reserve trust fund account the lesser of the following amounts:

1. Fifty percent (50%) of all general fund revenue receipts in excess of the revenue estimates determined under KRS 48.120(3), or the amount subsequently certified by the ***state budget director***~~[secretary of the Finance and Administration Cabinet]~~ pursuant to KRS 48.400(3) for the year just ended; and fifty percent (50%) of the unexpended balance of all general fund appropriations for the fiscal year just ended that would otherwise lapse to the general fund surplus account under KRS 45.229; or

2. The amount necessary, from general fund revenue receipts in excess of the revenue estimates determined under KRS 48.120(3), or the amount subsequently certified by the ***state budget director***~~[secretary of the Finance and Administration Cabinet]~~ pursuant to KRS 48.400(3) for the year just ended, and from the unexpended balance of all general fund appropriations for the fiscal year just ended that would otherwise lapse to the surplus account under KRS 45.229, to make the balance of the budget reserve trust fund account equal to five percent (5%) of the actual general fund revenue receipts collected during the fiscal year just ended, as determined by the Finance and Administration Cabinet.

(b) Any amounts to be deposited to the budget reserve trust fund account from general fund revenue receipts in excess of the revenue estimates determined under KRS 48.120(3) or the amount subsequently certified by the ***state budget director***~~[secretary of the Finance and Administration Cabinet]~~ pursuant to KRS 48.400(3) shall be determined after the excess receipts have been reduced by the amount necessary to implement the provisions of any surplus expenditure plan authorized by KRS 48.140 and enacted as a part of a branch budget bill.

(3) If, at the close of any fiscal year, the budget reserve trust fund account has a balance equal to or greater than five percent (5%) of the actual general fund revenue receipts collected during the fiscal year just ended, as determined by the Finance and Administration Cabinet, the deposits required under subsection (2) of this section shall be suspended for that year.

(4) (a) Moneys in the budget reserve trust fund account may be appropriated by the General Assembly in a regular or special session.

(b) Funds from the budget reserve trust fund account may be used pursuant to the provisions of KRS Chapter 47 if actual general fund revenue receipts are not sufficient to meet the general fund appropriation levels authorized by the General Assembly in the branch budget bills for the executive, legislative, and judicial branches, as determined under KRS 48.130 and 48.600, or an appropriation provision in any act.

(5) Before authorizing any allotments from the budget reserve trust fund account, the secretary of the Finance and Administration Cabinet shall notify in writing the Interim Joint Committee on Appropriations and Revenue. The notice shall include the amount and purpose for the proposed allotment.

(6) Within thirty (30) days of the close of each fiscal year, the secretary of the Finance and Administration Cabinet shall report to the Interim Joint Committee on Appropriations and Revenue the general fund revenue receipts collected for the fiscal year just ended, the balance of the budget reserve trust fund account, and any amounts deposited to the budget reserve trust fund account pursuant to the provisions of subsection (2) of this section.

(7) All sums appropriated or deposited to the budget reserve trust fund account shall not lapse at the close of the fiscal year but shall carry forward into the next fiscal year and shall remain available for the purposes of this section.

Section 21. KRS 56.862 is amended to read as follows:

The Office of Financial Management~~[and Economic Analysis]~~ shall serve as staff to the commission. The executive director of the Office of Financial Management~~[and Economic Analysis]~~ shall serve as secretary to the commission. The commission shall coordinate with the Office of the Controller to ensure that the necessary financial data is made available.

Section 22. KRS 56.863 is amended to read as follows:

The commission shall have the power and duty to:

(1) Maintain the records and perform the functions necessary and proper to accomplish the purposes of KRS 56.860 to 56.869;

(2) Promulgate administrative regulations relating to KRS 56.860 to 56.869;

(3) Conduct analysis to determine the impact of fluctuating receipts of revenues on the budget of the Commonwealth, fluctuating interest rates upon the interest-sensitive assets and interest-sensitive liabilities of the Commonwealth, and the resulting change in the net interest margin on the budget of the Commonwealth;

(4) Develop strategies to mitigate the impact of fluctuating receipts of revenues on the budget of the Commonwealth and of fluctuating interest rates on the Commonwealth's interest-sensitive assets and interest-sensitive liabilities;

(5) Report its findings to the State Investment Commission at least annually to assist the State Investment Commission in developing and implementing its investment strategy. The State Investment Commission shall provide the commission with a copy of its monthly investment income report to aid the commission in developing and implementing its strategies;

(6) Issue funding notes, project notes, and tax and revenue anticipation notes or other obligations on behalf of any state agency to fund authorized projects or to satisfy judgments;

(7) Refund any funding notes, project notes, or tax and revenue anticipation notes issued under KRS 56.860 to 56.869 to achieve economic savings, to better match receipts with expenditures, or as a part of a continuing finance program;

(8) Designate individual employees or officers of the Office of Financial Management~~[and Economic Analysis]~~ as agents for purposes of approving the principal amount of tax and revenue anticipation notes, the interest rate, the discount, maturity date, and other relevant terms of tax and revenue anticipation notes, project notes, and funding notes or refunding notes issued within constraints established by the commission and to execute agreements, including notes and financial agreements, for the commission;

(9) Enter into financial agreements for the purpose of hedging a portfolio of interest-sensitive assets and interest-sensitive liabilities to stabilize the Commonwealth's net interest margin, as deemed necessary by the commission, subject to administrative regulations promulgated by the commission that limit the net exposure of the Commonwealth as a result of these financial agreements;

(10) Deposit net interest payments and premiums received by the commission under financial agreements relating to funding notes, project notes, and tax and revenue anticipation notes into a restricted account, which shall not lapse at the end of the fiscal year but shall continue to accumulate to act as security for these financial agreements. This duty is mandatory in nature. Any accumulated funds in excess of the amount determined by the commission to be necessary to establish this security may be applied to debt service payments, net interest payments, and premiums and expenses related to tax and revenue anticipation notes, project notes, and funding notes; and

(11) Report to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue on a semiannual basis, by September 30 and March 31 of each year, the following:

(a) A description of the Commonwealth's investment and debt structure;

(b) The plan developed to mitigate the impact of fluctuating revenue receipts on the budget of the Commonwealth and fluctuating interest rates on the interest-sensitive assets and interest-sensitive liabilities of the Commonwealth, including an analysis of the impact that a change in the net interest margin would have on the budget of the

Commonwealth. The report due by March 31 of each year shall reflect the strategy for January through June of the fiscal year, and the report due by September 30 shall reflect the strategy for July through December of the fiscal year;

(c) The principal amount of notes issued, redeemed, and outstanding; and a description of all financial agreements entered into during the reporting period. The report due by March 31 shall include information about agreements entered into from July through December of the fiscal year. The report due by September 30 shall include information about agreements entered into between January and June of the prior fiscal year; and

(d) A summary of gains and losses associated with financial agreements and any other cash flow strategies undertaken by the commission to mitigate the effect of fluctuating interest rates during each reporting period. The report due by March 31 shall include information about agreements and strategies entered into or undertaken from July through December of the fiscal year. The report due by September 30 shall include information about agreements and strategies entered into or undertaken from January through June of the prior fiscal year.

Section 23. KRS 131.020 is amended to read as follows:

(1) The Revenue Cabinet shall be organized into the following functional units:

(a) Office of the Secretary. The Office of the Secretary shall include the Office of the Taxpayer Ombudsman, the Office of Financial and Administrative Services, principal assistants and other personnel appointed by the secretary pursuant to KRS Chapter 12 as are necessary to enable the secretary to perform functions of the office;

(b) Office of Financial and Administrative Services. The Office of Financial and Administrative Services shall be headed by an executive director. The functions and duties of the office shall include personnel services, administrative support, preparation and administration of the budget, training, and asset management;

(c) Office of Taxpayer Ombudsman. The Office of Taxpayer Ombudsman shall be headed by a taxpayer ombudsman as established by KRS 131.051(1). The functions and duties of the office shall consist of those established by KRS 131.071;

(d) Department of Law. The Department of Law shall be headed by a commissioner. The functions and duties of the department shall include establishing Revenue Cabinet tax policies, providing information to the public, conducting tax research, collecting delinquent taxes, conducting conferences, administering taxpayer protests, issuing final rulings, administering all activities relating to assessments issued pursuant to KRS 138.885, 139.185, 139.680, 141.340, 142.357, and 143.085, enforcing the criminal laws of the Commonwealth involving revenue and taxation, and representing the cabinet in legal and administrative actions. The Department of Law shall consist of the divisions of legal services, protest resolution, tax policy, collections, and research;

(e) Department of Property Valuation. The Department of Property Valuation shall be headed by a commissioner. The functions and duties of the department shall include mapping, providing assistance to property valuation administrators, supervising the property valuation process throughout the Commonwealth, valuing the property of public service companies, valuing unmined coal and other mineral resources, administering tangible and intangible personal property taxes, and collecting

delinquent taxes. The Department of Property Valuation shall consist of the Divisions of Local Valuation, State Valuation, and Technical Support;

(f) Department of Tax Administration. The Department of Tax Administration shall be headed by a commissioner. The functions and duties of the department shall include recordkeeping, conducting audits, reviewing audits, rendering taxpayer assistance, and collecting delinquent taxes. The Department of Tax Administration shall consist of the Divisions of Field Operations, Revenue Operations, and Compliance and Taxpayer Assistance; and

(g) Department of Information Technology. The Department of Information Technology shall be headed by a commissioner. The functions and duties of the department shall include the development and maintenance of technology and information management systems in support of all units of the cabinet. The Department of Information Technology shall consist of the Division of Systems Planning and Development and the Division of Technology Infrastructure Support.

(2) The functions and duties of the cabinet shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the cabinet shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the cabinet, and to attempt to fairly and equitably resolve tax controversies at the administrative level.

(3) Except as provided in KRS 131.190(4), the cabinet shall fully cooperate with and make tax information available as prescribed under KRS 131.190(2) to the ***Governor's***[~~Finance and Administration Cabinet's~~] Office ***for***[~~of Financial Management and~~] Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.

Section 24. KRS 151.730 is amended to read as follows:

(1) The authority is hereby authorized to provide, at one (1) time or from time to time, for the issuance of its revenue bonds for the purpose of paying all or any part of the cost of any one (1) or more projects undertaken pursuant to KRS 151.720. The principal of and the interest on such bonds shall in each instance be payable solely from a special fund provided for the payment, with revenues derived from water use fees collected from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes, pledged to be set aside and deposited in such special fund. The bonds of any issue may be in one (1) or more series and any one (1) or more such series may enjoy equal or subordinate status with respect to the pledge of funds from which they are payable, shall be dated, shall bear interest, shall mature at such time or times not exceeding the thirtieth anniversary of their respective dates, all as may be provided by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of bonds including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places for payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the facsimile signature of the chairman of the authority, and the seal of the authority or a facsimile thereof shall be affixed thereto and attested by the manual signature of the treasurer of the authority, and any

coupons attached thereto shall bear the facsimile signature of the chairman of the authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this section shall have and are hereby declared to have all qualities and incidents of negotiable instruments under the uniform commercial code of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The authority may sell such bonds at public sale, and for such price as it may determine will best effect the purposes of KRS 151.720.

(2) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects for which such bonds shall have been issued, and shall be disbursed in such a manner and under such restrictions, if any, as the authority may provide in the proceedings authorizing the issuance of such bonds or in the trust indenture securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the proceedings authorizing the issuance of such bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund or funds for such bonds or any account or accounts therein as the authority shall have provided in the proceedings or trust indenture authorizing and securing such bonds.

(3) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

(4) The authority may issue revenue bond anticipation notes.

(5) Any holder of bonds issued under the provisions of this section or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent of the rights given in this section, may be restricted by such trust indenture or proceedings, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted under this section or under such trust indenture or the proceedings authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this section or by such trust indenture or proceedings to be performed by the authority or by any officer or employee thereof.

(6) Revenue bonds issued under the provisions of this section shall not be a debt, liability, or obligation of the Commonwealth or any political subdivision thereof and shall not be a pledge of the faith and credit of the Commonwealth or any political subdivision thereof.

(7) Revenue bonds issued by the authority shall be subject to the jurisdiction and approval of the State Property and Buildings Commission and the Capital Projects and Bond Oversight Committee and shall be subject to review by the Office of Financial Management~~[and Economic Analysis]~~.

(8) The authority shall not be required to pay any taxes and assessments to the Commonwealth or any county, municipality, or other governmental subdivision of the Commonwealth upon any of its property or upon its obligations or other evidences of indebtedness pursuant to the provisions of this section, or upon any moneys, funds, revenues, or other income held or received by the authority and the bonds or notes of the authority and the income therefrom shall at all times be exempt from taxation, except for death and gift taxes and taxes of transfers.

(9) Contractual expenses to construct, reconstruct, provide for the major maintenance, or repair the Kentucky River locks and dams, or to maintain the channel, or to acquire real or personal property pertaining thereto, or to construct, reconstruct, maintain, or repair such property, shall be paid from the proceeds of the revenue bonds. Expenses for administrative services and necessary travel expenses and per diem compensation of authority members, shall not be paid from the proceeds of the revenue bonds. Nor shall the cabinet's cost of operating the locks be paid from the proceeds of the revenue bonds.

Section 25. KRS 153.180 is amended to read as follows:

(1) There is hereby established a nonprofit foundation to be known as the Kentucky Foundation for the Arts. The purpose of the foundation shall be to enhance the stability of Kentucky's arts organizations and to ensure Kentuckians have access to the arts through the support of an endowment fund.

(2) Funding for the foundation shall be obtained through state appropriations, gifts, grants, and any other funds from the public and private sectors. The foundation board shall have the authority to solicit, accept, and receive contributions from the public and private sectors to match public funding. Moneys in the foundation fund shall not lapse to the general fund at the end of the fiscal year. Moneys in the foundation fund shall be invested by the Office of Financial Management~~[and Economic Analysis]~~ consistent with the provisions of KRS Chapter 42, and interest income earned shall be credited to the foundation fund. The foundation board may use the investment income for the purpose of awarding matching grants to nonprofit arts organizations to carry out the following programs:

(a) The Performing Arts and Visual Arts Touring Subsidy Program shall support tours and exhibitions for the education and enjoyment of audiences throughout the state.

(b) The Institutional Stabilization Program shall provide operating funds to achieve short-term or long-term stability of arts organizations.

(3) The foundation shall be governed by a board of trustees consisting of six (6) members appointed by the Governor on recommendations from the Kentucky Arts Council. For the initial appointments, the Governor shall appoint two (2) members to serve two (2) year terms; two (2) members to serve three (3) year terms; and two (2) members to serve four (4) year terms. Thereafter, the Governor shall make all appointments for a term of four (4) years. The board shall elect by majority vote a chair and other officers deemed necessary. Board members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS 44.070 and 45.101 for actual and necessary expenses incurred in the performance of their duties.

(4) The foundation board shall perform duties and responsibilities deemed necessary to fulfill the purposes of this section. The foundation board shall establish by administrative regulation procedures for administration of the foundation, eligibility criteria for the award of grants, appropriate matching contributions from grant recipients, and evaluation and reporting requirements.

(5) The foundation shall be attached to the office of the secretary for the Education, Arts, and Humanities Cabinet for administrative purposes only. The Kentucky Arts Council shall provide to the foundation by agreement staff support and office facilities for which reasonable charges and fees may be levied against the foundation fund.

(6) The foundation board shall submit an annual report to the Governor and the Legislative Research Commission listing the sources of funds acquired and expended.

Section 26. KRS 177.366 is amended to read as follows:

(1) Except as provided in subsection (8) of this section, on and after July 1, 1980, the Finance and Administration Cabinet shall allocate to each incorporated city and "unincorporated urban place" its pro rata share of the funds set apart for construction, reconstruction, and maintenance of urban roads and streets on the basis of the ratio which the population in the incorporated cities and in "unincorporated urban places" bears to the total population in incorporated cities and in "unincorporated urban places" of the state. "Unincorporated urban places" as used here, means an area as defined in KRS 81.015, and any area outside of incorporated cities, which area has a population of 2,500 or more as shown by the most recent decennial census of the United States Bureau of the Census, and all populations shall be determined by the most recent decennial census of the United States.

(2) Any area which becomes incorporated after December 31, 1970, shall not be eligible to participate in the Municipal Aid Program until the beginning of the second fiscal year following its incorporation and population certification. It shall be the responsibility of the newly incorporated area to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population of the newly incorporated area as it existed at the time of the last decennial census.

(3) In the event the newly incorporated area cannot obtain a population count from the Bureau of the Census, it shall not be eligible to participate in the Municipal Aid Program until the next decennial census.

(4) If an incorporated city, whose incorporation took place prior to December 31, 1970, annexes additional area, the population of the annexed area will not be counted in the allocation of municipal aid funds until the beginning of the second fiscal year following annexation and population certification.

(5) It shall be the responsibility of the incorporated city to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population for the annexed area as it existed at the time of the last decennial census.

(6) If the incorporated area cannot obtain a population count from the Bureau of the Census, the annexed area's population shall not be eligible to be counted in the distribution of the municipal aid fund. However, the streets included in the annexed areas shall be eligible to receive work through this program.

(7) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the ***Office of State Budget Director***[~~Finance and Administration Cabinet~~] and shall be adjusted quarterly in accordance with the most recent revision of the estimates by the ***Office of State Budget Director***[~~Finance and Administration Cabinet~~].

(8) Any local government eligible to receive municipal road aid moneys pursuant to KRS 177.365 to 177.369 shall be required to submit a uniform financial information report to the Department for Local Government pursuant to KRS 65.905 before any payment of municipal road aid funds shall be made. The Department for Local Government shall notify the Finance and Administration Cabinet no later than March 1 annually of any local government that has not submitted a uniform financial information report. The Finance and Administration Cabinet shall upon notification by the department, immediately suspend all municipal road aid moneys to the local government until the local government complies with the provisions of KRS 65.900 to 65.915 and submits the uniform financial information report to the Department for Local Government. The department shall immediately notify the Finance and Administration Cabinet to reinstate municipal road aid moneys to any local government affected by this subsection as soon as the local government submits the uniform financial information report.

Section 27. KRS 247.946 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 247.940 to 247.978 including, but without limiting the generality of the foregoing, the power:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, administrative regulations, and policies in connection with the performance of its functions and duties;

(2) To review the projects authorized to be financed by KRS 247.940 to 247.978 in order to determine the following:

(a) The qualifications of the applicant as a party entitled to financing assistance under the provisions of KRS 247.940 to 247.978 and the rules and administrative regulations of the corporation;

(b) The qualifications of the applicant in the areas of experience, training, and financial ability in relation to the project for which assistance is sought and any other areas as the corporation shall determine necessary and desirable in implementing the intent of KRS 247.940 to 247.978 in the promotion of agriculture throughout the Commonwealth. Analysis shall include a careful evaluation of character, experience, record, and prospects for sound financial management and sound operation of the project. Financial ability factors to be considered shall include the applicant's total assets controlled, equity owned, contingent liabilities, history of earnings to date, and repayment capacity, as well as other factors set by the corporation. Consideration may be given to the special needs of beginning farmers;

(c) The economic need for the project in the area based upon general economic conditions and unemployment in the region;

(d) The economic soundness of the project based upon generally accepted cost-benefit methodology; and

(e) Consistency of the project with other policies of the Commonwealth designed to ensure a sustained land base for agriculture including preservation of prime farmland and promotion of soil conservation techniques for protection of farmland;

(3) To issue from time to time bonds, notes, bond anticipation notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, debentures, warrants, commercial paper, or other obligations or evidence of indebtedness, hereinafter collectively referred to as "bonds" or "notes," to provide funds for and to fulfill and achieve its authorized public functions or corporate purposes, as set forth in the provisions of KRS 247.940 to 247.978; and in addition to the powers conferred hereunder, to have all the authority delegated to cities and counties pursuant to the provisions of KRS 103.200 to 103.285; provided, however, that bonds or notes issued by the corporation shall not be subject to the jurisdiction or approval of the Industrial Revenue Bond Oversight Committee or the State Property and Buildings Commission but shall be subject to the review of the Office of Financial Management~~[and Economic Analysis]~~;

(4) To make or participate in the making of insured mortgage loans to qualified applicants for the purpose of purchasing agricultural real estate and improvements;

(5) To purchase or participate in the purchase of mortgage loans made to qualified applicants for the purpose of purchasing agricultural real estate and improvements;

(6) To make or participate in the making of loans to qualified applicants for the purpose of purchasing machinery, equipment, and livestock;

(7) To purchase or participate in the purchase of loans to qualified applicants for the purpose of purchasing machinery, equipment, and livestock;

(8) To make or participate in the making or to purchase or participate in the purchase of loans to qualified applicants for the purpose of leasing equipment, introducing new agricultural commodities or enhancing agricultural markets;

(9) To collect and pay reasonable fees and charges in connection with making, purchasing, and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;

(10) To acquire real and personal property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, and operate real and personal property; to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber real and personal property where necessary or appropriate to the purposes of the corporation subject to the rights of holders of the bonds of the corporation, at public or private sale, with or without public bidding;

(11) To sell, at public or private sale, all or any part of any real estate mortgage or chattel mortgage or other instrument or document securing any loan permitted by KRS 247.940 to 247.978;

(12) To procure insurance against any loss in connection with its operations in the amounts and from any insurers, as it may deem necessary or desirable;

(13) To consent, whenever the corporation deems necessary or desirable in the fulfillment of its corporate purposes, to the modification of interest rates, time of payment of principal or interest, or any other terms of any loan, contract, or agreement of any kind to which the corporation is a party;

(14) To include in any borrowing those amounts deemed necessary by the corporation to pay financing charges, capitalized interest, consultant, advisory, and legal fees and any other expenses necessary or incident to any borrowing;

(15) To make and publish administrative regulations respecting its lending programs and any other rules and regulations as are necessary to effectuate its corporate purposes;

(16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of KRS 247.940 to 247.978;

(17) To accept gifts, devises, bequests, grants, loans, appropriations, and other assistance and any other aid from any source whatsoever and to agree to and to comply with conditions attached thereto;

(18) To sue and be sued in its own name and in the name of any subsidiary corporation or entity which may be created pursuant to subsection (28) of this section;

(19) To maintain an office in the city of Frankfort and at any other place or places as it may determine;

(20) To employ fiscal consultants, engineers, attorneys, appraisers, and such other agents and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor;

(21) To invest any funds held in sinking funds, reserve funds, or trust fund accounts or any moneys not required for immediate disbursement by the corporation in:

(a) Obligations of or guaranteed by the Commonwealth, United States of America or their respective agencies and instrumentalities;

(b) Certificates of deposit and other evidences of deposit at state and federal chartered banks and savings and loan associations, fully collateralized as to any principal amount in excess of the amount insured by the United States government or any agency thereof;

(c) A guaranteed investment or similar contract, which provides for the investment of funds at a guaranteed rate of return, with an insurance company or depository financial institution with a claim paying rating of no less than either of the two (2) highest grades given by a nationally recognized rating agency; and

(d) Any other investment authorized by law for the investment of funds of the Commonwealth;

(22) Subject to the rights of holders of bonds of the corporation, to renegotiate, refinance, or foreclose on any mortgage, security interest, or lien; or commence any action to protect or enforce any right or benefit conferred upon the corporation by any law, mortgage, security interest, lien, contract, or other agreement; and bid for and purchase property at any foreclosure or at any other sale or otherwise acquire or take possession of any property; and in any such event, the corporation may complete, administer, pay the principal of and interest on any obligation incurred in connection with the property, dispose of and otherwise deal with the property in any manner as may be necessary or desirable to protect the interest of the corporation or of holders of its bonds therein;

(23) To insure, coinsure, reinsure, or cause to be insured, coinsured or reinsured, agricultural loans, mortgage loans, or mortgages, or any other type of loans, and pay or receive premiums on insurance, coinsurance, or reinsurance, and establish reserves for losses, and participate in the insurance, coinsurance, or reinsurance of agricultural loans, mortgage loans or mortgages, or any other type of loans with the federal or state government or any private insurance company;

(24) To undertake and carry out or authorize the completion of studies and analyses of agricultural conditions and needs within the Commonwealth and needs relating to the promotion of agricultural exports and ways of meeting the needs, and make the studies and analyses available to the public and to the agricultural industry, and to engage in research or disseminate information on agriculture and agricultural exports;

(25) To accept federal, state, or private financial or technical assistance and comply with any conditions for assistance, provided that those conditions are not in conflict with the intent of the provisions of KRS 247.940 to 247.978;

(26) To purchase, discount, sell, negotiate and guarantee, insure, co-insure and reinsure notes, drafts, checks, bills of exchange, acceptances, bankers' acceptances, cable transfers, letters of credit, and other evidence of indebtedness;

(27) To serve as the beneficiary of any public trust; and

(28) To create such subsidiary corporations or entities as may be necessary to borrow money, insure or reinsure agricultural loans, or issue bonds.

Section 28. KRS 248.550 is amended to read as follows:

(1) The amount of revenues collected and/or credited to the tobacco research-trust fund shall be appropriated each year to the University of Kentucky Tobacco and Health Research Institute to finance tobacco research projects and programs as provided in KRS 248.510 to 248.570 and shall be expended by the institute only on those projects and programs authorized by the Kentucky Tobacco Research Board.

(2) The ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~ shall supply revenue estimates of the amount of revenue anticipated to be collected during each fiscal year by the added one-half cent ($0.005) tax on cigarettes which estimate, along with any federal funds available, shall be the basis for preparing tobacco research programs and budget requests for each fiscal year.

Section 29. KRS 342.1223 is amended to read as follows:

(1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.

(2) The commission shall:

(a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through

one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities;

(c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Revenue Cabinet, of all entities subject to the assessments imposed in this chapter; and

(h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;

(b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;

(c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;

(d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

(e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and

(f) To make and promulgate administrative regulations.

(4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management~~[and Economic Analysis]~~ rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.

(5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

Section 30. KRS 342.825 is amended to read as follows:

The board shall formulate and adopt an investment policy that safeguards the value of all assets and maximizes investment potential commensurate with risk and liquidity restrictions, and supervise the investment activities of the authority subject to the limitations on domestic insurance companies under KRS Chapter 304. Notwithstanding any provisions of the Kentucky Revised Statutes to the contrary, the authority may utilize the investment expertise and advice of the Office of Financial Management~~[and Economic Analysis]~~ in the~~[Cabinet for]~~ Finance and Administration ***Cabinet***. The authority shall also retain an independent investment counsel or managers who shall be subject to standards applicable to fiduciaries responsible for safeguarding assets of a corporation.

Section 31. The General Assembly confirms Executive Order 99-1439, issued by the Governor on October 26, 1999, to the extent that it is not otherwise confirmed by this Act.

Approved March 3, 2000

CHAPTER 47

(HB 193)

AN ACT relating to state leasing.

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

Section 1. KRS 56.803 is amended to read as follows:

(1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department at least ninety (90) calendar days before the space requested will be required by the agency. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, the commissioner shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency. A copy of the notice shall be kept on file.

(3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.

(5) (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or newspaper advertisements. Each notice shall contain general information concerning the agency requirements for the space sought and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be stated in the notice.

(b) The Department for Facilities Management may use any means available to notify landlords that a notice has been given.

(6) A property owner, or his representative, shall respond in writing on or before the time and date designated in the notice and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the notice.

(7) All written responses received on or before the time and date designated shall be opened or downloaded at the same time, publicly read or posted, and kept on file by the department.

(8) Within five (5) days of the opening of written responses, the department shall transmit general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be transmitted to each person.

(9) After the general requirement specifications have been transmitted, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be notified of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each notice shall be kept on file.

(10) The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a

site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.

(11) After the commissioner has reviewed the completed site evaluation forms, the commissioner shall inform each owner of property, or his representative, of the steps necessary to bring the property up to general and specific requirement specifications. The commissioner shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be provided to each bidder. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated.

(12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.

(13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:

(a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;

(b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.

(14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the general and specific requirement specifications.

(b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.

(15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:

(a) Choose the best proposal in the interest of the Commonwealth;

(b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or

(c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors

stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.

(16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.

(b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.

(17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.

(18) The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, ~~[and]~~the head of the agency that will occupy the leased space***, and all agency employees who were directly involved with a site evaluation or lease negotiations*** shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file ***and shall inform state agencies of the legal requirements concerning lease certification on an annual basis***.

(19) The department shall notify each person who submitted a written response on or before the time and date designated in the public notice pursuant to subsection (6) of this section, but who was not awarded the lease, of the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each notice shall state that fact. A copy of each notice shall be kept on file.

Approved March 3, 2000

CHAPTER 48

(SCR 20)

A CONCURRENT RESOLUTION designating the Louisville Pipe Band as the official Pipe Band of Kentucky.

WHEREAS, the Louisville Pipe Band is a musical and educational organization dedicated to furthering the Celtic arts of piping and drumming through public performances and band and solo competition and instruction, and the band is a non-profit corporation that relies on performance fees, private donations, and corporate sponsorships to facilitate teaching programs and travel to competitions; and

WHEREAS, the Louisville Pipe Band is a competitive Grade Four pipe band based in Jefferson County; this is the band's second year as a partner in the Louisville & Nashville Pipe Band Project; and, in 1999, the band established itself as a contender by placing second in a field of fifteen in their grade at the United States Open Pipe Band Championships at Alma, Michigan, and securing three first-place finishes in the Eastern United States Pipe Band Association competitions; and

WHEREAS, the Louisville Pipe Band actively participates as a member of the Eastern United States Pipe Band Association, Southern Branch, and the band retains world class piping and drumming instructors for workshops with participation open to all who share an appreciation of piping and drumming; and

WHEREAS, the Louisville Pipe Band actively supports many public events, including the Kentucky Derby Parade, Shakespeare in the Park, and the Commonwealth's two great Highland games: Kentucky Scottish Weekend and the Glasgow Highland Games; and

WHEREAS, the Louisville Pipe Band is proudly uniformed in ancient Henderson tartan kilts in honor of Colonel Richard Henderson, whose Transylvania Company established the first settlement in Kentucky, and employed Daniel Boone as a trailblazer; and

WHEREAS, the Louisville Pipe Band has been invited to represent the Commonwealth of Kentucky at the World Pipe Band Championships in Glasgow, Scotland, in August, 2000, and this unique opportunity to participate in this international event gives recognition to the talent, accomplishments, and dedication of the Louisville Pipe Band;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. The Louisville Pipe Band is hereby designated the official Pipe Band of Kentucky for the purpose of representing the Commonwealth of Kentucky in the ceremony of international significance at the World Pipe Band Championships in Glasgow, Scotland, in August, 2000.

Section 2. The General Assembly of the Commonwealth of Kentucky praises and highly commends the Louisville Pipe Band members for their excellent performances, and they are hereby designated as goodwill ambassadors for the Commonwealth of Kentucky in their appearances at the World Pipe Band Championships.

Section 3. The Clerk of the Senate is hereby directed to transmit a copy of this Resolution to the Louisville Pipe Band, c/o Dr. Robert Caudill, 17208 Mallet Hill Drive, Louisville, Kentucky 40245.

Approved March 3, 2000

CHAPTER 49

(HB 362)

AN ACT relating to the Justice Cabinet and declaring an emergency.

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

Section 1. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

(1) Office of the Secretary of Justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the Criminal Justice Council. The Parole Board shall be attached to the Office of the Secretary for administrative and support purposes only.

(2) Offices of Deputy Secretaries of Justice.

(3) Office of the General Counsel.

(4) Division of Kentucky State Medical Examiners Office.

(5) Office of Management, Administrative, and Legal Services, which shall be responsible for providing information systems management, investigative services, and legal services to the Office of the Secretary. The office shall be headed by an executive director appointed by the secretary in accordance with KRS 12.050.

Section 2. Whereas the amendment set out in this Act will affect a positive influence upon the health, safety, and welfare of the citizens of the Commonwealth of Kentucky through the more efficient operation of the Kentucky Justice Cabinet and the General Assembly finds that any delay of the implementation of this Act will intolerably delay the provision of the most effective services of the Kentucky Justice Cabinet, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 3, 2000

CHAPTER 50

(HB 192)

AN ACT relating to state leasing.

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

Section 1. KRS 48.111 is amended to read as follows:

(1) The Governor shall include in the executive branch budget recommendation and in the draft branch budget bill for the executive branch submitted to each regular session of the General Assembly pursuant to KRS 48.110, for the biennium period beginning July 1, 1992, and for each biennium thereafter, a recommended program for rental of any space for which the annual rental cost will exceed two hundred thousand dollars ($200,000).

(2) The recommended program for leased space shall include:

(a) A summary description of each specific two hundred thousand dollar ($200,000) lease project recommended for funding during the biennium; and

(b) For each project:

1. The name of the agency for which space will be leased;

2. The purpose and justification for the lease;

3. Whether the lease contains a purchase option which will be exercised during the biennium pursuant to KRS 56.806(4) and the estimated purchase price;

4. a. Whether the lease contains a lease-purchase which will be completed during the biennium pursuant to KRS 56.806(5) prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease; and

   b. The estimated sum of money that will have to be paid in addition to rent paid to complete the purchase;

5. The estimated cost of the lease; and

6. The recommended sources of funds.

(3) All information required by subsection (2) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only the information specified in subparagraphs 1. and 2. of subsection (2)(b) of this section.

(4) Except as provided in subsection (5) of this section, no lease with an annual rental cost which will exceed two hundred thousand dollars ($200,000) shall be executed unless the lease has been identified and included in the branch budget bill. The branch budget bill for the executive branch shall authorize the expenditure by the budget unit that will occupy the premises.

(5) A lease with an annual rental cost exceeding two hundred thousand dollars ($200,000) may be authorized even though it is not specifically listed in the biennial budget report and branch budget bill, subject to the following conditions and procedures:

(a) A lease is awarded as the result of the consolidation of leases in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate; or

(b) A lease is awarded as the result of an agency occupying substantially less space than it should, under the standards for space set by the Department for Facilities Management, in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate. The space allocated under the new lease shall not exceed the space which should be allocated pursuant to the standards for space; or

(c) ***A lease with an annual rental cost of less than two hundred thousand dollars ($200,000) is renewed or replaced for an annual rental cost that exceeds two hundred thousand dollars ($200,000), but only if that request and subsequent renewal or replacement lease is:***

1. From the same state agency lessee whose initial lease was under two hundred thousand dollars ($200,000);

2. For the same or substantially the same square footage as the initial lease that was under two hundred thousand dollars ($200,000);

3. The result of the competitive leasing process authorized by KRS 56.803;

4. For an annual lease payment of less than two hundred and fifty thousand dollars ($250,000); and

5. Effective only until June 30 of the next even numbered year unless authorized in the biennial budget report and branch budget bill; or

(d) A lease is awarded as the result of an emergency in which case the provisions of KRS 56.805(3) and (4) and KRS 56.823(5) shall apply; or

(e)[~~(d)~~] 1. Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds; and

2. Money specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallotted for expenditure on the lease. Money utilized shall not jeopardize any existing program and shall not require the use of current general funds specifically dedicated to existing programs; and

3. The Finance and Administration Cabinet shall comply with the requirements of subsection (6) of this section.

(6) (a) No later than five (5) business days after an advertisement for lease proposals pursuant to paragraph (a) or (b) of subsection (5) of this section, the cabinet shall provide the Capital Projects and Bond Oversight Committee with a copy of the advertisement and shall state in writing to the committee that the copy is being provided in compliance with this paragraph.

(b) Prior to final authorization of a lease pursuant to paragraph ***(e)***[~~(d)~~] of subsection (5) of this section, the cabinet shall report to the Capital Projects and Bond Oversight Committee:

1. The name of the agency for which space will be leased;

2. The purpose and justification for the lease;

3. The estimated cost of the lease;

4. The source of funds; and

5. Whether the requirements of paragraph ***(e)***[~~(d)~~] of subsection (5) of this section have been met.

(c) Within thirty (30) days after the report required in paragraph (b) of this subsection has been submitted to the committee, the committee shall conduct its review and decide whether to approve or disapprove the proposed lease authorization. The Legislative Research Commission shall promptly transmit the committee's findings and determinations to the Finance and Administration Cabinet.

(d) If the committee disapproves a proposed lease authorization, the secretary of the Finance and Administration Cabinet shall:

1. Revise the proposed lease authorization to comply with the objection of the committee; or

2. Cancel the proposed lease authorization; or

3. Determine to proceed with the proposed lease authorization disapproved by the committee.

(e) The decision made by the secretary of the Finance and Administration Cabinet under paragraph (d) of this subsection shall be communicated to the committee in writing within thirty (30) days of the committee's disapproval.

(f) The Legislative Research Commission shall maintain records of the committee's disapproval of a proposed lease authorization and the cabinet's report of its actions on a disapproved proposed lease authorization. If the committee disapproves a proposed lease authorization, the Legislative Research Commission shall transmit the committee's disapproval and the cabinet's action on the disapproval to the appropriate interim joint committee of the Legislative Research Commission and to the General Assembly when next convened.

(g) If after committee review a lease is authorized, the lease shall be awarded pursuant to the provisions of KRS 56.800 to 56.823 and this section, KRS 43.050, and KRS 48.190 and shall be subsequently reviewed pursuant to the appropriate subsection of KRS 56.823.

Approved March 3, 2000

CHAPTER 51

(HB 92)

AN ACT relating to reorganization.

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

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following offices and divisions:

(1) Office of Management and Administration, containing the:

(a) Division of Administrative Services;

(b) Division of Facilities;

(c) Bluegrass Station Division; and

(d) Division of Air Transport;

(2) Division of Disaster and Emergency Services;

(3) Office of the Chief of Staff for Federal Army Guard;

(4) Office of the Chief of Staff for Federal Air Guard;~~[and]~~

(5) ***Kentucky Guard Youth Challenge Division; and***

(6) Kentucky Civil Air Patrol.

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment

to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. The General Assembly hereby confirms Executive Order 98-1397, issued by the Governor on October 19, 1998, to the extent that it is not otherwise confirmed by Section 1 of this Act.

Approved March 3, 2000

CHAPTER 52

(HB 46)

AN ACT relating to the Kentucky Higher Education Student Loan Corporation.

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

Section 1. KRS 164A.080 is amended to read as follows:

(1) The corporation may provide for the issuance, at one (1) time or from time to time, of not exceeding ***nine hundred fifty million dollars ($950,000,000)***~~[five hundred fifty-three million dollars ($553,000,000)]~~ in bonds of the corporation to carry out and effectuate its corporate purposes and powers. In anticipation of the issuance of bonds, the corporation may provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on bonds or notes shall be payable solely from the funds provided for payment. Any notes may be made payable from the proceeds of bonds or renewal notes or, if bond or renewal note proceeds are not available, notes may be paid from any available revenues or assets of the corporation. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at the price or prices and under the terms and conditions determined by the corporation. Any bonds or notes shall bear interest at a rate or rates determined by the corporation. Notes shall mature at a time or times not exceeding five (5) years from their date or dates and bonds shall mature at a time or times not exceeding thirty (30) years from their date or dates, as determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state. If any officer whose signature or a facsimile of whose signature appears on any bonds or notes or coupons attached to them shall cease to be an officer before the delivery of the bonds or notes, the signature or facsimile shall be valid and sufficient for all purposes as if he had remained in office until the delivery. The corporation may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation authorizing the sale of its bonds or notes, the bonds or notes may be sold in a manner, either at public or private sale, and for a price the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter if the sale is approved by the corporation.

(2) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued and shall be disbursed in a manner and under restrictions, if any, the corporation may provide in the resolution authorizing the issuance of bonds or notes or in the trust agreement securing the bonds or notes. The principal of and interest on any bonds issued by the corporation shall be payable only from the proceeds derived by the corporation from insured student loans made and purchased from the proceeds of the bonds.

(3) (a) Prior to the issuance of any bonds or notes that are not secured by the repayment of student loans at least ninety-five percent (95%) insured by the guarantee agency and reinsured by the United States of America, the corporation shall obtain approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1). This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bond or note.

(b) Notwithstanding paragraph (a) of this subsection, if during the interim of sessions of the General Assembly, the federal act is amended to reduce to less than ninety-five percent (95%) the maximum rate of insurance payable by the guarantee agency or reinsurance payable by the Secretary of Education of the United States on insured student loans, upon notification by the corporation to the Legislative Research Commission of the change in the federal act, the corporation may, until the adjournment of the next regular session of the General Assembly, issue bonds or notes for student loans insured by the guarantee agency and reinsured by the Secretary of Education of the United States to the maximum extent permitted by the federal act.

Approved March 3, 2000

CHAPTER 53

(HB 2)

AN ACT relating to campaign expenditures.

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

Section 1. KRS 119.205 is amended to read as follows:

(1) Any person who makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.

(2) Any person who solicits, accepts, or receives any such expenditure as payment or consideration for his vote, or the withholding of his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.

(3) ***Any person who makes or offers to make an expenditure to any person to sign a petition to have a public question placed on the ballot, or any person who solicits, accepts, or receives any such expenditure as payment or consideration to sign a petition to have a public question placed on the ballot, shall be guilty of a Class B misdemeanor.***

(4) For purposes of this section, "expenditure" means any of the following when intended as payment or consideration for ***voting or withholding*** a vote~~[, or the withholding of a vote]~~,

voting for or against any candidate or public question***, or signing a petition to have a public question placed on the ballot***:

(a) A payment, distribution, loan, advance, deposit, or gift of money or anything of value; or

(b) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

"Expenditure," as used in this section, shall not include the distribution of materials bearing the name, likeness, or other identification of a candidate, political party, committee, or organization, or position on a public question and not intended as payment or consideration for ***voting or withholding*** a vote~~[, or the withholding of a vote]~~, ***voting*** for or against any candidate or public question***, or signing a petition to have a public question placed on the ballot***.

(5)~~[(4)]~~ Any candidate or committee, or any person on his behalf, who pays any person, including campaign workers, for transporting voters to the polls on the day of the election, shall make all payments by check. All payments, regardless of amount, shall be reported to the Registry of Election Finance in the manner that the Registry shall provide by administrative regulation. Any person who knowingly violates any requirement of this subsection shall be guilty of a Class B misdemeanor.

(6)~~[(5)]~~ In addition to the above provisions, a person may be convicted of a violation of this section pursuant to KRS 502.020.

Approved March 3, 2000

CHAPTER 54

(SCR 16)

A CONCURRENT RESOLUTION reauthorizing the Task Force on Funding for Wildlife Conservation.

WHEREAS, the Task Force on Funding for Wildlife Conservation was authorized by the 1996 Regular Session of the General Assembly and presented recommendations to the 1998 General Assembly; and

WHEREAS, these recommendations cover a broad range of policy, regulatory, and legislative changes; and

WHEREAS, the Task Force on Funding for Wildlife Conservation was reauthorized by the 1998 Regular Session of the General Assembly; and

WHEREAS, important issues in this area will require the oversight and continued attention of this task force;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. The Task Force on Funding for Wildlife Conservation is reauthorized with its original membership. The task force shall convene once in 2000 and twice in 2001 to assess the progress being made toward implementing the recommendations from its October 1997 report.

Section 2. The task force shall report its findings to the Interim Joint Committee on Agriculture and Natural Resources and the Interim Joint Committee on Appropriations and Revenue before October 31, 2001.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 3, 2000

CHAPTER 55

(HB 166)

AN ACT relating to child support.

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

Section 1. KRS 405.435 is amended to read as follows:

(1) An employer or labor organization in the Commonwealth of Kentucky shall provide information to the Cabinet for Families and Children when that employer or labor organization hires an employee who resides or works in the Commonwealth, or rehires or permits the return to work of an employee who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment, unless the reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission as determined by the secretary of families and children.

(2) The employer shall provide the information within twenty (20) days of the hiring or return to work of the employee. The information shall include:

(a) The employee's name, address, and Social Security number; and

(b) The employer's name, address, and, if the employer has been assigned one, federal and state employer identification numbers.

(3) An employer shall report the required information by submitting a copy of the employee's W-4 form or, at the option of the employer, an equivalent form provided by the Cabinet for Families and Children as prescribed by administrative regulation promulgated by the Cabinet for Families and Children in accordance with KRS Chapter 13A.

(4) The Cabinet for Families and Children shall enter all new hire information into the database of the cabinet within five (5) business days.

(5)[~~ An employer shall not be required to report the information when the hiring, rehiring, or returning to work involves:~~

~~(a) An employee to whom the employer pays wages of less than three hundred dollars ($300) each month; or~~

~~(b) An employee who is under eighteen (18) years of age.~~

~~(6)]~~ The Cabinet for Families and Children may promulgate administrative regulations in accordance with KRS Chapter 13A if the Cabinet for Families and Children determines exceptions are needed to reduce unnecessary or burdensome reporting or are needed to facilitate cost-effective operation of the cabinet under this section.

(6)~~[(7)]~~ The Cabinet for Families and Children shall use the information collected pursuant to this section for the location of noncustodial parents, establishment, modification, and enforcement of child support and any other matter related to paternity or child support.

(7)~~[(8)]~~ If the employer fails to report as required by this section, the Cabinet for Families and Children shall give the employer written notice of the provisions of this section, including the penalty for failure to report.

(8)~~[(9)]~~ If the employer has not filed a report within twenty (20) days from the date that the written notice is sent to him, the Cabinet for Families and Children shall send a second written notice.

(9)~~[(10)]~~ If the employer fails to file a W-4 or equivalent form within twenty (20) days from the date that the second written notice is sent, or supplies a false or incomplete report, and the failure is a result of a conspiracy between the employee and the employer to prevent the proper information from being filed within twenty (20) days from the date that the second written notice is sent, the Cabinet for Families and Children shall send the employer by certified mail, return receipt request, notice of an administrative fine. The fine shall be two hundred fifty dollars ($250) per calendar month per person for any violation occurring after the second notice has been given, and continuing until a W-4 or equivalent form is received by the Cabinet for Families and Children. No fine shall be imposed for any period of less than one (1) full calendar month.

(10)~~[(11)]~~ The employer shall have ten (10) days after receipt of the administrative fine notice to request a hearing before the Cabinet for Families and Children on whether the administrative fine was properly assessed. If a timely request for a hearing is received, the Cabinet for Families and Children shall schedule and conduct a hearing in accordance with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

Approved March 3, 2000

CHAPTER 56

(HB 84)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1673, dated December 18, 1998, which abolishes the Division of Administration and Development, the Division of Facilities and Alternative Services and the Division of Individual and Clinic Providers from the Department for Medicaid Services and creates the following: 1) Division of Physical Health Programs; 2) Division of Children's Health Programs, 3) Division of Long Term Care Programs; 4) Division of Behavioral Health Programs; 5) Division of Financial Systems; 6) Division of Member and Provider Services; 7) Division of Quality Improvement; and 8) Division of Management Information Systems.

Approved March 3, 2000

CHAPTER 57

(HB 18)

AN ACT relating to insurance agents.

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

Section 1. KRS 304.9-270 is amended to read as follows:

(1) Each insurer appointing an agent in this state shall ***obtain approval of the appointment from the commissioner by filing***~~[file]~~ with the commissioner the ***notice of*** appointment in writing, specifying the kinds of insurance or classifications thereof to be transacted by the agent for the insurer, and submit the license fee with the license application and the appointment fee with every appointment thereafter, or license fee in the case of limited licenses, as specified in KRS 304.4-010.

(2) ***No agent shall claim to be an agent or representative of, or in any way imply a contractual relationship with, a particular insurer, or place applications for insurance with an insurer unless the agent becomes an appointed agent of that insurer and the agent's appointment has been approved by the commissioner.***

(3) An agent may act as a representative of and place insurance with an insurer without first obtaining approval of the appointment by the commissioner for a period of thirty (30) days from the date the first insurance application is executed by the agent subject to the following criteria:

(a) The agent has filed with the commissioner, and thereafter kept in force, evidence of financial responsibility in the sum of not less than one million dollars ($1,000,000) per occurrence, and the sum of two million dollars ($2,000,000) in the aggregate, for all such occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. Such a policy, bond, deposit, or combination shall not be terminated unless at least thirty (30) days' prior written notice is given to the licensee and the commissioner.

(b) If the agent does not receive from the insurer acknowledgment that the agent's appointment has been approved by the commissioner within thirty (30) days from the date the first insurance application is executed, the agent shall immediately

discontinue acting as an agent on behalf of the insurer until acknowledgment is received.

(4) (a) The insurer shall, no later than forty-five (45) days from the date the agency contract is executed or the first insurance application is submitted by an agent, whichever is earlier, file with the commissioner a written notice of appointment on a form prescribed by the commissioner.

(b) If there is no executed agency contract, the insurer shall also mail to the agent, within the same forty-five (45) day period specified in paragraph (a) of this subsection, a copy of the notice of appointment form filed with the commissioner.

(5) Within fifteen (15) days of receipt of the notice of appointment, the commissioner shall determine and notify the insurer whether the agent is eligible for appointment. If the agent's license is in good standing and no other grounds exist to deny the appointment, the commissioner shall approve the appointment.

(6) Subject to continuation by the insurer as provided in subsection ***(4)***~~[(3)]~~ of this section, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in KRS 304.9-280.

(7)~~[(3)]~~ Biennially, before January 31, the department shall distribute to each insurer a listing of the names and addresses of that insurer's agents whose appointment, or licenses in the case of limited licenses, were in effect during the proceeding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall remain in effect as to the kinds of insurance or classifications thereof for which the respective agents are currently appointed, and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall submit the continuation of appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010, for each appointment not terminated on or prior to December 31 of the preceding calendar year. Any appointment or license not expressly terminated shall continue, unless otherwise terminated, canceled, suspended, or revoked by the department of insurance.

Section 2. KRS 304.9-080 is amended to read as follows:

(1) No person shall in this state be, act as, or hold himself out as an agent, solicitor, consultant, or adjuster unless then licensed as an agent, solicitor, consultant, or adjuster respectively.

(2) No agent, or solicitor shall solicit or take applications for, procure or place for others any kind of insurance as to which he is not then licensed. No consultant shall act as such with respect to any kind of insurance as to which he is not then licensed as a consultant.

(3) A consultant license must cover either or both of the following categories, as selected by the licensee:

(a) General lines;

(b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

(4) No person licensed as a consultant shall act as a consultant until he has filed with the commissioner a bond or insurance as prescribed in KRS 304.9-330.

(5) Except as provided in KRS 304.9-410 ***and subsection (3) of Section 1 of this Act***, no agent shall place, and no insurer shall accept, any insurance with any insurer as to which he does not then hold a license and appointment as agent under this subtitle.

(6) The commissioner shall prescribe and furnish all forms required under this subtitle as to licenses and appointments.

Approved March 3, 2000

CHAPTER 58

(HB 355)

AN ACT relating to visitation rights.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the provisions of KRS 403.320, if a parent of a child is convicted of murder or manslaughter in the first degree of the other parent, a court shall not grant the convicted parent visitation rights with respect to that child unless the court, through a hearing, determines that visitation is in the child's best interest.

(2) If the court later modifies a denial of visitation to grant visitation, the court shall do so only after a hearing which establishes that visitation is in the child's best interest.

(3) In any hearing conducted under subsection (1) or (2) of this section:

(a) Jurisdiction shall lie with the Circuit Court of the county where the child resides; and

(b) The convicted parent, to obtain visitation, shall have to meet the burden of proving that visitation is in the child's best interest.

Section 2. This Act may be cited as the Roxie Denkhoff Act.

Approved March 6, 2000

CHAPTER 59

(HB 222)

AN ACT relating to the designation of the Commonwealth's official steam locomotive.

WHEREAS, the Commonwealth's rich and vibrant railroad history, including the construction of America's second steam locomotive and the laying of one of the earliest railroads in the United States from Lexington to Frankfort and on to Louisville, has been and continues to be a source of pride and honor for the thousands of dedicated employees involved in making that history and to every Kentuckian who benefits from the transportation revolution that the railroads brought to this Commonwealth; and

WHEREAS, it is perhaps the steam locomotive which best exemplifies and symbolizes the historic growth of the railroad industry in the Commonwealth, continued today with the modern power of the Commonwealth's world class railroad companies; and

WHEREAS, there exists in Kentucky a special steam locomotive known affectionately far and wide as "Ol' Number 152" which annually pulls thousands of visitors behind her as she majestically strides along the high iron as the only regularly operating steam locomotive in Kentucky; and

WHEREAS, in pulling express passenger trains from Louisville to points throughout the South or serving the vibrant rural communities of Kentucky, and in being tapped by the Louisville and Nashville Railroad to pull trains for such notable dignitaries as Theodore Roosevelt or such notorious criminals as Al Capone, steam locomotive #152 distinguished itself in its service to the people of this great nation and the citizens of this proud Commonwealth; and

WHEREAS, the volunteers of the Kentucky Railway Museum, in tirelessly laboring over thirteen years to transform steam locomotive #152 from an engine facing the scrapyard to the pride of the Commonwealth which it is today, giving of themselves in time, effort, and money, provide an example to us all of the civic pride and involvement which typify the conduct to be found in and give true meaning to the term "Commonwealth;"

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

Steam locomotive #152, a 4-6-2 Light Pacific, formerly of the Louisville and Nashville Railroad and restored to operation by the volunteer members of the Kentucky Railway Museum, is named and designated as the official steam locomotive of the Commonwealth of Kentucky.

Approved March 6, 2000

CHAPTER 60

(HB 170)

AN ACT relating to child protection.

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

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

(a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

(b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);

(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

(g) Abandons or exploits the child;~~[or]~~

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; ***or***

(i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;

(2) ***"Aggravated circumstances" means the existence of one or more of the following conditions:***

(a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;

(b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;

(c) The parent has sexually abused the child and has refused available treatment;

(d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or

(e) The parent has caused the child serious physical injury;

(3) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(4)~~[(3)]~~ "Cabinet" means the Cabinet for Families and Children;

(5)~~[(4)]~~ "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;

(6)[~~(5)~~] "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(7)[~~(6)~~] "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(8)[~~(7)~~] "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(9)[~~(8)~~] "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(10)[~~(9)~~] "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;

(11)[~~(10)~~] "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(12)[~~(11)~~] "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(13)[~~(12)~~] "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(14)[~~(13)~~] "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(15)[~~(14)~~] "Deadly weapon" has the same meaning as it does in KRS 500.080;

(16)[~~(15)~~] "Department" means the Department for Social Services;

(17)[~~(16)~~] "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(18)[~~(17)~~] "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention;

(19)[~~(18)~~] "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(20)[~~(19)~~] "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(21)[~~(20)~~] "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;

(22)[~~(21)~~] "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(23)[~~(22)~~] "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;

(24)[~~(23)~~] "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(25)[~~(24)~~] "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(26)[~~(25)~~] "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(27)[~~(26)~~] "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(28)[~~(27)~~] "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(29)[~~(28)~~] "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(30)[~~(29)~~] "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(31)[~~(30)~~] "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(32)[~~(31)~~] "Juvenile holding facility" means a physically secure setting, approved by the Department of Juvenile Justice, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;

(33)[~~(32)~~] "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(34)[~~(33)~~] "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(35)[~~(34)~~] ""Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;

(36)[~~(35)~~] Needs of the child" means necessary food, clothing, health, shelter, and education***;***[~~.~~]

(37)[~~(36)~~] "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(38)[~~(37)~~] "Parent" means the biological or adoptive mother or father of a child;

(39)[~~(38)~~] "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(40)[~~(39)~~] "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(41)[~~(40)~~] "Physical injury" means substantial physical pain or any impairment of physical condition;

(42)[~~(41)~~] "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(43)[~~(42)~~] "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(44)[~~(43)~~] "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

(45)[~~(44)~~] "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(46)[~~(45)~~] "School personnel" means those certified persons under the supervision of the local public or private education agency;

(47)[~~(46)~~] "Secretary" means the secretary of the Cabinet for Families and Children;

(48)[~~(47)~~] "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(49)[~~(48)~~] "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(50)[~~(49)~~] "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(51)[~~(50)~~] "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(52)[~~(51)~~] "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(53)[~~(52)~~] "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(54)[~~(53)~~] "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(55)[~~(54)~~] "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(56)[~~(55)~~] "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and

(57)[~~(56)~~] "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 2. KRS 610.010 is amended to read as follows:

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:

(a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

(b) Has not subjected himself to the reasonable control of his parent or guardian, school personnel, or other person exercising custodial control or supervision of the child;

(c) Is an habitual truant from school;

(d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;

(e) Is dependent, neglected, or abused; or

(f) Is mentally ill.

(2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.

(3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.

(4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.

(5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.

(6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights.

(7) The court shall have no jurisdiction to make permanent awards of custody of a child ***except as provided by Section 5 of this Act.***[~~, but~~]

(8) If the court finds an emergency to exist affecting the welfare of a child, it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.

(9)[~~(7)~~] The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence or the county wherein the offense was committed, as the case may be.

(10)[~~(8)~~] Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.

(11)[~~(9)~~] Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.

(12)[~~(10)~~] Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.

(13)[~~(11)~~] The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct ***permanency***[~~dispositional~~] hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Section 3. KRS 610.125 is amended to read as follows:

(1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a ***permanency***[~~dispositional review~~] hearing no later than twelve (12) months after the date the child is considered to have entered foster care, and every twelve (12) months thereafter if custody and out-of-home placement continues, to determine the future status of the child. For purposes of this section, a child shall be considered to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty (60) days after the date on which the child is removed from the home.

The court shall address the following areas:

(a) If parental rights have not been terminated, whether the child should be returned to the parent;

(b)[~~ Whether the child should continue in out-of-home care for a specified period of time;~~

~~(c)~~] Whether the child should be placed for adoption;[~~ and~~]

(c) Whether the child should be placed with a permanent custodian; and

(d) Whether ***the cabinet has documented a compelling reason that it is in the best interest of the child to be placed in another planned permanent living arrangement other than those listed in this subsection***[~~special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis~~].

(2) If the cabinet or the Department of Juvenile Justice determines that reasonable efforts to reunify the child with the child's ***parent***[~~family~~] will not be made, the cabinet or Department of Juvenile Justice shall file a case permanency plan as defined by KRS 620.230 or case progress report with the court that documents the reasons for not making reasonable efforts. The court shall hold a ***permanency***[~~dispositional review~~] hearing within thirty (30) days of the filing of the cabinet's or Department of Juvenile Justice's plan or report with the Court.

(3) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the

time established in subsection (1) of this section, and shall further inform the court of the name and address of the child's foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; and foster care review board member assigned to the case. For the hearing to be held pursuant to subsection (2) of this section, the names and addresses of the persons identified in this subsection shall be provided in the case permanency plan or case progress report to be filed with the court. The court shall set a time for the hearing and notify the child's parent, foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; foster care review board member assigned to the case; attorney for the child; attorney for the parent, if any; and the Department of Juvenile Justice or the cabinet.

(4) The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last ***permanency***~~[dispositional]~~ hearing, including the following:

(a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;

(b) The number, location, and date for each placement during the total period of the child's commitment;

(c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;

(d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;

(e) The familial and institutional barriers to:

1. Returning the child to the home;

2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and

3. Delivery of appropriate services needed by the child;

(f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;

(g) An evaluation of the child's current placement and services provided to the child;

(h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and

(i) Recommendations as to the permanency goal for the child.

(5) The child's parent, foster parent, preadoptive parent, relative providing care to the child, attorney for the parent, attorney for the child, or court-appointed special advocate, if deemed appropriate by the court, may present any evidence relevant to the determination of a permanency goal for the child.

(6) Upon conclusion of the hearing the court shall make a written ***order determining***~~[finding regarding the adequacy of]~~ the permanency plan~~[, the extent to which the permanency plan complies with KRS 620.230(2), and the services intended to achieve permanency]~~ for the child.

(7) If ***necessary, the case may be redocketed for further review of the progress toward the implementation of the permanency plan established at the permanency hearing***~~[the court finds that the permanency plan is not adequate, it shall redocket the case within sixty (60) days for further review]~~.

SECTION 4. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO READ AS FOLLOWS:

Reasonable efforts as defined in KRS 620.020(9) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction determines that the parent has:

(1) Subjected the child to aggravated circumstances as defined in Section 1 of this Act;

(2) Been convicted in a criminal proceeding of having caused or contributed to the death of another child of the parent;

(3) Committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent;

(4) Had their parental rights to another child terminated involuntarily;

(5) Engaged in a pattern of conduct due to alcohol or other drug abuse as defined in KRS 222.005(12) for a period of not less than ninety (90) days that has rendered the parent incapable of caring for the immediate and ongoing needs of the child, and the parent has refused or failed to complete available treatment for alcohol or other drug abuse;

(6) Mental illness as defined in KRS 202A.011(9) or mental retardation as defined in KRS 202B.010(9) or other developmental disability as defined in KRS 387.510(7) that places the child at substantial risk of physical or emotional injury even if the most appropriate and available services were provided to the parent for twelve (12) months; or

(7) Other circumstances in existence that make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child.

Section 5. KRS 620.027 is amended to read as follows:

The District Court has jurisdiction, concurrent with that of the Circuit Court, to determine matters of child custody and visitation in cases ***that come before the District Court*** where the need for a permanent~~[relative]~~ placement and custody order is established as set forth in this chapter~~[and the order is requested by the relative custodian]~~. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to child custody and visitation.~~[In no event shall permanent custody orders be entered if the relative custodian elects to pursue approval as a provisional foster parent with the cabinet.]~~ In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interest of the child.

Section 6. KRS 625.090 is amended to read as follows:

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:

(a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;

2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or

3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and

(b) Termination would be in the best interest of the child.

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

(b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and

3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

(3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents ***unless one or more of the circumstances enumerated in Section 4 of this Act for not requiring reasonable efforts have been substantiated in a written finding by the District Court***;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

(4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.

(5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its discretion may determine not to terminate parental rights.

(6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:

(a) Terminating the right of the parent; or

(b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

Approved March 6, 2000

CHAPTER 61

(HB 113)

AN ACT relating to election precincts.

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

Section 1. KRS 117.055 is amended to read as follows:

Subject to KRS 117.0551 to 117.0555:

(1) Each county shall be divided into election precincts by the county board of elections. Each election precinct shall be composed of contiguous and, as nearly as practicable, compact areas having clearly definable boundaries and wholly contained within any larger district. The county board of election shall establish precincts so that no boundary of a precinct crosses the boundary of:

(a) The Commonwealth;

(b) A county or urban-county;

(c) A congressional district;

(d) A state senatorial district;

(e) A state representative district;~~[or]~~

(f) A justice of the peace or county commissioner's district established under KRS Chapter 67***; or***

(g) An aldermanic ward established under KRS 83.440.

(2) The county board of elections shall have the authority to draw precinct lines so as to enable more than one (1) precinct to vote at one (1) location. The county board of elections shall review election precinct boundaries as often as necessary. Without exception, they shall review the boundaries of all election precincts exceeding seven hundred (700) votes cast in the last regular election prior to each primary election. Consideration to the division of said election precincts should be based on the anticipated growth factor within the specified boundaries; however, the county board of elections shall not be prohibited from dividing election precincts in excess of seven hundred (700) votes cast in the last regular election or less than seven hundred (700) votes cast in the last regular election if they elect to do so. However, the State Board of Elections shall not remit to a county the expenses of an election for any precinct containing less than three hundred fifty (350) registered voters unless the county has received prior approval from the state board to establish a precinct containing less than three hundred fifty (350) registered voters. The State Board of Elections shall provide by administrative regulation under what circumstances an exception shall be granted.

(3) No election precinct shall be created, divided, abolished, or consolidated or the boundaries therein changed prior to any primary election to comply with the provisions of KRS 117.055 to 117.0555 and KRS 117.0557 later than the last date prescribed by election law generally for filing notification and declaration forms with the county clerk or Secretary of State. No election precinct shall be created, divided, abolished, or consolidated or the boundaries

therein changed prior to any general election to comply with the provisions of KRS 117.055 to 117.0555 and KRS 117.0557 later than the last date prescribed by election law generally for filing certificates or petitions of nomination with the county clerk or Secretary of State.

(4) The county board of elections shall designate the name or number and the boundaries of the election precincts. Each precinct shall contain, as nearly as practicable, an equal number of voters, based on the number of registered voters in the county.

(5) A map and listing of the exact election precinct boundaries shall be filed by the county board of elections with the State Board of Elections, and any changes in boundaries thereafter made shall also be filed with the State Board of Elections. A copy of this map indicating all precinct boundaries within the county shall be included in the election supplies of each precinct.

(6) If the county board of elections fails to perform any of the duties required by KRS 117.055 to 117.0555 and KRS 117.0557:

(a) The State Board of Elections or any citizen and voter of the county may apply to the Circuit Court of the county for a summary mandatory order requiring the board to perform the duty. Appeals may be taken to the Court of Appeals by either party; and

(b) The State Board of Elections shall not submit claims for payments to the county under KRS 117.343 and 117.345 until the State Board of Elections determines in writing that the duty has been performed.

(7) The county board of elections shall coordinate all precinct boundary changes with the affected school board, magisterial, and municipal boundaries.

Approved March 6, 2000

CHAPTER 62

(HB 186)

AN ACT relating to registered nurses.

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

Section 1. KRS 314.181 is amended to read as follows:

(1) When it appears that a person whom a registered nurse who has successfully completed training in determination of death has been called to attend is dead, the registered nurse shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the registered nurse or a paramedic or an emergency medical technician who has responded with or after the registered nurse, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the nurse may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead. If it is determined that death has occurred in accordance with the procedures of KRS 446.400***(1) concerning patients whose circulation and respiration are not being artificially maintained***~~[with regard to patients who have not been resuscitated]~~, the

registered nurse may make the actual determination and pronouncement of death.[~~ This section shall not apply to patients who are in a hospital when apparent death occurs.~~]

(2) ***When the determination and pronouncement of death of a patient whose circulation and respiration are not being artificially maintained, as required under KRS 446.400(1), occurs in a hospital or nursing facility, that declaration may be made by a registered nurse, in addition to any other person permitted by law to determine and pronounce death. The nurse shall notify the patient's attending physician of the death in accordance with the hospital's or facility's policy.***

(3) In the event that a registered nurse determines that a person is dead, the registered nurse shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.

(4)[~~(3)~~] Any registered nursing course taught in pre-licensure programs after July 15, 1998, shall include a course of instruction on the determination of death and preservation of evidence as required by the Board of Nursing by administrative regulation.

(5)[~~(4)~~] Any registered nurse within the two (2) years following July 15, 1998, shall successfully complete in-service training required by the Board of Nursing by administrative regulation relating to determination of death and preservation of evidence.

(6)[~~(5)~~] Any registered nurse from another jurisdiction desiring to become a registered nurse in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection ***(5)***[~~(4)~~] of this section.

(7)[~~(6)~~] The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person prior to the arrival of the registered nurse by any person, for the purposes of this section and KRS 446.400, shall not be considered as artificial maintenance of respiration and circulation. The administration of advanced cardiac life support procedures by any person, other than a paramedic rendering care pursuant to KRS 311.660, prior to the arrival of the registered nurse shall preclude the determination of death by the registered nurse, and the provisions of KRS 446.400 shall apply. However, nothing in this section shall preclude the supervising physician from directing the registered nurse to cease resuscitative efforts under approved agency medical protocols.

(8)[~~(7)~~] The resuscitative efforts of a nurse under protocols authorized by this section shall not invoke the provisions of KRS 446.400.

Approved March 6, 2000

CHAPTER 63

(HB 194)

AN ACT relating to state leasing.

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

Section 1. KRS 56.800 is amended to read as follows:

The Finance and Administration Cabinet shall be responsible for the lease of all real property rentals required for use by all departments, agencies, and administrative bodies of the state

government listed in KRS Chapter 12 ***that do not have statutory authority to lease property***, and no lease of real property shall be binding against the Commonwealth or any agency unless made and entered into as provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

Section 2. KRS 56.803 is amended to read as follows:

(1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department~~[at least ninety (90) calendar days before the space requested will be required by the agency]~~. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, the commissioner shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency. A copy of the notice shall be kept on file.

(3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.

(5) (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or newspaper advertisements. Each notice shall contain general information concerning the agency requirements for the space sought and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be stated in the notice.

(b) The Department for Facilities Management may use any means available to notify landlords that a notice has been given.

(6) A property owner, or his representative, shall respond in writing on or before the time and date designated in the notice and shall state in the writing the type and location of the

property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the notice.

(7) All written responses received on or before the time and date designated shall be opened or downloaded at the same time, publicly read or posted, and kept on file by the department.

(8) Within ***ten (10) business***~~[five (5)]~~ days of the opening of written responses, the department shall transmit general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be transmitted to each person.

(9) After the general requirement specifications have been transmitted, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be notified of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each notice shall be kept on file.

(10) The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.

(11) After the commissioner has reviewed the completed site evaluation forms, the commissioner shall inform each owner of property, or his representative, of the steps necessary to bring the property up to general and specific requirement specifications. The commissioner shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be provided to each bidder. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated.

(12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.

(13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:

(a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;

(b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.

(14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the general and specific requirement specifications.

(b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.

(15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:

(a) Choose the best proposal in the interest of the Commonwealth;

(b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or

(c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.

(16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.

(b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.

(17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.

(18) The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, and the head of the agency that will occupy the leased space shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute

a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file.

(19) The department shall notify each person who submitted a written response on or before the time and date designated in the public notice pursuant to subsection (6) of this section, but who was not awarded the lease, of the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each notice shall state that fact. A copy of each notice shall be kept on file.

(20) Prior to finalization of the lease, the department or the leasing agency shall inspect the property to ensure that any changes described in subsection (11) of this section necessary to bring the property up to specifications have been completed in a manner satisfactory to the agency or department. At the conclusion of the inspection, the owner shall be advised in writing by the department either that the property is approved for occupancy and the lease may be finalized, or that there remain changes to be completed or corrected before the lease may be finalized.

Section 3. KRS 56.8035 is amended to read as follows:

(1) When the Department for Facilities Management solicits for procurement of leased office space under the provisions of KRS 56.803, a proposal for new construction shall be considered if it does not contain any provision for a lease-purchase or an option to purchase.

(2) The Department for Facilities Management shall only consider a proposal for construction of leased office space with provision for lease-purchase or option to purchase if the proposal is submitted in response to a solicitation for proposals for built-to-suit leases in accordance with KRS 56.8169.

(3) A building constructed and leased to the Commonwealth under this section shall be constructed:

(a) In accordance with all applicable state and national safety, building, and construction code requirements; and

(b) To last for a minimum of thirty (30) years.

Section 4. KRS 56.806 is amended to read as follows:

(1) Except when another lease term is approved by the secretary of the Finance and Administration Cabinet, the terms of all leases entered into pursuant to KRS 56.803 or 56.805 may provide for an initial lease term beginning on a date stated and ending on June 30 in each year in which the General Assembly has convened in regular session and appropriated funds for the operation of the state government during the next ensuing biennium. The leases may grant the state successive options for the automatic renewal of the lease upon the same terms and conditions for additional renewal periods of twenty-four (24) months each, not to exceed three (3) automatic renewal periods. Any lease containing provision for the automatic renewal of the lease after the expiration of the initial lease term shall also provide that the state may, upon written notice given to the lessor on or before April 15 of the year in which the initial or any automatic renewal term expires, elect not to exercise its option for the automatic renewal of the lease term. Subject to the agreement of the lessor, a lease in which the final automatic renewal period has expired, or will expire as

of the end of the then current term, may be renewed upon the same terms and conditions, provisions of KRS 56.803 to the contrary notwithstanding.

(2) The Department for Facilities Management shall comply with the provisions of this subsection when calculating rentable area for the purposes of a lease.

(a) If the Commonwealth is the only tenant on a single floor of a multistory building, the rentable area shall be the entire area described by measuring to the inside finished surface of the dominant portion of the permanent outer building walls, excluding any major vertical penetrations of the floor which shall include, but not be limited to, stairways, elevator shafts, pipe chases, vertical air ducts, and the enclosing wall of all such excluded areas. Restrooms, corridors, and utility rooms which exclusively serve the floor occupied by the Commonwealth shall be included as part of the rentable area.

(b) If the Commonwealth is the only tenant in a one (1) story or multistory building, rentable area shall be calculated pursuant to the provisions of paragraph (a) of this subsection except that those areas excluded pursuant to paragraph (a) shall be included as part of the rentable area.

(c) If the Commonwealth shares a floor with one (1) or more other tenants, the rentable area shall be calculated by measuring from the inside finished surface of the dominant portion of the permanent outer building walls to the office side of every corridor wall or other wall separating the Commonwealth's leased space from other adjacent rentable areas which shall include, but not be limited to, space under the control of another tenant, public corridors, restrooms, all common service and utility areas, stairways, elevator shafts, vertical pipe chases, and air ducts.

(d) The Commonwealth's rentable area determined pursuant to paragraphs (a), (b), and (c) of this subsection shall include columns and projections necessary to the building.

(3) The Finance and Administration Cabinet may include in a lease an option to purchase the leased property or a lease-purchase of the leased property.

(4) If the Finance and Administration Cabinet exercises an option to purchase leased property, the option price shall not exceed the fair market value of the leased property as of the time the lessor and the Commonwealth enter into the option. Two (2) competent and qualified real estate appraisers shall each determine the fair market value. Each real estate appraiser shall be selected by the Finance and Administration Cabinet and shall employ an accepted appraisal technique.

(5) (a) Except as provided in paragraph (b) of this subsection, if the Finance and Administration Cabinet includes in a lease the lease-purchase of the leased property, two (2) competent and qualified real estate appraisers shall each determine the fair market value of the leased property as of the time the lessor and the Commonwealth enter into the lease. Each appraiser shall be selected by the Finance and Administration Cabinet and shall employ an accepted appraisal technique. The lease shall provide for an initial lease term ending June 30 of the second year of the then current fiscal biennium of the Commonwealth, with the option of the Commonwealth, as lessee, to extend the term of the lease for a term of two (2) years from the expiration of each extended term of the lease, until the original term of the lease has been extended for a total number of years agreed upon by the parties. The agreed rental paid for the original term and for each of the full number of years for which the term of the lease may be extended shall amortize the fair market value of the leased property as of

the time the lessor and the Commonwealth entered into the lease. The lease shall provide that the Commonwealth may, at the expiration of the original or any extended term, purchase the leased property at a stated price, which shall be the balance of the fair market value of the leased property as of the time the lease was entered into which has not been amortized by the payments of rent previously made by the Commonwealth.

(b) If the Finance and Administration Cabinet includes lease-purchase of the leased property in a lease with the federal government, the terms of the lease-purchase shall be determined through negotiations between the Commonwealth and the federal government.

(6) Except when a lease incorporates a lease-purchase pursuant to subsection (5) of this section, the Commonwealth shall reserve the right to cancel a lease upon written notice within thirty (30)~~[, sixty (60), or ninety (90)]~~ days~~[, whichever is specified in the lease agreement]~~.

Approved March 6, 2000

CHAPTER 64

(HB 218)

AN ACT relating to charitable health care providers.

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

Section 1. KRS 216.940 is amended to read as follows:

As used in KRS 216.940 to 216.945:

(1) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by ***the Commonwealth***~~[this state]~~ or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" only means those persons, agencies, clinics, or facilities engaging in primary care and performing no invasive or surgical procedures.

(2) "Regularly practice" means to practice for more than sixty (60) days within any ninety (90) day period.

(3) "Sponsoring organization" means any organization, with an established relationship with a practicing entity, that organizes or arranges for the voluntary provision of health care services in the state.

Section 2. KRS 216.941 is amended to read as follows:

(1) Notwithstanding any provision of law to the contrary, no additional license or certificate otherwise required under the provisions of KRS Chapters 211, 216, 311, 312, 313, or 314 shall be necessary for the voluntary provision of health care services by any person who:

(a) Is a charitable health care provider as defined in KRS 216.940; or

(b) Does not regularly practice in the Commonwealth.

(2) No person whose license or certificate is suspended or revoked under disciplinary proceedings in any jurisdiction, nor any person who renders services outside of the scope of practice authorized by his or her licensure or certification or exception to license or certification shall be allowed to participate with any sponsoring organization as a charitable health care provider.

(3) Before providing charitable health care services in this state, a charitable health care provider or sponsoring organization shall register with the Cabinet for Health Services by~~[submitting a registration fee of fifty dollars ($50) and]~~ filing a registration form that shall contain the following information:

(a) The name, address, and phone number of the charitable health care provider;

(b) Written and verifiable documentation of a current Kentucky license including, if applicable, a license granted to an individual under a reciprocal agreement with another state or country;

(c) The name, principal office address, phone number, and principal officer of any sponsoring organization;

(d) The dates, locations, types of services, and intended recipients of any charitable health care services to be performed in the state;

(e) Information as to any medical malpractice insurance procured under KRS 304.40-075 or otherwise; and

(f) Other information as the cabinet may require by administrative regulation.

(4) The cabinet shall provide, upon request of the charitable health care provider or sponsoring organization, any information available as to declared emergencies, underserved populations, and lack of access to health care in the state that will assist the charitable health care provider or sponsoring organization in the provision of these services.

(5) Boards of health created under KRS Chapter 212 may submit requests for charitable health care providers in their jurisdictions to be listed in any information provided.

(6) Each sponsoring organization shall maintain a list of health care providers associated with its provision of charitable health care services. For each health care provider, the sponsoring organization shall maintain a copy of a current license, certificate, or statement of exemption from licensure or certification and shall require each health care provider to attest in writing that his or her license or certificate is not suspended or revoked under disciplinary proceedings in any jurisdiction. The sponsoring organization shall maintain its records of charitable health care providers for at least five (5) years after the provision of charitable health care services, including actual dates, types of services, and recipients of charitable health care services, and shall furnish these records upon the request of the Cabinet for Health Services. Compliance with this section shall be prima facie evidence that the sponsoring organization has exercised due care in selecting charitable health care providers.

(7) The cabinet may revoke the registration of any charitable health care provider or sponsoring organization for failure to comply with the provisions of KRS 216.940 to 216.945, in accordance with the provisions of KRS Chapter 13B.

(8) The cabinet shall report to the General Assembly the name and location of individuals registered with the cabinet as charitable health care providers, by October 1 of each year.

Section 3. KRS 304.40-075 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" only means those persons, agencies, clinics, or facilities engaging in ***primary care***~~[general practice]~~ medicine and performing no invasive or surgical procedures;

(b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and

(c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.

(2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.

(3) (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund~~[not to exceed the sum of twenty thousand dollars ($20,000) and from the registration fees collected by the Cabinet for Health Services under KRS 216.941(3)]~~ upon written application for payment of the premium by the health care provider wishing to offer charitable services.

(b) The Department of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:

1. Name and address of the charitable health care provider;

2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;

3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;

4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed; and

5. A copy of the registration filed with the Cabinet for Health Services under KRS 216.941.

(c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.

(4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance ***for the charitable health care services provided***, and that meet the terms for eligibility established pursuant to this section.

(5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.

(6) The Department of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the Department of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.

(7) The Cabinet for Health Services shall make available to the Department of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.

(8) The Department of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health Services under KRS 216.941.

Approved March 6, 2000

CHAPTER 65

(HB 219)

AN ACT relating to ophthalmic dispensers.

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

Section 1. 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 Section 4 of this Act;

(b) Impose administrative fines in accordance with Section 5 of this Act; 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 Franklin Circuit Court to enjoin violation of KRS 326.030.

Section 2. KRS 326.030 is amended to read as follows:

~~[On and after January 1, 1955,]~~No person shall engage in the practice of ophthalmic dispensing unless he ***or she*** is duly licensed to practice medicine, osteopathy***,*** or optometry in this Commonwealth or unless he ***or she*** is the holder of a license as an ophthalmic dispenser; provided, this section shall not be so construed as to prohibit a firm or corporation from operating a business which comes within the meaning of ophthalmic dispensing, if each of its employees either (1) coming in contact with the public and performing for the public any service or services included within the meaning of ophthalmic dispensing, or (2) otherwise performing any work or service required by this chapter to be performed by an ophthalmic dispenser, is the holder of a license as an ophthalmic dispenser.

Section 3. KRS 326.040 is amended to read as follows:

A license as an ophthalmic dispenser shall be issued by the board to any person who pays a fee of ***fifty dollars ($50)***~~[$25]~~ and submits evidence under oath satisfactory to the board:

(1) That he ***or she*** is more than eighteen (18) years of age and of good moral character;

(2) ***That he or she has graduated from high school or possesses a General Educational Development (GED) certificate;***

(3) That he ***or she*** has at least two (2) years of satisfactory training and experience in ophthalmic dispensing under the supervision of an ophthalmic dispenser, physician, osteopath***,*** or optometrist, or is a graduate of an accepted school of ophthalmic dispensing;

(4)~~[(3)]~~ That he ***or she*** has passed a satisfactory examination in ophthalmic dispensing ***approved***~~[given]~~ by the board.

Section 4. KRS 326.090 is amended to read as follows:

(1) The board ***may refuse to issue a license, or*** may suspend***,***~~[or]~~ revoke***, impose probationary conditions upon, impose an administrative fine upon, or issue a written reprimand against the holder of a***~~[any]~~ license to practice ophthalmic dispensing ***or an apprentice license if the applicant or licensee has***~~[for any of the following causes]~~:

(a)~~[(1)]~~ ***Committed a dishonest or corrupt act. If the act is a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence are presumptive evidence of guilt at the ensuing disciplinary hearing of the licensee. Conviction includes all instances in which a plea of no contest is the basis of the conviction***~~[The conviction of a felony involving moral turpitude]~~;

(b) Committed any unfair, false, misleading, or deceptive act or practice;

(c) Been incompetent or negligent in the practice of ophthalmic dispensing;

(d) Failed to comply with a lawful order of the board;

(e) Aided or abetted another person in falsely procuring or attempting to procure a license;

(f) Aided or abetted an unlicensed person in activities which violate KRS 326.030 and which are not otherwise exempted from the provisions of this chapter;

(g)~~[(2)]~~ ***Exhibited*** chronic or persistent inebriety or addiction to a drug habit, to an extent that disqualifies ***the applicant or the licensee*** from practicing with safety to the public;

(h)~~[(3)]~~ ***Committed*** fraud or deception in the application or in the examination for the license; ***or***

(i)~~[(4)]~~ ***Violated any provisions of***~~[Violation of]~~ this chapter ***or administrative regulations promulgated in accordance with this chapter.***

(2) After investigating an alleged violation and offering the licensee the opportunity to respond to the allegation, the board may issue a written reprimand to the licensee if the board determines that a violation that is not of a serious nature has occurred. A copy of the reprimand shall be placed in the permanent file of the licensee. The licensee may file a written response to the reprimand within thirty (30) days of receiving the reprimand or may request a hearing with the board. If the licensee responds to the reprimand, his or her response shall be placed in the licensee's permanent file. If the licensee requests a hearing, the board shall set aside the written reprimand, pending the outcome of a hearing by the board under the provisions of KRS Chapter 13B.

Section 5. KRS 326.100 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 taking any combination of these actions regarding any licensee under KRS Chapter 326 shall conduct a hearing under the provisions of***~~[No license shall be suspended or revoked until after a hearing conducted in accordance with]~~ KRS Chapter 13B***, upon the request of the licensee***.

(2) ***After denying an application under the provisions of this chapter, the board shall grant a hearing to the denied applicant under the provisions of KRS Chapter 13B.***

(3) Any applicant aggrieved by a disciplinary action of the board may appeal~~[A licensee whose license has been suspended or revoked may appeal]~~ the final order of the board to the Circuit Court in the county in which the licensee is practicing in accordance with KRS Chapter 13B.

Section 6. KRS 326.990 is amended to read as follows:

Any person who shall directly or indirectly engage in the practice of ophthalmic dispensing or hold himself ***or herself*** out to the public as being able so to do, or who shall violate any of the provisions of this chapter relating to ophthalmic dispensing, or having had his ***or her*** license suspended or revoked shall continue to engage in the practice of ophthalmic dispensing, or who directly or indirectly employs, permits or authorizes an unlicensed person to engage in the practice of ophthalmic dispensing shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for not more than thirty (30) days, or by a fine of not ***less than one hundred dollars ($100) nor*** more than ***five***~~[one]~~ hundred dollars ***($500)***~~[($100)]~~ or by both such fine and imprisonment, and each such violation shall be deemed a separate offense.

Section 7. The following KRS section is repealed:

326.050 Issuance of license to persons in business prior to January 1, 1955 or in Armed Forces.

Approved March 6, 2000

CHAPTER 66

(HB 236)

AN ACT relating to vehicle emission testing programs.

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

Section 1. KRS 224.20-710 is amended to read as follows:

As used in KRS 224.20-710 to 224.20-765, unless the context clearly indicates otherwise:

(1) "Compliance certificate" means an official emission inspection certificate issued by the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle has been tested in accordance with KRS 224.20-710 to 224.20-765 and complies with all applicable emission standards;

(2) "Independent contractor" means any person, business firm, partnership, or corporation with whom the cabinet or a fiscal court may negotiate an agreement providing for construction, equipment, maintenance, personnel, management, and operation of an official emission inspection station;

(3) "Control system" means equipment designed for installation or installed on a motor vehicle for the purpose of reducing the air contaminants emitted from the vehicle or a system or engine adjustment or modification which causes a reduction of air contaminants emitted from the vehicle;

(4) "Exemption certificate" means an official exemption certificate issued by the cabinet or a county, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle is exempt from certain requirements of KRS 224.20-710 to 224.20-765;

(5) "Inspection station" means an official vehicle emission inspection facility whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this Commonwealth, to conduct emission inspections of vehicles required to be inspected pursuant to KRS 224.20-710 to 224.20-765;

(6) "Vehicle" means any automobile or truck registered in this Commonwealth having a combined manufacturer's weight of vehicle and maximum load to be carried of up to eighteen thousand (18,000) pounds, which is equivalent to eight thousand one hundred eighty-two (8,182) kilograms, or less and used upon the public highways of the Commonwealth for the purpose of transporting persons or property***. The term "vehicle" shall not include a motorcycle as defined in KRS 189.285(6)***; and

(7) "Vehicle emission control program" means a program developed by the cabinet pursuant to KRS 224.20-710 to 224.20-765 which provides for the control of vehicle emissions of any air contaminant.

Section 2. KRS 224.20-755 is amended to read as follows:

(1) A county fiscal court may apply to the cabinet for authority to operate a vehicle emission control program. The cabinet may delegate authority when it has found that the applicant:

(a) Has obtained approved machinery, tools, and equipment approved by the cabinet and adequate to conduct the required emission inspections;

(b) Has provided for a sufficient number of facilities to ensure minimum waiting time for vehicles to be inspected;

(c) Employs properly trained personnel with whom to perform the necessary inspections;

(d) Has adopted minimum emission standards for vehicles at least as stringent as those adopted by the cabinet; and

(e) Agrees to provide information prescribed by the cabinet concerning the implementation, administration, and operation of the vehicle emission control program.

(2) ***Any county that has received authority to operate a vehicle emission control program shall be prohibited from inspecting motorcycles as defined in KRS 189.285(6). The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motorcycles under a vehicle emission control program administered by a county. All counties, cities, special districts, and other units of local government shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***

(3) Any county which has received authority to operate a vehicle emission control program may charge an inspection fee. There shall be established an emission inspection account in the county. Unless an independent contractor is authorized pursuant to KRS 224.20-740 to collect inspection fees, the county clerk shall collect the fee at the time of registration

renewal in the manner provided for cabinet programs. The inspection fees collected by the county clerk shall be immediately transferred to the county emission inspection account, except for a sum of no more than twenty-five cents ($0.25) per vehicle which the county clerk may retain.

(4)[~~(3)~~] A county which has received authority to operate a vehicle emission control program shall transmit to the cabinet's vehicle emission control fund two percent (2%) of the funds received from inspection fees or from the independent contractor authorized pursuant to KRS 224.20-740.

(5)[~~(4)~~] The county may use the county's emission inspection fund to acquire any special equipment, tools, employees, material, or facilities needed to adequately administer, investigate, or enforce the provisions of KRS 224.20-710 to 224.20-765.

(6)[~~(5)~~] The county may enter into a contract with the cabinet and receive state funds charged to the cabinet's vehicle emission control fund to start a vehicle emission control program.

(7)[~~(6)~~] A county applying for delegation pursuant to this section may enter into a contract with one (1) or more independent contractors subject to the provisions of KRS 224.20-740 to provide for construction, equipment, establishment, maintenance and operation of inspection stations for the purpose of obtaining delegation pursuant to KRS 224.20-710 to 224.20-765.

(8)[~~(7)~~] If the cabinet determines, after a hearing with notice, that a delegated vehicle emission control program is not being administered in accordance with KRS 224.20-710 to 224.20-765, the delegation of authority may be revoked by order of the cabinet and all unexpended money, equipment and facilities acquired by the county with funds granted by the cabinet shall be transferred to the cabinet.

Section 3. KRS 224.20-760 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section,*** the provisions of KRS 224.20-710 to 224.20-765 shall not detract from the authority provided air pollution control districts in KRS Chapters 77 and 224.

(2) ***Any air pollution control district that has received authority to operate a vehicle emission control program shall be prohibited from inspecting motorcycles as defined in KRS 189.285(6). The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motorcycles under a vehicle emission control program administered by an air pollution control district. All counties, cities, special districts, and other units of local government, including an air pollution control district, shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***

(3) The authority in KRS 224.20-720 is provided to air pollution control districts provided:

(a) The air pollution control district may function and exercise its powers pursuant to resolution or ordinance as provided in ***this section and*** KRS Chapter 77; and

(b) The air pollution control district has been granted concurrent jurisdiction by the cabinet pursuant to KRS 224.20-130.

(4)[~~(3)~~] Actions taken by an air pollution control district for violations of KRS 224.20-710 to 224.20-765 shall be enforced in accordance with the provisions of KRS 224.20-130(5).

Section 4. All counties and air pollution control districts that have authority to operate a vehicle emission control program under the provisions of KRS 224.20-710 to 224.20-765 shall be prohibited from inspecting motorcycles as defined in KRS 189.285(6) upon the effective date of this Act. Any county, city, special district, or other unit of local government, including an air pollution control district, that currently has an ordinance requiring the inspection of motorcycles under a locally administered vehicle emission control program, shall repeal the ordinance within thirty (30) days of the effective date of this Act. Any local government that fails to repeal an ordinance requiring the inspection of motorcycles in violation of this section, shall have the local government's authority to administer a vehicle emission control program immediately suspended until the offending ordinance is repealed.

Approved March 6, 2000

CHAPTER 67

(HB 376)

AN ACT relating to blasting safety.

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

Section 1. KRS 351.315 is amended to read as follows:

(1) No person shall detonate explosives in any blasting operation in which more than five (5) pounds of explosives or the equivalent are used in a single charge or in which less than five (5) pounds of explosives are used by a regular user, excluding blasting for agriculture and underground coal, unless he is licensed by the department. The department shall issue a license to use explosives to any person who:

(a) Has worked in blasting operations for at least twenty-four (24) months under the immediate supervision of an experienced blaster ***or has worked in blasting operations for twelve (12) months and has completed a formal training program approved by the department***; and

(b) Has passed an examination prescribed by the department which shall test the examinee's practice of blasting operations and the storage, moving, handling, and detonation of explosives.

(2) Application for license shall be in writing upon a form furnished by the department and shall be accompanied by a ***photograph of the applicant***~~[fee]~~. If the applicant is successful in passing the examination, a license indicating his competency to detonate explosives shall be issued upon the payment of ***a***~~[an additional]~~ fee of twenty-five dollars ($25).

(3) Any person who is a licensed blaster in another state where the qualifications prescribed at the time of licensing were, in the opinion of the commissioner, equal to those prescribed in the Commonwealth at the date of application, and where reciprocal licensing privileges satisfactory to the department are granted to licensees of the Commonwealth, may be granted a license without an examination, upon the payment of a fee.

(4) Each blaster shall be required to renew his license ***every three (3) years***~~[each year]~~ by application to the department, which application shall be accompanied by a fee. ***Each applicant for renewal of a Kentucky blaster's license, other than a certified surface coal miner, shall furnish proof that during the preceding three (3) years, he has attended a***

minimum of sixteen (16) hours of blaster's training approved by the department. Each applicant for renewal of a limited Kentucky blaster's license shall furnish proof that during the preceding three (3) years, he has attended a minimum of four (4) hours of blaster's training approved by the department.

(5) The department shall not issue a blaster's license to any person not entitled to transport or receive explosives under existing federal law, including persons who:

(a) Are less than twenty-one (21) years of age; or

(b) Have been convicted in any court of a crime punishable by imprisonment for a term exceeding one (1) year, unless the conviction has been specifically exempted by the United States Bureau of Alcohol, Tobacco and Firearms or its successor.

(6) All fees provided in this section shall be set by the department by administrative regulation; however, the fee for an application shall not exceed forty dollars ($40), the fee for license renewal shall not exceed ***sixty***~~[twenty]~~ dollars ***($60)***~~[($20)]~~, and the fee for reciprocal licensing shall not exceed sixty dollars ($60).

(7) The commissioner may suspend any license for due cause, but no license may be revoked until the licensee has been granted adequate opportunity for a hearing conducted in accordance with KRS Chapter 13B.

Approved March 6, 2000

CHAPTER 68

(HB 404)

AN ACT relating to training and education of coal miners.

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

Section 1. KRS 351.102 is amended to read as follows:

(1) No person shall be assigned~~[to work]~~ duties by a licensee as a laborer or supervisor working~~[underground]~~ for the purpose of mining coal unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section.

(2) A permit as trainee miner shall be issued by the commissioner to any person who has completed a program of education of a minimum of forty (40) hours ***for underground mining or sixteen (16) hours for surface mining*** 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***~~[prepared]~~ by the ***commissioner***~~[department]~~. This education and training program shall be determined and established by the board, as provided in KRS 351.105.

(3) Trainee miners shall work within the sight and sound of a certified miner.

(4) 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***~~[, or fire boss may]~~ have no more than five (5)

persons working~~[with him and]~~ under his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining.

(5) A certificate of competency and qualification as ***a***~~[an underground]~~ miner shall be issued by the commissioner to any person who has~~[in total]~~ 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.

(6) 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 ***shall***~~[may]~~ be given orally if the miner is unable to read or comprehend a written examination.

(7) Examinations shall be held in any district office during regular business hours~~[after whatever public notice and at the time that the commissioner finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification]~~.

~~[(8) Notice of the time and place of the examination for the certification of miners shall be given to management at the mine and to the miners or their representatives at the mine, and notice shall be posted at the places in the vicinity of the mine where notices to employees are posted.]~~

(8)~~[(9)]~~ If the commissioner or his ***authorized*** representative finds that an applicant is not qualified and competent, he shall notify the applicant not more than ten (10) days after the date of examination.

(9)~~[(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***~~[may]~~, within ten (10) days of notice of the action complained of, appeal to the commissioner who shall~~[schedule an informal hearing and]~~ either affirm the action or issue the certificate to the applicant.

(10)~~[(11)]~~ If the applicant is~~[still]~~ aggrieved by the action of the commissioner, he may appeal to the board which shall hold a hearing on the matter in accordance with KRS Chapter 13B.

(11)~~[(12)]~~ The applicant may appeal from the final order of the board by filing in the Circuit Court in the judicial circuit in which he resides a petition for appeal in accordance with KRS Chapter 13B.

Section 2. KRS 351.106 is amended to read as follows:

(1) The board shall establish criteria and standards for a program of education and training to be required of prospective miners~~[of coal mines]~~, miners~~[of coal mines]~~, and all certified persons. This education and training shall be provided in a manner determined by the commissioner to be adequate to meet the standards established by the board, which shall include as a minimum the requirements of KRS 351.102 and the requirements of the federal government for the training of miners for new work assignments,~~[but in no case less than twenty (20) hours training for new work assignments,]~~ and at least eight (8) hours of annual retraining and reeducation for all certified persons.

(2) Beginning with the first full calendar year after the effective date established by the board and during each calendar year thereafter, each certified miner shall receive at least eight (8) hours of retraining and reeducation.

(3) Newly-hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training.

(4) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend.~~[Each licensee shall annually submit to the department the dates on which the annual retraining and reeducation sessions were conducted and the names and corresponding miner identification numbers of those persons receiving training and reeducation on a form prescribed by the commissioner.]~~

(5) The licensee shall pay all certified ***miners***~~[persons]~~ their regular wages and benefits while they receive~~[required]~~ training ***required*** by the department.

(6) Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate.

(7) If the department discovers a miner working without proper training ***or***~~[and]~~ the licensee cannot provide proof of training, the miner shall be withdrawn from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented.

(8) When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records.

(9) The board may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the board, if the training and education meet the minimum requirements of this chapter.

(10) The commissioner may promulgate reasonable administrative regulations necessary to establish a program to implement the provisions of this chapter according to the criteria and standards established by the board. This program shall include, but not be limited to, implementation of a program of instruction and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction.

(11) The commissioner shall keep and maintain records of board meetings, activities of the board, and current records on all certified ***miners***~~[persons]~~, all of which shall be maintained by computer for ready access.

(12) The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination.

(13) The commissioner may make recommendations or supply information to the board as he may deem appropriate. The commissioner is authorized and directed to utilize state and

federal moneys and personnel that may be available to the department for educational and training purposes in the implementation of the provisions of this chapter.

(14) All training and education required by this chapter may be conducted in classrooms, on the job, or in simulated mines.

Approved March 6, 2000

CHAPTER 69

(HB 463)

AN ACT relating to alcoholic beverage licenses at automobile race tracks and declaring an emergency.

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

Section 1. KRS 243.050 is amended to read as follows:

(1) The department may issue a railroad system license to a railroad company upon the payment of the required fee. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.

(2) The department may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of the required fee. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly-scheduled or charter flights of the licensee, in and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application.

(3) The department may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of the required fee. This license may be renewed annually. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly-scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.

(4) The department may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license is required, where applicable. An applicant for the license shall meet the qualifications of KRS 243.055, and an extended supplement license under subsection (5) of this section may be issued. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable to other premises.

The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class, if the original license was issued prior to July 15, 1998.

(5) Where it is determined by the department to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the department may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230,~~[and]~~ at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually***, and at automobile race tracks having a seating capacity of at least thirty thousand (30,000) people***. Upon application by the holder of a retail alcoholic beverage license at a convention center, convention hotel complex, horse race track, ***automobile race track, meeting the requirements of this subsection,*** or commercial airport as provided above, the department may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be established, and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The department may, by administrative regulation or special conditions of the supplemental permit, establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention business, the horse racing industry,~~[and]~~ passengers at large commercial airports***, and the automobile racing industry***.

Section 2. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the administrator of the distilled spirits unit, the fees for which shall be:

(1) Distiller's license, per annum $2,500.00

(2) Rectifier's license, per annum $2,500.00

(3) Blender's license, per annum $2,500.00

(4) Vintner's license, per annum $1,000.00

(5) Small winery license, per annum $100.00

(a) Small winery off-premises retail license, per annum $25.00

(6) Wholesaler's license, per annum $2,000.00

(7) Retail package license, per annum:

(a) In counties containing cities of the first class $800.00

(b) In counties containing cities of the second class $700.00

(c) In counties containing cities of the third class $600.00

(d) In counties containing cities of the fourth class $500.00

(e) In all other counties $400.00

(8) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:

(a) In counties containing cities of the first class $1,000.00

(b) In counties containing cities of the second class $700.00

(c) In counties containing cities of the third class $600.00

(d) In counties containing cities of the fourth class $500.00

(9) Transporter's license, per annum $100.00

(10) Dining car license, per annum $100.00

(11) Special nonbeverage alcohol vendor's license, per annum $50.00

(12) Special industrial alcohol license, per annum $50.00

(13) Special nonindustrial alcohol license, per annum $50.00

(14) Special agent's or solicitor's license, per annum $25.00

(15) Special storage or warehouse license and bottling house storage license, per annum $500.00

(16) Special temporary liquor license, per event $100.00

(17) Special private club license, per annum $300.00

(18) Special Sunday retail drink license, per annum $500.00

(19) Nonresident, special agent or solicitor's license, per annum $100.00

(20) Transport permit, nonresident license, per annum $100.00

(21) Through transporter's license, per annum $100.00

(22) Freight forwarder's license, per annum $100.00

(23) Restaurant wine license, per annum $500.00

(24) Farm winery license, per annum $100.00

(a) Farm winery, off-premises retail outlet license, per annum $25.00

(25) Special temporary wine license, per event $50.00

(26) Caterer's license, per annum $800.00

(27) Souvenir retail liquor license, per annum $500.00

(28) Special temporary distilled spirits and wine auction license, per event $100.00

(29) Airport drink license, per annum $1,000.00

(30) Convention center or convention hotel complex license, per annum $5,000.00

(31) Extended hours, supplemental license, per annum $2,000.00

(32) Horse race track license, per annum $2,000.00

(33) ***Automobile race track license, per annum $2,000.00***

(34) Air or rail system license, per annum $2,000.00

(35)~~[(34)]~~ Riverboat license, per annum $1,000.00

(36)[~~(35)~~] Bottling house license, per annum $1,000.00

(37)[~~(36)~~]Hotel in-room license, per annum $200.00

(38)[~~(37)~~] Bonded warehouse license, per annum $1,000.00

(39)[~~(38)~~] Air transporter liquor license, per annum $500.00

(40)[~~(39)~~] Replacement or duplicate license $25.00

(41)[~~(40)~~] Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars ($50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (25), (28), and ***(40)***[~~(39)~~]. The application fee shall be applied to the licensing fee if the application is issued and shall be retained by the department if the license is denied.

Section 3. KRS 243.070 is amended to read as follows:

The city legislative body of any city in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of manufacturing and trafficking in alcoholic beverages. The licenses may only be issued by the city administrator, and the fee shall not exceed the following:

(1) Distilled spirit licenses as set forth in KRS 243.030:

(a) Distiller's license, per annum $500.00

(b) Rectifier's license, per annum $3,000.00

(c) Blender's license, per annum $3,000.00

(d) Wholesaler's distilled spirits and wine license, per annum $3,000.00

(e) Distilled spirits and wine retail package license, per annum:

1. In counties containing cities of the first class $1,200.00

2. In counties containing cities of the second class $1,000.00

3. In counties containing cities of the third class $800.00

4. In counties containing cities of the fourth class $600.00

5. In all other counties $400.00

(2) Distilled spirits and wine retail drink license, motel drink license, airport drink license, restaurant drink license, or supplemental bar license, per annum:

(a) In counties containing cities of the first class $1,600.00

(b) In counties containing cities of the second class $1,000.00

(c) In counties containing cities of the third class $800.00

(d) In counties containing cities of the fourth class $600.00

(3) Distilled spirits and wine special temporary liquor license, per event:

(a) In counties containing cities of the first class $266.66

(b) In counties containing cities of the second class $166.66

(c) In counties containing cities of the third class $133.33

(d) In counties containing cities of the fourth class $100.00

(4) Special temporary wine license, per event $50.00

(5) Distilled spirits and wine special temporary auction license, per event $200.00

(6) Special private club license, per annum $300.00

(7) Distilled spirits and wine special Sunday retail drink license, per annum $300.00

(8) Extended hours supplemental license, per annum $2,000.00

(9) Nonresident special agent or solicitor's license, per annum $40.00

(10) Restaurant wine license, per annum:

(a) New applicants $600.00

(b) Applicants for renewal $400.00

(11) Caterer's license, per annum $800.00

(12) Riverboat license, per annum $1,200.00

(13) Horse race track license, per annum $2,000.00

(14) Convention center or convention hotel complex license, per annum $2,000.00

(15) ***Automobile race track license, per annum*.....*$2,000.00***

(16) Bottling house distilled spirits license or wine storage license, per annum $1,000.00

(17)~~[(16)]~~ Souvenir retail liquor license, per annum $1,000.00

(18)~~[(17)]~~ Malt beverage licenses as follows:

(a) Brewer's license, per annum $500.00

(b) Microbrewery license, per annum $500.00

(c) Malt beverage distributor's license, per annum $400.00

(d) Retail malt beverage license, per annum $200.00

(e) Special temporary retail malt beverage license, per event $25.00

(f) Malt beverage brew-on-premises license, per annum $100.00

Section 4. Whereas the availability of alcoholic beverage sales by the drink at an automobile race track will spur economic growth and development and promote tourism in the

Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved March 6, 2000

CHAPTER 70

(HCR 10)

A CONCURRENT RESOLUTION confirming the reappointment of Alayne Lackey White to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by Executive Order 98-1508 and letter of February 5, 1999, the Governor reappointed Alayne Lackey White and submitted her reappointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Alayne Lackey White meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the reappointment of Alayne Lackey White to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2002.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Ms. Alayne Lackey White, 1151 Red Mile Road, Suite 1B, Lexington, Kentucky 40504-2654 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 6, 2000

CHAPTER 71

(HCR 13)

A CONCURRENT RESOLUTION confirming the reappointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by Executive Order 99-1338 and letter of October 5, 1999, the Governor reappointed Daniel Hall and submitted his reappointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Daniel Hall meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the reappointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Mr. Daniel Hall, 2200 Wynnewood Circle, Louisville, Kentucky 40222 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 6, 2000

CHAPTER 72

(HCR 28)

A CONCURRENT RESOLUTION confirming the reappointment of Dr. Paul Cook to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on June 2, 1999, the Legislative Research Commission reappointed Dr. Paul Cook to the Long-Term Policy Research Center Board and by letter of December 14, 1999, has submitted his appointment for the General Assembly's confirmation; and

WHEREAS, the House of Representatives and the Senate find that Dr. Paul Cook meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the appointment of Dr. Paul Cook to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Dr. Paul Cook, 1296 Underwood Court, Bowling Green, Kentucky 42103.

Approved March 6, 2000

CHAPTER 73

(HCR 30)

A CONCURRENT RESOLUTION confirming the reappointment of Dr. Betty Griffin to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on June 2, 1999, the Legislative Research Commission reappointed Dr. Betty Griffin to the Long-Term Policy Research Center Board and by letter of December 14, 1999, has submitted her appointment for the General Assembly's confirmation; and

WHEREAS, the House of Representatives and the Senate find that Dr. Betty Griffin meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the appointment of Dr. Betty Griffin to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Dr. Betty Griffin, 462 McDowell Avenue, Frankfort, Kentucky 40601.

Approved March 6, 2000

CHAPTER 74

(HCR 34)

A CONCURRENT RESOLUTION reauthorizing the Task Force on Funding for Wildlife Conservation to conduct three meetings and to report its findings.

WHEREAS, the Task Force on Funding for Wildlife Conservation, authorized by the 1996 Regular Session of the General Assembly and reauthorized by the 1998 Regular Session of the General Assembly, presented recommendations to the 1998 General Assembly;

WHEREAS, these recommendations will be affected by future funding developments; and

WHEREAS, these recommendations cover a broad range of policy, regulatory, and legislative changes;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Task Force on Funding for Wildlife Conservation is reauthorized with its original membership. The task force shall convene once in 2000 and twice in 2001 to assess the progress being made toward implementing the recommendations from its October 1997 report.

Section 2. The task force shall report its findings to the Interim Joint Committee on Agriculture and Natural Resources and the Interim Joint Committee on Appropriations and Revenue before October 31, 2001.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 6, 2000

CHAPTER 75

(HCR 45)

A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

WHEREAS, tobacco production is at the heart of Kentucky's economy; and

WHEREAS, loss of tobacco production or the tobacco program would have a devastating effect on Kentucky and its tobacco farmers; and

WHEREAS, such losses would cause failure of many farms and businesses, decreases in land values, the default of loans, and the loss of state and local revenues; and

WHEREAS, the Tobacco Task Force was created by the Legislative Research Commission in 1984 to address problems that threaten the tobacco industry and the tobacco price support program; and

WHEREAS, the Task Force has been instrumental in helping to resolve these problems; and

WHEREAS, the tobacco industry and tobacco farmers remain in jeopardy because of threats to the program, increased imports, labor shortages, marginal prices, possible increases in excise taxes, and other problems;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the Kentucky Tobacco Task Force be reauthorized to help resolve the problems facing the tobacco industry and the tobacco program.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 6, 2000

CHAPTER 76

(HJR 41)

A JOINT RESOLUTION renaming a segment of KY 100 in Simpson County the "Veterans Memorial Highway".

WHEREAS, all Americans owe a debt of gratitude that we can never repay to the selfless men and women who have served in the United States Armed Forces; and

WHEREAS, our brave sons and daughters willingly spilled their blood in their defense of the United States Constitution; and

WHEREAS, rows of plain white headstones, both here and around the world, represent the ultimate sacrifice made to protect our freedom and our way of life; and

WHEREAS, even though millions of friends and loved ones have shed silent tears and endured grief filled hearts, there remains a constant overwhelming pride in the veterans who have gallantly served their country;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That state highway KY 100 in Simpson County from the junction with Interstate 65 to the junction with US 31W in the City of Franklin be renamed the "Veterans Memorial Highway".

Section 2. That the Secretary of the Transportation Cabinet erect appropriate highway signs at both the junction of KY 100 with Interstate 65 and the junction of KY 100 with US 31W in the City of Franklin within thirty (30) days of the effective date of this Resolution.

Approved March 6, 2000

CHAPTER 77

(HJR 42)

A JOINT RESOLUTION reauthorizing the Kentucky Aquaculture Task Force, and making an appropriation therefor.

WHEREAS, the Kentucky Aquaculture Task Force was created in 1998 by House Joint Resolution 72 to develop a State Aquaculture Plan to address the proper management, use, and marketing of the state's aquacultural industry; and

WHEREAS, the State Aquaculture Plan was developed and recommendations were made to the Governor and to the Legislative Research Commission; and

WHEREAS, it is essential to the aquaculture industry in Kentucky that the recommendations made by the task force be monitored as they are implemented;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Kentucky Aquaculture Task Force created by 1998 House Joint Resolution 72 is reauthorized to monitor the recommendations made in the State Aquaculture Plan as they are implemented, and to promote the development of the aquaculture industry in the Commonwealth.

Section 2. The membership guidelines of the task force remain the same, including the provision that the Department of Agriculture provide staff services for the task force.

Section 3. The task force shall develop a report by September 1, 2001, with respect to the implementation of the State Aquaculture Plan recommendations and other recommendations that the task force may support relating to the aquaculture industry in the Commonwealth. The report shall be given to the Governor and to the Legislative Research Commission.

Section 4. There is appropriated from the general fund the sum of $5,000 to accomplish the report. Any amount remaining following the completion of the report shall revert to the general fund. The report and recommendations shall be submitted to the Governor and to the Legislative Research Commission no later than September 1, 2001.

Section 5. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 6, 2000

CHAPTER 78

(HJR 59)

A JOINT RESOLUTION directing the Transportation Cabinet to name KY 11 from US 421 to the town of Oneida in Clay County the "James Anderson Burns Highway".

WHEREAS, James Anderson Burns, a native of West Virginia, came to Kentucky in the late 1800's; and

WHEREAS, James Anderson Burns, known across the nation as "Burns of the Mountains", was such a famous Chautauqua speaker that he was considered one of the finest speakers of his day; and

WHEREAS, James Anderson Burns' life was one of adventure, excitement, and violent contrast; and

WHEREAS, James Anderson Burns came to reject the feuds that were all too prevalent in the mountains at that time, feeling that God had called him to be an instrument through which the feuds were to be ended; and

WHEREAS, James Anderson Burns was determined to substitute the opportunities of education for the violence of feuding; and

WHEREAS, James Anderson Burns opened Oneida Baptist Institute in 1900 to help expand educational opportunities; and

WHEREAS, Oneida Baptist Institute has grown beyond Mr. Burns' wildest expectations and dreams with the simple mission of teaching God's love; and

WHEREAS, through the last 100 years, the students who have passed through the halls of Oneida Baptist Institute have not only been taught God's love, but more importantly, have been shown His love; and

WHEREAS, Oneida Baptist Institute was opened to help the needy children of the mountains, but has since reached the four corners of the earth to help the young people of the world; and

WHEREAS, students of Oneida Baptist Institute have gone on to outstanding, productive careers in all fields and include former Governor Bert T. Combs; and

WHEREAS, through the last 100 years, and for the future, the commitment of Oneida Baptist Institute remains the same: to provide all who enter an "Education for Time and Eternity";

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Transportation Cabinet is directed to name KY 11 from US 421 to the town of Oneida in Clay County the "James Anderson Burns Highway".

Section 2. That the Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "James Anderson Burns Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to Dr. Wesley Underwood, President of Oneida Baptist Institute, to the Secretary of the Transportation Cabinet, and to the District Highway Engineer in Manchester, Kentucky.

Approved March 6, 2000

CHAPTER 79

(HJR 66)

A JOINT RESOLUTION directing the Transportation Cabinet to name the new bridge on Kentucky Route 3071 near the community of Moranburg in Mason County the "John P. Loyd Memorial Bridge."

WHEREAS, Mason County's native son John P. Loyd has slipped the bonds of earth to join his Almighty in eternal bliss; and

WHEREAS, John P. Loyd was a life-long resident of the community of Moranburg in Mason County; and

WHEREAS, John P. Loyd was a dedicated public servant who selflessly served the citizens of Mason County as a County Commissioner on the Fiscal Court; and

WHEREAS, while serving as County Commissioner, John P. Loyd was appointed as County Judge/Executive upon the death of Mr. Harry Lowe; and

WHEREAS, John P. Loyd was elected to three terms as County Judge/Executive by the citizens of Mason County; and

WHEREAS, Judge Loyd tirelessly championed the needs of the less advantaged through his advocacy for a better public health system; and

WHEREAS, during his tenure, Judge Loyd reorganized the Mason County Health Department to better serve citizens countywide; and

WHEREAS, Judge Loyd's compassion and humanitarian efforts were especially focused upon young people, evidenced by his diligence in creating and staffing a county welfare office; and

WHEREAS, Judge Loyd also ensured the citizens of Mason County enjoyed good roads with easy access to work and personal activities by paving as many county roads as possible during his tenure;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. In honor and tribute to Judge John P. Loyd, the Transportation Cabinet shall name the new bridge on Kentucky Route 3071 in Mason County, located approximately one-half mile north of the intersection of Kentucky Route 3071 and Kentucky Route 3056 near the community of Moranburg the "John P. Loyd Memorial Bridge."

Section 2. The Transportation Cabinet shall erect memorial signs on each side of the bridge honoring John P. Loyd within thirty (30) days of the effective date of this Resolution.

Section 3. A copy of this Resolution is to be transmitted to Secretary James Codell, Kentucky Transportation Cabinet, and to Chief District Engineer, Jim Rummage, for the District 9 Highway Office in Flemingsburg, Kentucky.

Approved March 6, 2000

CHAPTER 80

(SB 97)

AN ACT relating to the airport zoning commission.

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

Section 1. KRS 183.861 is amended to read as follows:

There is hereby created and established within the cabinet, a commission to be known as the "Kentucky Airport Zoning Commission" which, notwithstanding the provisions of KRS Chapters 100 and 147, shall be empowered to issue~~[such]~~ orders, rules**,** and regulations pertaining to use of land within and around all ***military and public use airports, heliports, and sea plane bases***~~[publicly owned airports]~~ within the state as will promote the public interest and protect and encourage the proper use of ***the***~~[such]~~ airports and their facilities.

Section 2. KRS 183.865 is amended to read as follows:

All of the powers, provisions and duties relating to the zoning and use of land, structures and air space within and around ***military and public use airports, heliports, and sea plane bases***~~[public airports]~~ within the state are hereby conferred upon, delegated to and vested in the commission. The commission shall also exercise all powers, provisions**,** and duties relating to the use of navigable air space within the state. Nothing contained in this chapter shall prevent a governmental unit from acquiring airports, airport facilities, or air navigation facilities, or from taking any action authorized by law for the elimination of any airport hazard, either alone or jointly with the commission.

Section 3. KRS 183.867 is amended to read as follows:

(1) The commission shall require that every ***military and public use airport, heliport, and sea plane base***~~[public airport]~~ in the state file with it, from time to time, as required, maps showing the airport and area surrounding ***the***~~[such]~~ airport used for approach or landing purposes. The commission shall thereafter designate on ***the***~~[such]~~ maps, by reference to the regulations or standards promulgated by the Federal Aviation Administration concerning the area required for the safe maneuvering approach and landing of aircraft, the area over which jurisdiction will be assumed for zoning purposes. The commission shall notify any local zoning bodies of the area so designated and may exercise jurisdiction of ***the***~~[such]~~ area insofar as it pertains to the safe and proper maneuvering of aircraft and the safe and proper use of the airport involved. The local zoning body may retain jurisdiction of zoning in such areas as to all other matters.

(2) The commission may adopt~~[such]~~ regulations pertaining to the zoning of areas over which jurisdiction is assumed as will provide for the proper and safe use of ***the***~~[such]~~ area and airport.

(3) The commission shall maintain a public file in the offices of the cabinet showing maps of each ***military and public use airport, heliport, and sea plane base***~~[public airport]~~ within the state and the area around ***the***~~[such]~~ airport over which it has assumed jurisdiction for zoning purposes and such shall constitute public notice of the restrictions and zoning applicable to ***the***~~[such]~~ areas or airport. The commission shall also maintain a public file showing any regulations adopted pertaining to land uses in areas zoned and ***these regulations***~~[such]~~ shall constitute public notice of same.

Approved March 6, 2000

CHAPTER 81

(SCR 15)

A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

WHEREAS, tobacco production is at the heart of Kentucky's economy; and

WHEREAS, loss of tobacco production or the tobacco program would have a devastating effect on Kentucky and its tobacco farmers; and

WHEREAS, such losses would cause failure of many farms and businesses, decreases in land values, the default of loans, and the loss of state and local revenues; and

WHEREAS, the Tobacco Task Force was created by the Legislative Research Commission in 1984 to address problems that threaten the tobacco industry and the tobacco price support program; and

WHEREAS, the Task Force has been instrumental in helping to resolve these problems; and

WHEREAS, the tobacco industry and tobacco farmers remain in jeopardy because of threats to the program, increased imports, labor shortages, marginal prices, possible increases in excise taxes, and other problems;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. That the Kentucky Tobacco Task Force be reauthorized to help resolve the problems facing the tobacco industry and the tobacco program.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 6, 2000

CHAPTER 82

(HB 61)

AN ACT relating to intergovernmental agreements.

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

Section 1. KRS 67.083 is amended to read as follows:

(1) It is the purpose of this section to provide counties as units of general purpose local government with the necessary latitude and flexibility to provide and finance various governmental services within those functional areas specified in subsection (3) of this section, while the General Assembly retains full authority to prescribe and limit by statute local governmental activities when it deems such action necessary.

(2) The fiscal court of any county is hereby authorized to levy all taxes not in conflict with the Constitution and statutes of this state now or hereafter enacted.

(3) The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county may enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds, and employ personnel in performance of the following public functions:

(a) Control of animals, and abatement of public nuisances;

(b) Regulation of public gatherings;

(c) Public sanitation and vector control;

(d) Provision of hospitals, ambulance service, programs for the health and welfare of the aging and juveniles, and other public health facilities and services;

(e) Provision of corrections facilities and services, and programs for the confinement, care and rehabilitation of juvenile law offenders;

(f) Provision of parks, nature preserves, swimming pools, recreation areas, libraries, museums, and other recreational and cultural facilities and programs;

(g) Provision of cemeteries and memorials;

(h) Conservation, preservation and enhancement of natural resources including soils, water, air, vegetation, and wildlife;

(i) Control of floods;

(j) Facilitating the construction and purchase of new and existing housing; causing the repair or demolition of structures which present a hazard to public health, safety, or morals or are otherwise inimical to the welfare of residents of the county; causing the redevelopment of housing and related commercial, industrial, and service facilities in urban or rural areas; providing education and counseling services and technical assistance to present and future residents of publicly assisted housing;

(k) Planning, zoning, and subdivision control according to the provisions of KRS Chapter 100;

(l) Adoption, by reference or in full, of technical codes governing new construction, renovation, or maintenance of structures intended for human occupancy;

(m) Regulation of commerce for the protection and convenience of the public;

(n) Regulation of the sale of alcoholic beverages according to the provisions of KRS Chapters 241 to 244;

(o) Exclusive management of solid wastes by ordinance or contract or by both and disposition of abandoned vehicles;

(p) Provision of public buildings, including armories, necessary for the effective delivery of public services;

(q) Cooperation with other units of government and private agencies for the provision of public services, including, but not limited to, training, educational services, and cooperative extension service programs;

(r) Provision of water and sewage and garbage disposal service but not gas or electricity; including management of onsite sewage disposal systems;

(s) Licensing or franchising of cable television;

(t) Provision of streets and roads, bridges, tunnels and related facilities, elimination of grade crossings, provision of parking facilities, enforcement of traffic and parking regulations;

(u) Provision of police and fire protection;

(v) Regulation of taxis, buses, and other passenger vehicles for hire;

(w) Provision and operation of air, rail and bus terminals, port facilities, and public transportation systems;

(x) Promotion of economic development of the county, directly or in cooperation with public or private agencies, including the provision of access roads, land and buildings, and promotion of tourism and conventions;

(y) Preservation of historic structures; and

(z) Regulation of establishments or commercial enterprises offering adult entertainment and adult entertainment activities.

(4) The county judge/executive is hereby authorized and empowered to exercise all of the executive powers pursuant to this section.

(5) A county acting under authority of this section may assume, own, possess and control assets, rights and liabilities related to the functions and services of the county.

(6) If a county is authorized to regulate an area which the state also regulates, the county government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation:

(a) If the state statute or administrative regulation prescribes a single standard of conduct, a county ordinance is consistent if it is identical to the state statute or administrative regulation;

(b) If the state statute or administrative regulation prescribes a minimal standard of conduct, a county ordinance is consistent if it establishes a standard which is the same as or more stringent than the state standard;

(c) A county government may adopt ordinances which incorporate by reference state statutes and administrative regulations in areas in which a county government is authorized to act.

(7) County ordinances which prescribe penalties for their violation shall be enforced throughout the entire area of the county unless:

(a) Otherwise provided by statute; or

(b) The legislative body of any city within the county has adopted an ordinance pertaining to the same subject matter which is the same as or more stringent than the standards that are set forth in the county ordinance. The fiscal court shall forward a copy of each ordinance which is to be enforced throughout the entire area of the county to the mayor of each city in the county.

(8) (a) The powers granted to counties by this section shall be in addition to all other powers granted to counties by other provisions of law. These powers, other than the power to tax, may be exercised cooperatively by two (2) or more counties, or by a county and a city, or by a county and a special district, or by a county and the state through, but not limited to, joint contracts, joint ownership of property, or the exchange of services, including personnel and equipment. When counties cooperate in the provision of public services, contracts shall be drawn to ***document the***~~[insure that]~~ benefits ***and relative cost for each of***~~[among]~~ the participating governments***. One (1) government may pay one hundred percent (100%), or a lesser percentage, of all or any part of the cost of the joint undertaking, based upon the written contract required by this subsection***~~[are relative to costs among them. If the personnel or equipment of one (1) government is provided for a second government, the second government shall fully compensate the first through the reciprocal provision of services or through monetary compensation]~~.

(b) A permissive procedure authorized by this section shall not be deemed to be exclusive or to prohibit the exercise of other existing laws and laws which may hereafter be enacted but shall be an alternative or supplement thereto.

(9) Any agency of county government exercising authority pursuant to subsection (3)(y) of this section shall, prior to exercising such authority, obtain the voluntary written consent of the owner of the structure. Consent may be obtained only after advising the owner in writing of any advantages and disadvantages to the owner which are likely to result from the exercise of such authority.

Section 2. KRS 178.010 is amended to read as follows:

(1) As used in this chapter, unless the context otherwise requires:

(a) "Construction" includes reconstruction and improvement;

(b) "County roads" are public roads which have been accepted by the fiscal court of the county as a part of the county road system after July 1, 1914, or private roads, streets, or highways which have been acquired by the county pursuant to KRS 178.405 to 178.425. "County roads" includes necessary bridges, culverts, sluices, drains, ditches, waterways, embankments or retaining walls; and

(c) "Hard surface road" means a road the surface of which is asphalt, brick, stone block, macadam, concrete, gravel or other material of equal merit.

(2) Nothing in this chapter shall be construed to take from the jurisdiction or control of the legislative body of any incorporated city any road, bridge, landing or wharf, or any other thing exclusively under the jurisdiction or control of such city.

(3) Nothing in this chapter shall prevent any fiscal court from acquiring land by gift for public purposes.

(4) Nothing in this chapter, including the fact that a municipal street has not been accepted into the county road system, shall prevent any county from entering into an agreement, pursuant to the provisions of KRS 65.220 to 65.300, with any city located within the county to perform work upon or to provide personnel, materials or equipment for work to be performed upon any street located within the city***. A county may pay one hundred percent (100%), or a lesser percentage, of all or any part of the cost of the joint undertaking, based upon the terms agreed to in the interlocal cooperative agreement required by this subsection***[~~, provided that the city agrees to pay the costs if any associated with any such agreement~~].

Approved March 6, 2000

CHAPTER 83

(HB 94)

AN ACT relating to reorganization.

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

Section 1. KRS 36.355 is amended to read as follows:

(1) There shall be established and maintained in the Commonwealth of Kentucky state veterans' nursing homes to provide long-term care to veterans who are residents of Kentucky.

(2) ***There is created the Office of Kentucky Veterans' Centers within the Department of Veterans' Affairs. The office shall be headed by an executive director appointed pursuant to KRS 12.050. The office shall operate*** the Kentucky state veterans' nursing homes[~~ shall be attached to the Finance and Administration Cabinet~~]. The ***Department of Veterans' Affairs***[~~Finance and Administration Cabinet~~] may promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.

(3) The Department of Veterans' Affairs may seek federal and private funding for the construction or renovation, and operation of Kentucky state veterans' nursing homes.

Section 2. The General Assembly hereby confirms Executive Order 98-1594, issued by the Governor on December 3, 1998, to the extent that it is not otherwise confirmed by Section 1 of this Act.

Section 3. Notwithstanding KRS 446.260, the change made in Section 1 of this Act shall be merged into the section of 2000 House Bill 139 affecting that statute, if House Bill 139 becomes law.

Approved March 6, 2000

CHAPTER 84

(HB 106)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1566, dated November 25, 1998, relating to the Public Protection and Regulation Cabinet, Kentucky Racing Commission, that: creates the Division of Racing/Security to provide supervision and oversight functions of horse racing in accordance with KRS Chapter 230; abolishes the Division of Thoroughbred Racing, transferring all personnel, records, files, equipment, and funds to the Division of Racing/Security; abolishes the Division of Standardbred and Quarter Horse Racing, transferring all personnel, records, files, equipment, and funds to the Division of Racing/Security; and abolishes the Division of Security, transferring all personnel, records, files, equipment, and funds to the Division of Racing/Security. The newly created Division of Racing/Security shall be composed of such personnel, records, files, equipment and funds as have been transferred pursuant to Executive Order 98-1566, and as may be set forth by subsequent executive order of the Governor, or administrative order of the commission.

Approved March 6, 2000

CHAPTER 85

(HB 108)

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of

information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   (a) Department of State Police.
   (b) Department of Criminal Justice Training.
   (c) Department of Corrections.
   (d) Department of Juvenile Justice.
   (e) Office of the Secretary.
   (f) Offices of the Deputy Secretaries.
   (g) Office of General Counsel.
   (h) Division of Kentucky State Medical Examiners Office.
   (i) Parole Board.
   (j) Kentucky State Corrections Commission.
   (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

1. Office of Program Planning and Management.

2. Office of Project Development.

3. Office of Construction and Operations.

4. Office of Intermodal Programs.

5. Highway District Offices One through Twelve.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) ***Department of Human Resources Management.***

(g) Office of the Secretary.

(h) Office of General Counsel ***and Legislative Affairs***.

(i)~~[(g)]~~ Office of Public Affairs.

(j)~~[(h)]~~ ***Office of Transportation Delivery***~~[Office of Personnel Management]~~.

(k)~~[(i)]~~ Office of Minority Affairs.

(l)~~[(j)Office of Environmental Affairs.~~

~~(k)]~~ Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 2. KRS 174.016 is amended to read as follows:

(1)[~~ The Department of Rural and Municipal Aid is created as a major organizational unit within the Transportation Cabinet. The department shall be headed by a commissioner who may be designated as a deputy secretary of transportation for operational purposes. The commissioner shall be appointed by the Governor pursuant to KRS 12.040 and shall be directly supervised by and responsible to the secretary.~~

~~(2)~~] The Department of Rural and Municipal Aid shall be responsible for the development and implementation of the Rural Secondary Program and such other functions as are assigned by the secretary, except that the department shall not have jurisdiction over the County Road Aid Program or Municipal Road Aid Program unless an agreement initiated by a county or municipality is in effect.

(2)[~~(3)~~] The Department of Rural and Municipal Aid shall include an assistant state highway engineer for rural and municipal aid appointed pursuant to KRS Chapter 12 by the secretary upon the recommendation of the state highway engineer of the Department of Highways.

Section 3. KRS 174.020 is amended to read as follows:

(1) The Transportation Cabinet[~~ in addition to the departments set forth in KRS 174.015~~] shall consist of the following ***major*** organizational units:

(a) ***The Office of the Secretary, which shall include, but not be limited to:***

1. a. The secretary to be appointed by the Governor under KRS 12.255; and

b. The deputy secretary appointed under KRS 12.040;

2. The Railroad Commission shall be attached to the Office of the Secretary for administrative purposes;

(b) The Department of Highways, headed by a commissioner, appointed by the Governor under KRS 12.040 on the recommendation of the secretary;

(c) The Department of Vehicle Regulation, headed by a commissioner, appointed by the secretary with the approval of the Governor, under KRS 12.040;

(d) The Department of Rural and Municipal Aid, headed by a commissioner appointed by the Governor under KRS 12.040;

(e) The Department of Fiscal Management, headed by a commissioner appointed by the Governor under KRS 12.040;

(f) The Department of Administrative Services, headed by a commissioner appointed by the Governor under KRS 12.040;

(g) The Department of Human Resources Management, headed by a commissioner appointed by the Governor under KRS 12.040;

(h) The following offices, which shall be attached to the Office of the Secretary:

1. The Office of Public Affairs, headed by an executive director appointed under KRS 12.040;

2. The Office of Policy and Budget, headed by an executive director appointed under KRS 12.040;

3. The Office of Transportation Delivery, headed by an executive director appointed under KRS 12.040;

4. The Office of General Counsel and Legislative Affairs, headed by an executive director appointed under KRS 12.040;

5. The Office of Minority Affairs, headed by an executive director appointed under KRS 12.040;

(i) The following offices, which shall be attached to the Department of Highways;

1. The Office of Program Planning and Management, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and known as the deputy state highway engineer for program planning and management;

2. The Office of Project Development, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for project development;

3. The Office of Construction and Operations, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for construction and operations;

4. The Office of Intermodal Programs, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for intermodal programs. The Kentucky Airport Zoning Commission established by KRS 183.861 shall be attached to the Division of Aeronautics within the Office of Intermodal Programs for administrative purposes; and

5. Highway District Offices One through Twelve, each district office to be headed by a chief highway district engineer, appointed by the secretary upon the recommendation of the commissioner and the state highway engineer, with the approval of the Governor

~~[Office of the Secretary of Transportation comprised of the secretary of transportation, a deputy secretary for administration, a deputy secretary for legal affairs, and the Office of Environmental Affairs created by paragraph (h) of this subsection;~~

~~(b) Railroad Commission, attached to the Office of the Secretary for administrative purposes;~~

~~(c) Office of Public Affairs, headed by an executive director who shall serve as media spokesperson and shall be responsible for all matters relating to public relations and information;~~

~~(d) Office of General Counsel, headed by an executive director responsible for general office administration, and the general counsel who provides legal services for the cabinet;~~

~~(e) Office of Personnel Management, headed by an executive director who shall be responsible for the implementation of programs and practices for the recruitment, utilization, and management of cabinet personnel;~~

~~(f) Office of Minority Affairs, headed by an executive director who shall be responsible for the development and implementation of programs and procedures for assisting minorities in employment and contractual relations with the cabinet;~~

~~(g) Kentucky Airport Zoning Commission established by KRS 183.861, which shall be attached to the Division of Aeronautics;~~

~~(h) Office of Environmental Affairs, headed by an executive director who shall oversee all Transportation Cabinet environmental issues, activities, and programs; developing and implementing policies; and procedures. The position of executive director is a policy-making position under the provisions of KRS 18A.175. The Office of Environmental Affairs may direct the Transportation Cabinet's environmental activities, associated personnel, and facilities when necessary to assure compliance with environmental laws and regulations; and~~

~~(i) Office of Policy and Budget, headed by an executive director who shall be responsible for administering the budget functions of the Transportation Cabinet]~~.

(2) ~~[The executive directors of the Offices of Public Affairs, General Counsel, Personnel Management, Minority Affairs, Environmental Affairs, and Policy and Budget shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050.]~~The positions of director in the Division of Fleet Management, Division of Professional Services, and Division of Environmental Analysis are policy-making positions ***under***~~[pursuant to]~~ KRS 18A.175.

Section 4. KRS 174.025 is amended to read as follows:

The executive director of the Office of General Counsel ***and Legislative Affairs*** may also serve as general counsel if so appointed pursuant to KRS 12.210. The Office of General Counsel ***and Legislative Affairs*** shall be directly responsible to the secretary and shall perform such duties as

may be assigned by the secretary. The office shall consist of such~~[attorney]~~ appointed pursuant to KRS 12.210 and such employees as necessary to perform the duties, responsibilities, and functions of the office.

Section 5. The General Assembly confirms Executive Order 98-1596, dated December 3, 1998, relating to the reorganization of the Transportation Cabinet to the extent not otherwise confirmed by this Act.

Section 6. The following KRS section is repealed:

174.015 Departments within the cabinet.

Approved March 6, 2000

CHAPTER 86

(HB 110)

AN ACT relating to reorganization.

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

Section 1. KRS 227.205 is amended to read as follows:

The Department of Housing, Buildings and Construction (hereinafter referred to as the department of housing) is hereby created within the Cabinet for Public Protection and Regulation. The department shall be headed by a commissioner appointed by the Governor subject to the provisions of KRS 12.040 and who shall report to the secretary of the Cabinet for Public Protection and Regulation. The office of the commissioner shall also include a deputy commissioner and an executive assistant to the commissioner, who shall be the policy making assistants to the commissioner and shall be appointed pursuant to KRS 12.050. The department shall consist of the Division of Fire Prevention, the Division of Building Codes Enforcement, the Division of Administrative Services**,**~~[and]~~ the Division of Plumbing***, and the Division of Heating, Ventilation and Air Conditioning (HVAC)***.

Section 2. The General Assembly hereby confirms Executive Order 99-1198, dated August 30, 1999, relating to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction, which creates the Division of Heating, Ventilation and Air Conditioning (HVAC), to be headed by a division director appointed by the secretary of the cabinet pursuant to KRS 12.050.

Approved March 6, 2000

CHAPTER 87

(SB 105)

AN ACT relating to parks.

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

Section 1. KRS 148.029 is amended to read as follows:

(1) All areas controlled by the Department of Parks and designated as camping, hiking, or other family-oriented recreation areas are designated wildlife sanctuaries for the purpose of

affording protection to the wildlife thereon as natural, integrated, interrelated, ecological communities.

(2) No unauthorized person shall enter a wildlife sanctuary and take, damage, injure, kill, destroy, or unduly disturb the wildlife therein except as provided in ***this section***[~~subsection (3) hereof~~].

(3) The department may issue to any person a permit for the scientific collection of wildlife provided the applicant for such permit holds a current state scientific collecting permit issued by the Department of Fish and Wildlife Resources.

(4) This section does not apply to fish taken pursuant to KRS Chapter 150 and all rules and regulations promulgated by the Department of Parks and the Department of Fish and Wildlife Resources.

(5) The department ***may authorize***[~~in cooperation with~~] the Department of Fish and Wildlife Resources ***to administer a wildlife management plan that may include the implementation of any management method provided in KRS Chapter 150***[~~may remove, destroy, or disturb wildlife~~] in the course of operating and administering the parks; and in so doing shall consider the ecological impact on the sanctuary as a whole.

Approved March 8, 2000

CHAPTER 88

(HB 208)

AN ACT relating to organ donation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

If an individual has made an anatomical gift by signing the anatomical gift section on the back of his or her operator's license or by directing the gift as a part of a living will directive according to KRS 311.623, the individual's family members and any health care surrogate as defined in KRS 311.621 shall honor the wishes upon the death of the individual and shall not have any legal standing or authority to modify the decedent's wishes or deny the anatomical gift from being made to the donee for the purposes stated in KRS 311.185, unless the gift has been revoked.

Approved March 8, 2000

CHAPTER 89

(HB 253)

AN ACT relating to city audits.

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

Section 1. KRS 91A.040 is amended to read as follows:

(1) Each city of the first through fifth class shall, after the close of each fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year being audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, in accordance with subsection (4)(f) of this section, each city shall forward three (3) copies of the audit report to the Kentucky Department for Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.

(2) Except as provided in subsection (3) of this section, each city of the sixth class shall, after the close of each odd-numbered fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year to be audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, in accordance with subsection (4)(f) of this section, each sixth class city shall forward three (3) copies of the audit report to the Kentucky Department for Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975. After the close of each even-numbered fiscal year, each sixth class city shall prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department for Local Government. The department shall forward one (1) copy of the financial statement to the Legislative Research Commission.

(3) Any city of the sixth class, which for any fiscal year receives and expends, from all sources and for all purposes, less than ***seventy-five thousand dollars ($75,000)***[~~twenty-five thousand dollars ($25,000)~~], and which has no long-term debt, whether general obligation or revenue debt, shall not be required to audit each fund of the city for that particular fiscal year. Each city shall annually prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department for Local Government for information purposes. The department shall be responsible for forwarding one (1) copy of the financial statement to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.

(4) Each city required by this section to conduct an annual or biannual audit shall enter into a written contract with the selected auditor. The contract shall set forth all terms and conditions of the agreement which shall include, but not be limited to, requirements that:

(a) The auditor be employed to examine the general purpose financial statements of all governmental, proprietary, and fiduciary funds of the city;

(b) The auditor shall include in the annual city audit report an examination of local government economic assistance funds granted to the city under KRS 42.450 to 42.495. The auditor shall include a certification with the annual audit report that the funds were expended for the purpose intended;

(c) All audit information be prepared in accordance with generally accepted governmental auditing standards which include tests of the accounting records and auditing procedures considered necessary in the circumstances. Where the audit is to cover the use of state or federal funds, appropriate state or federal guidelines shall be utilized;

(d) The auditor prepare a typewritten or printed report embodying the general purpose financial statements and his opinion and statements relating to those statements;

(e) The auditor express an overall opinion as to whether the general purpose financial statements present fairly the financial condition of the city or state the reasons why an overall opinion cannot be expressed;

(f) The completed audit and all accompanying documentation shall be presented to the city legislative body at a regular or special meeting; and

(g) Any contract with a certified public accountant for an audit shall require the accountant to forward a copy of the audit report and management letters to the Auditor of Public Accounts upon request of the city or the Auditor of Public Accounts, and the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers upon request.

(5) A copy of an audit report which meets the requirements of this section shall be considered satisfactory and final in meeting any official request to a city for financial data, except for statutory or judicial requirements, or requirements of the Legislative Research Commission necessary to carry out the purposes of KRS 6.955 to 6.975.

(6) Upon completion of an audit, each city may elect to publish the auditor's report in accordance with subsection (7) of this section, or publish a financial statement in accordance with subsection (8) of this section. Notwithstanding the election of subsection (7) or (8) of this section, the city shall, within ninety (90) days after the close of the fiscal year, cause to be published in a newspaper qualified under KRS 424.120 a legal display advertisement of not less than eight (8) column inches that the statement required by KRS 424.220 has been prepared and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio or television station which has on file with the city a written request to be provided a statement.

(7) If the city elects to publish the auditor's report prepared in accordance with this section in lieu of the financial statement required by KRS 424.220, it shall publish the auditor's cover letter to the city council, the combined balance sheet showing all fund types and account groups, the combined statement of revenues, expenditures, and changes in fund balance for all governmental fund types, the combined statement of revenues, expenses, and changes in retained earnings/fund balances for all proprietary fund types and similar trust funds, and the combined statement of changes in financial position for all proprietary fund types and similar trust funds in accordance with KRS Chapter 424. The advertisement shall contain a statement that a copy of the complete auditor's report, including financial statements and supplemental information, are on file at city hall and are available for public inspection during normal business hours. The advertisement shall also contain a statement that any citizen may obtain from city hall a copy of the complete auditor's report, including financial statements and supplemental information, for his personal use. The statement shall notify citizens requesting a personal copy of the city audit report that they will be charged for duplication costs at a rate that shall not exceed twenty five cents ($0.25) per page. In addition, the advertisement shall contain a statement that copies of the financial statement prepared in accordance with KRS 424.220 are available to the public at no cost at the business address of the officer responsible for preparation of the statement.

(8) If the city, other than a city of the first or second class or urban-county government, elects to publish the financial statement prepared in accordance with KRS 424.220 in lieu of publishing the auditor's report, it shall, within sixty (60) days after the completion of the audit, publish the statement in accordance with KRS Chapter 424.

(9) Any city of the fifth or sixth class may utilize the alternative publication methods authorized by KRS 424.190(2) to comply with the provisions of this section.

(10) Any person who violates any provision of this section shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500). In addition, any officer who fails to comply with any of the provisions of this section shall, for each failure, be subject to a forfeiture of not less than fifty dollars ($50) nor more than five hundred dollars ($500), in the discretion of the court, which may be recovered only once in a civil action brought by any resident of the city. The costs of all proceedings, including a reasonable fee for the attorney of the resident bringing the action, shall be assessed against the unsuccessful party.

Approved March 8, 2000

CHAPTER 90

(HB 302)

AN ACT relating to city civil service.

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

Section 1. KRS 90.330 is amended to read as follows:

(1) The civil service commission shall examine all applicants as to their physical and mental qualification for the particular classification wherein they seek employment. To be eligible for examination a person must not be less than eighteen (18) nor have passed his or her forty-sixth birthday, a law-abiding citizen of sobriety and integrity, and must be able to read and write and understand the English language; provided, however, that any present employee who is over forty-five (45) years of age and who is otherwise qualified shall be eligible to take any promotional examinations.

(2) Except for those members whose qualifications are determined under KRS 95.440, no person shall be appointed to a position under civil service until that person is a resident of the ***Commonwealth of Kentucky***~~[county in which the city is located]~~.

(3) Any city legislative body that operates under this chapter may by ordinance require persons appointed to civil service positions to be a resident of the county in which the city is located.

Approved March 8, 2000

CHAPTER 91

(HB 340)

AN ACT relating to personnel.

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

Section 1. KRS 18A.005 is amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

(1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary;

(2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;

(3) "Board" means the Personnel Board created by KRS 18A.045;

(4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;

(5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the secretary on request of an appointing officer for consideration in filling a position in the classified service;

(6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;

(7) "Classified employee" means an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter;

(8) "Classified position" means a position in the executive branch of state government that is not exempt from the classified service under KRS Chapter 16, KRS 18A.115, KRS Chapter 151B, or any other provision of law;

(9) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;

(10) "Secretary" means the secretary of the Personnel Cabinet as provided for in KRS 18A.015;

(11) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility;

(12) "Cabinet" means the Personnel Cabinet provided for in KRS 18A.015, unless the context indicates otherwise;

(13) "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 and who has qualified to be placed on a register;

(14) "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time, part-time, or interim basis;

(15) "Full-time employee" means an employee in a full-time position;

(16) "Full-time position" means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:

(a) Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and

(b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;

(17) "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence. "Initial probation" does not include a probationary period served by a laid-off employee who accepts a bona fide written offer of appointment;

(18) "Interim employee" means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;

(19) "Interim position" means a position established to address a one time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;

(20) "Part-time employee" means an employee in a part-time position;

(21) "Part-time position" means a position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month;

(22) "Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees;

(23) "Position" means an office or employment in an agency (whether part-time, full-time, or interim, occupied, or vacant) involving duties requiring the services of one (1) person;

(24) "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;

(25) "Promotional probation" means the period of service, consistent with the length of the initial probationary period, following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days

during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;

(26) "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;

(27) "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs;

(28) "Reemployment" shall mean the rehiring of an employee with status who has been laid off;

(29) "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;

(30) "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;

(31) "Reinstatement" shall mean the restoration of an employee who has resigned in good standing, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;

(32) ***"Reversion" means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation, or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095(13);***

(33) "Seniority" means the total number of months of state service;

(34)[~~(33)~~] "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service;

(35)[~~(34)~~] "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

Section 2. KRS 18A.0751 is amended to read as follows:

(1) The board shall promulgate comprehensive administrative regulations for the classified service governing:

(a) Appeals by state employees;

(b) Demotion;

(c) Dismissal;

(d) Fines, suspensions, and other disciplinary measures;

(e) Probation, provided that the board may not require an initial probationary period in excess of six (6) months except as provided in subsection (4)(e) of this section and KRS 18A.005;

(f) Promotion;

(g) Reinstatement;

(h) Transfer; and

(i) Employee grievances and complaints.

(2) (a) These administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law, when approved by the board, after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;

(b) Administrative regulations promulgated by the board shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and

(c) No administrative body, other than the personnel board, shall promulgate administrative regulations governing the subject matters specified in this section.

(3) Prior to filing an administrative regulation with the Legislative Research Commission, the board shall submit the administrative regulation to the secretary for review:

(a) The secretary shall review the administrative regulation proposed by the board not ***more***~~[less]~~than twenty (20) days after its submission to him;

(b) Not ***more***~~[less]~~than five (5) days after his review, the secretary shall submit his recommendations in writing to the board;

(c) The board shall review the recommendations of the secretary and may revise the proposed administrative regulation as it deems necessary; and

(d) After the board has completed the review provided for in this section, it may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.

(4) These administrative regulations shall provide:

(a) For the procedures to be utilized by the board in the conduct of hearings by the board, consistent with the provisions of KRS Chapter 13B;

(b) For reduction in rank or grade as provided by this chapter;

(c) For discharge, as provided by this section;

(d) For imposition, as disciplinary measures, of a fine of not more than ten (10) working days' pay, or for suspension from the service without pay for no longer than thirty (30) working days and, in accordance with the provisions of KRS 18A.095, for the manner of notification of the employee of the discipline and his right of appeal;

(e) No probationary period may exceed twelve (12) months, except as provided in KRS 18A.005. The secretary may recommend an initial probationary period in excess of six (6) months for specific job classifications to the board. This recommendation shall take the form of a proposed administrative regulation that shall be submitted to the

board for approval. The subject of the administrative regulation shall be limited to job classifications for which an initial probationary period in excess of six (6) months is required and shall specify:

1. The job classification for which an initial probationary period in excess of six (6) months is required; and

2. The specific number of months constituting the initial probationary period for the job classification. No other administrative regulation shall include any provision prescribing an initial probationary period in excess of six (6) months, except as provided in KRS 18A.005. Upon approval by the board of the proposed administrative regulation provided for in this paragraph, the board shall file the regulation with the Legislative Research Commission as provided by KRS Chapter 13A;

(f) For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, conduct, and seniority. Except as provided by this chapter, vacancies shall be filled by promotion whenever practicable and in the best interest of the service;

(g) For reemployment of laid-off employees in accordance with the provisions of this chapter;

(h) For transfer from a position in one (1) department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges as provided by the provisions of KRS 18A.1131(3)(a);

(i) For establishment of a plan for resolving employee grievances and complaints. This plan shall not restrict rights granted employees by the provisions of this chapter;

(j) For promotion of career employees to positions in the unclassified service without loss of status to the individual employees so promoted, as provided by this chapter; and

(k) For any other administrative regulations not inconsistent with this chapter and KRS Chapter 13A as may be proper and necessary for its enforcement.

Section 3. KRS 18A.080 is amended to read as follows:

(1) Except as provided in KRS 18A.200, members of the board shall receive compensation of ***one hundred dollars ($100)***~~[sixty-five dollars ($65)]~~ per diem for each meeting of the board and reimbursement for actual and necessary expenses in accordance with state regulations and standards applicable to state employees.

(2) In addition to payments for attendance at board meetings all board members may also be paid ***one hundred dollars ($100)***~~[sixty-five dollars ($65)]~~ for each day spent in the preparation of recommended orders, the review of transcripts or other matters related to appeals before the board.

(3) Any board member missing three (3) consecutive regular meetings shall be deemed to have vacated his office. Replacements to the board shall be made as provided in KRS 18A.050(2) and 18A.060.

Approved March 8, 2000

CHAPTER 92

(SJR 17)

A JOINT RESOLUTION directing the Transportation Cabinet to rename the Cumberland Parkway in honor of Louie B. Nunn.

WHEREAS, Louie Nunn was born on March 8, 1924, in the town of Park, in Barren County, Kentucky, the fourth son of Walter H. and Mary Roberts Nunn; and

WHEREAS, Louie Nunn served his country as an infantryman from 1943 to 1945 at the height of World War II; and

WHEREAS, Louie Nunn received a law degree from the University of Louisville in 1950; and

WHEREAS, Louie Nunn was very active in civic affairs, evidenced by his serving as chairman of the Board of Elders and Deacons of the First Christian Church of Glasgow and director of the Glasgow Little League, and by his memberships in the Rotary Club, the Chamber of Commerce, the American Legion, and the Jaycees; and

WHEREAS, Louie Nunn's long history of public service began with his election as Barren County Judge in 1953, and continued with his service as city attorney for Glasgow; and

WHEREAS, Louie Nunn served as Governor of the Commonwealth from 1967 to 1971; and

WHEREAS, Louie Nunn's tenure as Governor was highlighted by increased support for economic development programs, mental health services, the establishment of the Kentucky Educational Television System, and expansion of state parks; and

WHEREAS, Louie Nunn was instrumental in increasing budgets for education at the primary, secondary, and post secondary levels, and his administration helped further higher education in the Commonwealth, by bringing the University of Louisville into the state system and by transforming a community college into what is now Northern Kentucky University; and

WHEREAS, Louie Nunn has continued to be an active force in the political and civic life of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to rename the Cumberland Parkway the "Louie B. Nunn Parkway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Louie B. Nunn Parkway" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet.

Approved March 8, 2000

CHAPTER 93

(HCR 35)

A CONCURRENT RESOLUTION confirming the appointment of Joan N. Taylor to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Ms. Joan N. Taylor as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2000; and

WHEREAS, the Senate and the House of Representatives find that Ms. Taylor meets the requirements of KRS 164.011, being a resident and qualified voter of Kentucky, not holding an official relationship to any institution of higher education in Kentucky, and not engaging in any occupation or business inconsistent with her duties as a member of the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate, pursuant to KRS 164.011, do confirm the appointment of Ms. Joan N. Taylor to the Council on Postsecondary Education for a term expiring December 31, 2000.

Section 2. That the Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Joan N. Taylor, 1324 Tanforan Drive, Lexington, Kentucky 40517, and to Governor Paul Patton, Room 100, State Capitol, Frankfort Kentucky 40601.

Approved March 8, 2000

CHAPTER 94

(HCR 37)

A CONCURRENT RESOLUTION confirming the appointment of Charles Layson Owen to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Mr. Charles Layson Owen as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2005; and

WHEREAS, the Senate and the House of Representatives find that Mr. Owen meets the requirements of KRS 164.011, being a resident and qualified voter of Kentucky, not holding an

official relationship to any institution of higher education in Kentucky, and not engaging in any occupation or business inconsistent with his duties as a member of the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate, pursuant to KRS 164.011, do confirm the appointment of Mr. Charles Layson Owen to the Council on Postsecondary Education for a term expiring December 31, 2005.

Section 2. That the Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Mr. Charles Layson Owen, 6 River Hill Road, Louisville, Kentucky 40207, and to Governor Paul Patton, Room 100, State Capitol, Frankfort Kentucky 40601.

Approved March 8, 2000

CHAPTER 95

(HB 326)

AN ACT related to the probationary period of police and firefighters.

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

Section 1. KRS 95.762 is amended to read as follows:

(1) The commission shall require all applicants for appointments as members of the police or fire departments to be examined as to their qualifications to fill the office of policeman or firefighter, and as to their knowledge of the English language, and as to the law and rules governing the duties of policemen and firefighters. Every member of the police or fire department shall be able to read and write and understand the English language, and have such other general qualifications as may be prescribed.

(2) No person shall be appointed a member of the police or fire departments unless he is well known to be a person of sobriety and integrity, and has been and is an orderly, law-abiding citizen, nor shall any person be appointed as a member of said police or fire departments on account of any political, partisan service rendered by him or on account of political sentiments or affiliations, or who is under twenty-one (21) years of age or over forty (40), unless the applicant has had as much as five (5) years' experience as a regular policeman or firefighter and is not over fifty-five (55) years of age. No member of the police or fire departments shall be removed or discharged or reduced in grade or pay for any political partisan opinion. The appointment and continuance upon the police and fire departments shall depend solely upon the ability and willingness of a person to comply with the rules of the said departments and to perform the duties of said departments. No appointment to or continuance as a member of a police or fire department shall be as a reward for political activity nor be obtained by political services or contributions to campaign funds.

(3) The examination and qualifications provided for in this section shall not apply to the members of the regular police and fire departments at this time, who have been continuously in the service for a period of three (3) years.

(4) Members of police and fire departments otherwise qualified under this law shall hold their positions during good behavior, provided, however, that the provisions of KRS 95.761 to 95.785 shall not prevent the said city legislative body from increasing or decreasing the number of policemen or firefighters, as may be deemed proper from time to time, and provided further, that in the event the said city legislative body decreases the number of policemen or firefighters, the youngest member in point of service shall be the first to be reduced and returned to the eligible list and to advance according to the rules and regulations of said department.

(5) The civil service commission may provide that appointments for initial permanent employment may be probationary appointments for a period of not more than ***twelve (12)***[~~six (6)~~] months, after which probationary period regular appointments shall be given to all probationary employees who are deemed to be satisfactory by the respective appointing authority.

Approved March 8, 2000

CHAPTER 96

(HB 281)

AN ACT relating to registered nurse first assistants.

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

Section 1. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

(1) "Abortion facility" means any place in which an abortion is performed;

(2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;

(3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;

(4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars ($1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;

(5) "Cabinet" means the Cabinet for Health Services;

(6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:

(a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or

(b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;

(7) "Capital expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;

(8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;

(9) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;

(10) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;

(11) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;

(12) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;

(13) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;

(14) "Nonclinically-related expenditures" means expenditures for:

(a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or

(b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:

1. Parking facilities;

2. Telecommunications or telephone systems;

3. Management information systems;

4. Ventilation systems;

5. Heating or air conditioning, or both;

6. Energy conservation; or

7. Administrative offices;

(15) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;

(16) ***"Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative, and postoperative nursing care to surgical patients;***

(17) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;

(18)[~~(17)~~] "Record" means, as applicable in a particular proceeding:

(a) The application and any information provided by the applicant at the request of the cabinet;

(b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;

(c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;

(d) Any staff reports or recommendations prepared by or for the cabinet;

(e) Any recommendation or decision of the cabinet;

(f) Any testimony or documentary evidence adduced at a hearing;

(g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and

(h) Any other items required by administrative regulations promulgated by the cabinet;

(19) "Registered nurse first assistant" means one who:

(a) Holds a current active registered nurse licensure;

(b) Is certified in perioperative nursing; and

(c) Has successfully completed and holds a degree or certificate from a recognized program, which shall consist of:

1. The Association of Operating Room Nurses, Inc., Core Curriculum for the registered nurse first assistant; and

2. One (1) year of postbasic nursing study, which shall include at least forty-five (45) hours of didactic instruction and one hundred twenty (120) hours of clinical internship or its equivalent of two (2) college semesters.

A registered nurse who was certified prior to 1995 by the Certification Board of Perioperative Nursing shall not be required to fulfill the requirements of paragraph (c) of this subsection.

(20)[~~(18)~~] "Secretary" means the secretary of the Cabinet for Health Services;

(21)[~~(19)~~] "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;

(22)[~~(20)~~] "Substantial change in a health service" means:

(a) The addition of a health service for which there are review criteria and standards in the state health plan;

(b) The addition of a health service subject to licensure under this chapter; or

(c) The reduction or termination of a health service which had previously been provided in the health facility;

(23)[~~(21)~~] "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;

(24)[~~(22)~~] "Substantial change in a project" means a change made to a pending or approved project which results in:

(a) A substantial change in a health service, except a reduction or termination of a health service;

(b) A substantial change in bed capacity, except for reductions;

(c) A change of location; or

(d) An increase in costs greater than the allowable amount as prescribed by regulation;

(25)[~~(23)~~] "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;

(26)[~~(24)~~] "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;

(27)[~~(25)~~] "To establish" means to construct, develop, or initiate a health facility;

(28)[~~(26)~~] "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and

(29)[~~(27)~~] "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 2. KRS 216B.160 is amended to read as follows:

All health care facilities and services licensed under this chapter shall include in their policies and procedures a care delivery model based on patient needs which includes but is not limited to:

(1) Defined roles and responsibilities of licensed and unlicensed health care personnel;

(2) ***A policy that establishes the credentialing, oversight, appointment, and reappointment of the registered nurse first assistant and for granting, renewing, and revising of the registered nurse first assistant's clinical privileges;***

(3) A staffing plan that specifies staffing levels of licensed and unlicensed personnel required to safely and consistently meet the performance and clinical outcomes-based standards as outlined in the facility's or service's quality improvement plan;

(4)[~~(3)~~] A staffing model that is developed and implemented in an interdisciplinary and collaborative manner;

(5)[~~(4)~~] A policy and method that incorporates at least four (4) components in an ongoing assessment done by the registered nurse of the severity of the patient's disease, patient condition, level of impairment or disability, and the specific unit patient census to meet the needs of the individual patient in a timely manner; and

(6)[~~(5)~~] A staffing model that supports the delivery of patient care services with an appropriate mix of licensed health care personnel that will allow them to practice according to their legal scope of practice, and for nurses, the professional standards of practice referenced in KRS Chapter 314, and facility and service policies.

If a nursing facility, intermediate care facility, or skilled care facility meets the most current state or federal regulations which address safe and consistent staffing levels of licensed and unlicensed personnel, those shall suffice for compliance with the standards in this section.

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of law, a health plan issued or renewed on or after July 15, 2000, that provides coverage for surgical first assisting benefits or services shall be construed as providing coverage for a registered nurse first assistant who performs services that are within the scope of practice of the registered nurse first assistant.

Approved March 8, 2000

CHAPTER 97

(HB 265)

AN ACT relating to an annual leave sharing program for state employees.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth of Kentucky annual leave sharing program is created. An employee who has accrued an annual leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his or her annual leave balance to another named employee authorized to receive leave under subsection (2) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his or her annual leave balance to less than seventy-five (75) hours.

(2) An appointing authority, with the approval of the secretary of personnel, may permit an employee of the agency to receive leave under this section if:

(a) The employee suffers from a catastrophic loss to his or her personal property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee has exhausted his or her accumulated annual leave and compensatory leave balances; and

(c) The employee has complied with administrative regulations governing the use of annual leave.

(3) The appointing authority, with the approval of the secretary of personnel, shall determine the amount of leave, if any, that an employee within his or her agency may receive under subsection (2) of this section. Transfers of leave shall not exceed the amount requested by the recipient.

(4) Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the secretary of personnel and of the appointing authorities of both agencies, leave may be transferred from an employee of one (1) agency to an employee of another state agency. The Personnel Cabinet shall maintain records of leave transferred between employees and the utilization of transferred leave.

(5) While an employee is on leave transferred under this section, he or she shall be deemed a state employee and shall receive the same treatment with respect to salary, wages, and employee benefits.

(6) All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.

(7) Any leave transferred under this section that remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the catastrophic loss for which the leave was transferred to an employee in his or her agency.

(8) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.

(9) The secretary of the Personnel Cabinet shall promulgate procedural administrative regulations to implement the provisions of this section.

Section 2. KRS 18A.025 is amended to read as follows:

(1) The Governor shall appoint the secretary of personnel as provided in KRS 18A.015, who shall be considered an employee of the state. He shall be a graduate of an accredited college or university and have at least five (5) years' experience in personnel administration or in related fields, have known sympathies with the merit principle in government and shall be dedicated to the preservation of this principle. Additional education may be substituted for the required experience and additional experience may be substituted for the required education.

(2) The secretary of the Personnel Cabinet or his designee, shall be responsible for the coordination of the state's affirmative action plan, established by KRS 18A.138.

(3) There is established within the Personnel Cabinet the following offices and departments, each of which shall be headed by a commissioner appointed by the secretary, subject to the prior approval of the Governor, pursuant to KRS 12.050, except that the Kentucky Employees Deferred Compensation Authority shall be headed by an executive director who shall be appointed by the authority's board of directors:

(a) Office of the Secretary, composed of the:

1. Office of Administrative and Legal Services, which shall:

a. Provide all administrative information systems management, and legal services to the Cabinet; and

b. Coordinate the state's affirmative action plan established in KRS 18A.138;

2. Kentucky Public Employees Deferred Compensation Authority which shall be attached to the Office of the secretary for administrative purposes only. The authority shall be governed by a board of trustees composed of seven (7) members including the secretary of Finance and Administration, ex officio; the secretary of Personnel, ex officio; the state controller, ex officio; and four (4) at large members appointed by the Governor, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall represent a nonstate employer. The authority shall be headed by an executive director who shall be appointed by the board of directors of the authority without the limitations imposed by KRS 12.040 and KRS Chapter 18A; and

3. Kentucky Kare;

(b) Department for Personnel Administration, composed of the:

1. Division of Performance Management, which shall coordinate and implement the employee performance evaluation systems throughout state government;

2. Division of Employee Records, which shall:

   a. Maintain the central personnel files mandated by KRS 18A.020;

   b. Process personnel documents and position actions;

   c. Operate and maintain a uniform payroll system;

   d. Implement lay-off plans mandated by KRS 18A.113 to KRS 18A.1132;

   e. Certify payrolls as required by KRS 18A.125; and

   f. Monitor and assist state agencies in complying with the provisions of the Federal Fair Labor Standards Act (FLSA);

3. Division of Staffing Services, which shall:

   a. Operate a centralized applicant and employee counseling program;

   b. Operate the examination program for State employment;

   c. Prepare registers of candidate employment;

   d. Coordinate outreach programs, such as recruitment and the Administrative Intern Program; and

   e. Construct merit examinations; and

4. Division of Classification and Compensation, which shall:

   a. Maintain plans of classification and compensation for the State Service; and

   b. Review and evaluate the plans; and

(c) Department for Employee Relations, composed of the:

1. Division of Employee Benefits, which shall be responsible for administering and assisting state employees with the following benefits and programs:

   a. Workers' Compensation (KRS 18A.375);

   b. Life Insurance (KRS 18A.205 to KRS 18A.220);

   c. Health Insurance (KRS 18A.225);

   d. Flexible Benefit Plan (KRS 18A.227);

   e. Employee Benefit Plan (KRS 18A.2281);

   f. Sick leave Sharing Program (KRS 18A.197);

   g. ***Annual Leave Sharing Program;***

   h. Health and Safety Programs (OSHA); and

   i~~[h]~~. Assessment and referral services provided to state employees;

2. Division of Communications and Recognition, which shall:

   a. Communicate with state employees about personnel issues and other relevant issues through publications;

b. Administer the employee incentive programs established by KRS 18A.202; and

c. Provide dispute resolution assistance to state employees and agencies.

(4) The cabinet shall include principal assistants appointed by the secretary, pursuant to KRS 12.050, as necessary for the development and implementation of policy. The secretary may employ, pursuant to the provisions of this chapter, personnel necessary to execute the functions and duties of the department.

Section 3. KRS 18A.197 is amended to read as follows:

(1) The Commonwealth of Kentucky ***sick*** leave sharing program is created. An employee who has accrued a sick leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his ***or her*** sick leave balance to another named employee authorized to receive leave under subsection (2) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his ***or her*** sick leave balance to less than seventy-five (75) hours.

(2) An appointing authority, with the approval of the secretary of personnel, may permit an employee of the agency to receive leave under this section if:

(a) The employee or a member of his ***or her*** immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practicing physician;

(c) The employee has exhausted his ***or her*** accumulated sick leave, annual leave, and compensatory leave balances; and

(d) The employee has complied with administrative regulations governing the use of sick leave.

(3) The appointing authority, with the approval of the secretary of personnel, shall determine the amount of leave, if any, which an employee within his ***or her*** agency may receive under subsection (2) of this section. Transfers of leave shall not exceed the amount requested by the recipient.

(4) Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the secretary of personnel and of the appointing authorities of both agencies, leave may be transferred from an employee of one (1) agency to an employee of another state agency. The Personnel Cabinet shall maintain records of leave transferred between employees and the utilization of transferred leave.

(5) While an employee is on leave transferred under this section, he ***or she*** shall be deemed a state employee and shall receive the same treatment with respect to salary, wages and employee benefits.

(6) All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.

(7) Any leave transferred under this section which remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(8) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.

(9) The secretary of the Personnel Cabinet shall promulgate procedural administrative regulations to implement the provisions of this section.

Approved March 9, 2000

CHAPTER 98

(HB 295)

AN ACT relating to homeless veterans.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Homeless Veterans Program is hereby created in the Kentucky Department of Veterans' Affairs, and shall be attached to the office of the commissioner for administrative purposes. The program shall develop a statewide network of:

(a) Services that provide treatment for addictions, including but not limited to alcohol, drug use, and gambling;

(b) Services that lead to permanent housing;

(c) Services that lead to employment; and

(d) Concerned citizens and nonprofit agencies that provide shelter.

(2) The mission of the Kentucky Homeless Veterans Program shall be to work toward the elimination of homelessness and the prevention of the threat of homelessness and its causes in the veteran population of the Commonwealth.

(3) The program shall provide assistance to persons who served in the United States Armed Forces or in forces incorporated as part of the United States Armed Forces, and who were discharged under conditions other than dishonorable.

(4) The program shall provide assistance to persons whose need for services is based upon homelessness, or other circumstances as prescribed by administrative regulations promulgated by the department.

(5) The primary components of the program shall be:

(a) Advocacy and public awareness. The program shall be an advocate for homeless veterans, and work to increase public awareness about the issue of homelessness

among veterans and its root causes. The program shall advocate legislation and policies on the local, state, and national level to address these issues;

(b) Information services. The program shall monitor and research issues relating to homeless veterans and disseminate information and opportunities throughout its network;

(c) Technical assistance. The program, through conferences and training workshops with federal and state agencies, shall provide guidance and direction in applying for grants and benefits for homeless veterans. The program shall provide peer-to-peer consulting and on-site technical support; and

(d) Facilities. The program, through grants and other sources of funding, shall provide facilities as appropriate in support of the program.

(6) A Homeless Veterans Service Coordinating Committee shall be established. The committee's membership shall be comprised of representatives of public and private agencies who provide services that may be used by homeless veterans. The commissioner of the Department of Veterans' Affairs shall designate the agencies represented on the committee. The committee shall discuss and research ways in which the services that it offers can be made more easily available and better focused to serve homeless veterans.

(7) The program is authorized to accept and expend moneys as may be appropriated from time to time by the General Assembly, and any moneys that may be received from any source including donations and grants.

Section 2. If 2000 Regular Session House Bill 139 becomes law, Section 1 of this Act shall be codified into KRS Chapter 40.

Approved March 9, 2000

CHAPTER 99

(HB 273)

AN ACT relating to certified public accountants.

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

Section 1. KRS 325.220 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the State Board of Accountancy;

(2) "State" includes and means any state, territory, or insular possession of the United States, or the District of Columbia;

(3) "Public accountant" means a public accountant issued a ***license***~~[permit]~~ to practice by the Commonwealth of Kentucky under the Public Accounting Act of 1946 as amended;

(4) "Attest," "attesting," or "attestation," when used with reference to financial information or the practice of public accountancy, means to issue, or the issuance of, opinions, reports, or other forms of language which state or imply assurance as to the reliability of any:

(a) Financial information; or

(b) Facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, administrative regulations, grants, loans, and appropriations, together with any wording accompanying or contained in the opinion or certificate, when such opinions, reports, or other forms of language are accompanied by or include any name, title, or wording that indicates that the person or firm issuing them is:

1. An accountant or auditor;

2. Has expert knowledge in accounting or auditing; or

3. That his ***or her*** or the firm's work has been performed in accordance with the applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation. The terms include forms of language which disclaim an opinion when the forms of language are conventionally understood to imply any assurance as to the reliability of the financial information referred to and expertise on the part of the person uttering the language; and any other form of language which is conventionally understood to imply such assurance and expertise; or which indicates certain procedures have been performed in accordance with applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation;

(5) "***Regulated activities***~~[Practice of or practicing public accountancy]~~" means the offering to perform or the performance for a client or potential client by a person or firm ***holding a license issued under this chapter***~~[holding himself or itself out to the public as a licensee]~~ of one (1) or more types of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or one (1) or more types of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. This definition shall not prohibit anyone who is not a certified public accountant from performing accounting services, such as the preparation of tax returns or financial statements, for which attestation by the preparer is not required;

(6) "Firm" means a sole proprietorship, partnership, professional service corporation, or any other form of business organization ***that is authorized to operate under***~~[engaged solely in the practice of public accountancy that is not otherwise prohibited from operating by]~~ the laws of this Commonwealth***,***~~[and which]~~ complies with the provisions of this chapter***, and is issued a license to practice by the board***;

(7) "***License***~~[Certificate]~~" means a ***license***~~[certificate]~~ as a "certified public accountant" issued pursuant to this chapter~~[or corresponding provisions of prior law]~~;

(8) "Licensee" means a certified public accountant, firm, or public accountant, holding a ***license***~~[permit]~~ to practice~~[public accounting]~~ issued under this chapter;

(9)~~["Quality enhancement review" means a study, appraisal, or review by the board of one (1) or more aspects of the professional work of a person or firm in the practice of public accountancy;~~

~~(10)~~] "***Peer***[~~Quality~~] review" means a study, appraisal, or review of one (1) or more aspects of the professional work of a person or firm ***licensed to practice***[~~in the practice of public accountancy~~] and may include a quality assurance or peer review, or any internal review or inspection that is required by professional standards relating to quality control policies and procedures[~~. The term shall not include a positive enforcement program of a state accountancy board~~];[~~ and~~]

(10)[~~(11)~~] "Review committee" means any person or persons carrying out, administering, or overseeing a ***peer***[~~quality~~] review program***; and***

(11) "Substantial equivalency" means a determination by the board or its designee that the education, examination, and experience requirements in the statutes and administrative regulations of another state for the licensing of a certified public accountant are comparable or better than those contained in the Uniform Accountancy Act issued by the American Institute of Certified Public Accountants (AICPA) and National Association of State Boards of Accountancy (NASB), or that an individual certified public accountant's education, examination, and experience qualifications are comparable or exceed these national standards.

Section 2. KRS 325.230 is amended to read as follows:

(1) There is hereby created a State Board of Accountancy. The board shall consist of seven (7) members, appointed by the Governor. Six (6) of the members shall be certified public accountants. One (1) of the members shall be a citizen-at-large who is not a certified public accountant. Members serving on the board as of July 15, 1994, shall retain their appointments until their terms expire. Whenever an appointment is to be made, the Kentucky Society of Certified Public Accountants shall submit to the Governor the names of three (3) persons for each vacancy to be filled. All persons recommended shall be qualified for membership on the board, and the Governor shall appoint one (1) of the three (3) recommended. Members of the board shall be citizens of the United States and residents of this state and the certified public accountant members shall hold ***licenses***[~~permits~~] to practice issued under the provisions of this chapter. Of the new members appointed to the board, as provided by this section, one (1) member shall be appointed for a term of one (1) year and one (1) member shall be appointed for a term of four (4) years from June 19, 1976. Succeeding appointments to the board shall be for a term of four (4) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his term of office, a member shall continue to serve until his successor shall have been appointed and shall have qualified. The Governor shall remove from the board any member whose ***license***[~~permit~~] to practice is not renewed or which has become void, revoked, or suspended, and may, after hearing, remove any member of the board for neglect of duty or other just cause.

(2) Each member of the board shall be paid one hundred dollars ($100) for each day spent in the discharge of his official duties and shall be reimbursed for his actual and necessary expenses therein incurred.

Section 3. KRS 325.240 is amended to read as follows:

The board shall elect annually a president, a secretary and a treasurer from its members. The office of secretary and treasurer may be held by the same individual. The board may ***promulgate***[~~adopt~~], and amend from time to time, ***administrative*** regulations, in accordance with

the provisions of KRS Chapter 13A, for the orderly conduct of its affairs and for the administration of this chapter. The board may also promulgate, and amend from time to time, rules of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accounting. A majority of the board shall constitute a quorum for the transaction of business. The board shall have a seal which shall be judicially noticed. The board shall keep records of its proceedings, and in any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of said records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of said records.~~[The board shall have printed and published for public distribution, in September of each year, an annual register which shall contain the names, arranged alphabetically by classifications, of all individuals and firms holding permits to practice under this chapter; the names of the members of the board; and such other matters as may be deemed proper by the board. Copies of said registers shall be mailed to each registered practitioner.]~~ The board may employ an executive director and such other personnel as it deems necessary in its administration and enforcement of this chapter. It may appoint such committees or persons, to advise or assist it in the administration and enforcement, as it may see fit. It may retain its own counsel to advise and assist it, in addition to such advice and assistance as is provided by the Attorney General of this state.

Section 4. KRS 325.261 is amended to read as follows:

~~[(1)]~~The ***license***~~[certificate]~~ of "certified public accountant" shall be granted by the board to any person who satisfies the following requirements:

(1)~~[(a)]~~ Is no less than eighteen (18) years of age;

(2)~~[(b)]~~ Is of good moral character;

(3)~~[(c)]~~ Meets the following educational credentials prior to applying for the examination:

(a)~~[1.]~~ Has a baccalaureate degree or master's degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined in administrative regulations promulgated by the board; or

(b)~~[2.]~~ Beginning in the year 2000 with a new examination applicant, approved to sit for the first examination of the year or subsequent examination, has completed one hundred and fifty (150) college semester hours which include a baccalaureate degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined in administrative regulations promulgated by the board;

(4)~~[(d)]~~ Has one (1) year of~~[public]~~ accounting ***or attest*** experience obtained while employed ***in an accounting or auditing position***~~[by]~~ ***in*** ~~[a]~~ public ***practice, academia, industry, or government that shall be verified by***~~[accounting firm and under the supervision of]~~ a certified public accountant who***, during the time being verified,*** held ***an active license***~~[a certificate and an active license or an active permit]~~ to practice~~[public accountancy]~~ from any state~~[as determined by administrative regulations promulgated by the board. The supervising certified public accountant's license or permit shall be active during the time he supervises the applicant]~~;

(5)~~[(e)]~~ Passes a board-approved written examination in accounting, auditing, and other related subjects as the board deems appropriate. To be eligible to apply for the examination, a

person shall first satisfy requirements of ***subsections (1), (2), and (3)***~~[subsection (1)(a), (b), and (c)]~~ of this section; and

(6)~~[(f)]~~ Submits ***a complete***~~[an]~~ application for a ***license to practice***~~[certificate]~~ as a certified public accountant ***in accordance with Section 8 of this Act***~~[on a form prescribed by the board and accompanied by a fee not to exceed one hundred dollars ($100)]~~.

~~[(2) The experience requirement of subsection (1)(d) of this section may alternatively be satisfied by having obtained two (2) years of experience while under the supervision of a certified public accountant who, during the time he supervised the applicant, held a certificate and an active license or an active permit to practice public accountancy from any state. This experience may be obtained in any of the ways set out in paragraphs (a) and (b) of this subsection, as determined by administrative regulations promulgated by the board:~~

~~(a) Private enterprise, a governmental agency, or an institution of higher education in an accounting or auditing position which required the performance of any auditing, accounting, or tax services; or~~

~~(b) Teaching of accounting in an institution of higher education that grants a degree which qualifies a person to sit for the Uniform Certified Public Accountants Examination under this chapter.~~

~~(3) Experience gained under subsection (1) (d) of this section may be combined with experience gained under subsection (2) of this section to satisfy the two (2) years of experience required by subsection (2) of this section.]~~

Section 5. KRS 325.280 is amended to read as follows:

(1) The board may issue a ***license***~~[certificate and permit]~~ to practice by reciprocity, if the applicant submits an application for a ***license***~~[certificate and permit]~~ to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board, and meets the following requirements:

(a) The applicant received a grade on the Uniform Certified Public Accountants Examination in another state that was equivalent to a passing grade at the time in this Commonwealth;

(b) The applicant holds a valid ***active license***~~[certificate, active permit]~~, and is in good standing as a certified public accountant, issued under the laws of any other state; and

(c) 1. The applicant meets all current experience requirements in this Commonwealth at the time application is made; or

2.~~[At the time of issuance of the applicant's certificate and permit to practice in the other state, the applicant met all experience requirements then in effect in this Commonwealth; or~~

~~3.]~~ Within the ten (10) years immediately preceding the application had four (4) years of experience in the practice of public accountancy acceptable to the board upon which the ***license***~~[certificate]~~ was based.

(2) The board may issue a ***license***~~[certificate and permit]~~ to practice public accountancy without examination to an applicant who holds a valid ***license***~~[certificate]~~ to engage in the practice of public accountancy in good standing from a foreign country if:

(a) The applicant's foreign country makes similar provisions to allow a person who holds a valid ***license***~~[certificate]~~ to practice public accountancy issued by this Commonwealth to obtain that foreign country's comparable designation;

(b) The authority of the foreign country that issued the designation regulates the practice of public accountancy including the issuance of reports upon financial statements;

(c) The foreign designation was granted upon education and examination requirements which were established by the foreign authority or law and were substantially equivalent to those in effect in this Commonwealth at the time the foreign designation was granted;

(d) The applicant satisfies the applicable experience requirement contained in paragraph (c) of subsection (1) of this section;

(e) The applicant has successfully passed a uniform qualifying examination on United States national standards and an examination on the law and administrative regulations of the board; and

(f) The applicant submits an application for a ***license***~~[certificate and permit]~~ to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board.

(3) The board may issue a license to practice to an applicant whose principal place of business is not in this state and who holds a valid license to practice as a certified public accountant in another state deemed by the board to have substantially equivalent licensing standards. The board shall determine the procedure for reviewing and determining the substantial equivalency of any state.

(4) The applicant shall apply in accordance with administrative regulations promulgated by the board and meet the following requirements:

(a) Submit an application and pay a fee not to exceed two hundred dollars ($200);

(b) Agree to submit to the personal and subject matter jurisdiction and disciplinary authority of the board;

(c) Comply with the laws of this chapter and the board's administrative regulations;

(d) Agree to the appointment of the board that issued the license as the agent upon whom process may be served in any action or proceeding by the board against the applicant;

(e) Agree to immediately cease offering services if any of the information filed is false;

(f) Agree to renew the license by affirming continuing licensure in the home jurisdiction; and

(g) Recognize that if the applicant moves his or her principal place of business to Kentucky he or she shall notify the board and revise the license application to reflect this information.

Section 6. KRS 325.290 is amended to read as follows:

(1) Only an individual who has received a ***license***[~~certificate and a current permit~~] to practice shall be styled and known as a "certified public accountant". A certified public accountant may also use the abbreviation "CPA" or "public accountant."

(2) ***Licensees***[~~The achievement of the requirements necessary to be awarded a certificate shall not allow the use of the titles "certified public accountant" or "CPA," unless a permit to practice has been issued and is current. Permit holders~~] granted a waiver from continuing professional education based on retirement may use "certified public accountant," "public accountant," or "CPA," but shall not ***engage in regulated activities***[~~practice public accounting~~].

Section 7. KRS 325.301 is amended to read as follows:

(1) All firms ***seeking to obtain a license to practice***[~~engaged in the practice of public accountancy~~] in this Commonwealth shall meet the following requirements:

(a) ***Licensees shall hold fifty-one percent (51%) or more of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers of the firm***[~~The sole purpose and business of the firm shall be to practice public accountancy~~];

(b) ***Nonlicensed owners of the firm shall be natural persons actively engaged in the firm's operations and shall satisfy additional requirements as promulgated by the board in administrative regulations;***

(c) The name of the firm shall ***comply with the requirements of Section 13 of this Act***[~~include the name of at least one (1) current or former certified public accountant who holds or has held an ownership interest in the firm, subject to the conditions set out in KRS 325.380(9) and (10). The firm may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its name~~];

(d)[~~(c)~~] All ***certified public accountants who are*** partners, shareholders, members, officers,[~~ or~~] directors***, or employees*** of the firm,[~~ and all certified public accountant employees of the firm,~~] who regularly practice in this Commonwealth, shall ***maintain***[~~be certified public accountants with~~] current ***licenses***[~~permits~~] to practice issued by the board;

(e)[~~(d)~~] ***Any individual licensee who is responsible for supervising attest services and signs or authorizes someone to sign the report on the financial statements on behalf of the firm shall meet the competency requirements as promulgated by the board in administrative regulation***[~~At least one (1) partner, shareholder, or other person holding an ownership interest in the firm shall be a certified public accountant with a current permit to practice issued by the board~~]; and

(f)[~~(e)~~] The firm shall comply with the provisions of this chapter, the administrative regulations promulgated by the board, and all other laws of this Commonwealth applicable to the firm's particular form of business organization.

(2) Before a firm may practice in this Commonwealth, it shall:

(a) Submit an initial application to the board for a firm ***license***[~~permit~~] to practice in this Commonwealth. This application shall be made upon forms approved by the board and signed by the firm manager, who shall also be the certified public accountant in

charge of the administrative matters of the firm. The application for a firm ***license***~~[permit]~~ to practice shall include the name of the firm manager, the name of each certified public accountant ***and nonlicensee*** with an ownership interest in the firm, the name of each certified public accountant employee of the firm, the location of each office, and any other information as the board, by duly promulgated administrative regulation, may require; and

(b) With the exception of a sole proprietorship, pay a fee not to exceed two hundred dollars ($200) set by an administrative regulation promulgated by the board.

(3) The firm ***license***~~[permit]~~ to practice shall be renewed every two (2) years by the firm. The application for renewal shall be submitted by the manager of the firm on forms established in administrative regulations promulgated by the board. The renewal fee, not to exceed two hundred dollars ($200), shall be established by administrative regulation promulgated by the board.

(4) The firm ***license***~~[permit]~~ to practice shall be effective for a two (2) year period following the date of its issuance and shall expire on the first day of July in the year of expiration.

(5) The manager of the firm shall notify the board, on a form established in administrative regulations promulgated by the board, of any change in its ***licensing***~~[registration]~~ information within thirty (30) days. Any change in the name of a firm shall require the filing of an initial application.

(6) All firms that perform audits, reviews, or compilations shall~~[undergo a quality enhancement review as determined by administrative regulations promulgated by the board.~~

~~(7) Firms that perform audits shall]~~ complete an approved ***peer***~~[quality]~~ review program with standards that are equivalent to or better than the ***peer***~~[quality]~~ review program administered by the American Institute of Certified Public Accountants as determined by administrative regulations promulgated by the board.

(7)~~[(8)]~~ Nothing contained in this chapter shall require a certified public accountant or firm of certified public accountants licensed by another state or foreign country to obtain a ***license***~~[permit]~~ to practice in this Commonwealth if the certified public accountant or firm of certified public accountants enter this Commonwealth solely to:

(a) Conduct a ***peer***~~[quality]~~ review of a firm; or

(b) Perform attestation work, incidental to an engagement which was initiated with a client located outside of the Commonwealth and has extended into the Commonwealth due to common ownership or existence of a subsidiary, assets, or other operations located within the Commonwealth.

Section 8. KRS 325.330 is amended to read as follows:

(1) An applicant for initial issuance of a ***license***~~[permit]~~ to practice shall~~[show]~~:

(a) ***Satisfy all the requirements of Section 4 of this Act and the administrative regulations promulgated by the board***~~[That he has obtained a certificate as specified in this chapter]~~;

(b) ***Pay***~~[That he has paid]~~ a fee not to exceed two hundred dollars ($200); and

(c) ***Submit a completed***~~[That he has completed an]~~ application on a form issued by the board.

(2) ***Licenses***~~[Permits]~~ shall be initially issued and renewed for a period of two (2) years, and shall expire on the first day of July in the year of expiration.

(3) ***When an initial license to practice is granted, the board shall issue a nonrenewable document that indicates that the licensee has satisfied all requirements to receive an initial license as a certified public accountant***~~[In July, 1991, one-half (1/2) of the permit holders on that date shall be issued permits with a one (1) year expiration date, while the remaining permit holders shall be issued permits with a two (2) year expiration date]~~.

(4) An applicant for renewal of a ***license***~~[permit]~~ to practice, in good standing, shall complete a ***license***~~[permit]~~ renewal form provided by the board showing the applicant has:

(a) Fulfilled the requirement of continuing professional education for professional enhancement as defined by the board by administrative regulation, but not to exceed eighty (80) hours during a two (2) year calendar period ending December 31 preceding the July 1 renewal date. Certified public accountants not ***employed by a firm licensed by the board***~~[engaged in public accounting]~~ shall be required to achieve continuing professional education not to exceed sixty (60) hours during the two (2) year calendar period ending December 31 preceding the July 1 renewal date. The board shall provide for lesser, prorated requirements for applicants whose initial permit was issued substantially less than two (2) years prior to the renewal date;

(b) Paid a fee not to exceed two hundred dollars ($200) biennially;

(c) Listed a permanent mailing address; and

(d) Designated on the ***license***~~[permit]~~ renewal application whether he is ***employed by a firm licensed by the board***~~[engaged in any manner of public accounting]~~.

(5) Any ***license***~~[permit]~~ not renewed by the expiration date shall automatically expire and the holder of the expired ***license***~~[permit]~~ shall be prohibited from practicing public accounting or holding himself out as a certified public accountant.

(6) The holder of ***a license that from the date of renewal has been expired for a period shorter than six (6) months, and***~~[an expired permit,]~~ who has not violated any other provision of this chapter, may renew the ***license***~~[permit]~~ by meeting all of the requirements of this section and paying a late penalty fee not to exceed one hundred dollars ($100).

(a) If the ***license***~~[permit]~~ has expired for a period longer than ***six (6)***~~[twelve (12)]~~ months, the applicant shall apply to the board for reinstatement. The board shall determine the eligibility for ***license***~~[permit]~~ reissuance, including a late penalty fee not to exceed two hundred dollars ($200) and additional continuing professional education hours.

(b) Failure to receive a renewal notice shall not constitute an adequate reason for failing to renew the ***license***~~[permit]~~ to practice in a timely manner.

(7) The board may reduce or waive the ***license***~~[permit]~~ to practice renewal requirements upon written request of the ***licensee***~~[permit holder]~~ showing illness, extreme hardship, or age and complete retirement from practice as prescribed by the board by administrative regulation.

Section 9. KRS 325.340 is amended to read as follows:

(1) After notice and hearing as provided in KRS Chapter 13B, the board may revoke~~[or suspend any certificate of a certified public accountant issued under this chapter or any~~

~~registration of a public accountant granted under this chapter, or may revoke~~], suspend, ***impose a fine not to exceed one thousand dollars ($1,000)***[~~or~~] refuse to issue or renew any ***license,***[~~permit issued under this chapter, or may~~] censure***, or***[~~ the holder of the permit,~~] place[~~ any licensee~~] on probation ***any licensee***, all with or without terms, for any one (1) or any combination of the following causes:

(a) Fraud or deceit in obtaining[~~ a certificate as certified public accountant, or in obtaining registration under this chapter, or in obtaining~~] a ***license issued***[~~permit to practice public accounting~~] under this chapter;

(b) Dishonesty, fraud, or negligence ***while performing any regulated activity***[~~in the practice of public accounting~~], including fiscal dishonesty or an intentional breach of fiduciary responsibility of any kind, and also including, but not limited to, the following:

1. Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information; and

2. Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses;

(c) Violation of any of the provisions of this chapter or administrative regulations promulgated by the board under this chapter or violation of any order of the board;

(d) Violation of a rule of professional conduct promulgated by the board;

(e) ***Conviction of any felony, or of any crime in which dishonesty or fraud is an element, under the laws of any state or of the United States. Conviction includes but is not limited to*** pleading no contest, entering an Alford plea, ***or entry of a court order*** suspending the imposition of a criminal penalty ***to a crime***[~~, or the conviction of a felony or any crime an element of which is dishonesty or fraud, under the laws of any state or of the United States~~];

(f) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant or a public accountant in any state;

(g) Suspension or revocation of the right to practice before any state or federal agency;

(h) Conduct discreditable to the accounting profession; or

(i) Failure to respond to a board inquiry regarding any licensing or complaint matter.

(2)[~~ The board may issue an order to a certificate holder to show cause why his certificate shall not be revoked for failure to renew his permit to practice. The order shall be sent to the certificate holder by certified mail, return receipt requested, to the mailing address given to the board by the certificate holder. If he fails to request a hearing on the order within twenty (20) days from the date of the order being mailed, the board may without a hearing, revoke the certificate. If a hearing is timely requested, it shall be conducted pursuant to KRS Chapter 13B.~~

~~(3)~~] In any proceeding in which a remedy provided by subsection (1) of this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

Section 10. KRS 325.350 is amended to read as follows:

(1) After notice and hearing as provided in KRS Chapter 13B, the board shall revoke the ***license***~~[registration and permit]~~ to practice of a firm if at any time it does not have all the qualifications prescribed by this chapter under which it qualified for ***licensing***~~[registration]~~.

(2) After notice and hearing as provided in KRS Chapter 13B, the board may~~[revoke or suspend the registration or may]~~ revoke, suspend, or refuse to renew the ***license***~~[permit]~~ to practice of a firm or may censure the ***licensee***~~[holder of any permit]~~ for any of the causes enumerated in KRS 325.340, and for the following additional causes:

(a) The revocation**,**~~[or suspension of the certificate or registration or the revocation or]~~ suspension**,** or refusal to renew the ***license***~~[permit]~~ to practice of any partner or shareholder, or any other person with an ownership interest; or

(b) The cancellation, revocation, suspension, or refusal to renew the authority of the firm or any partner or shareholder, or any other person with an ownership interest thereof to practice public accounting in any other state.

Section 11. 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, if the subject of the investigation is a licensee, the board shall direct that a complaint be issued pursuant to this section; and if the subject of the investigation is not a licensee, the board shall take appropriate action pursuant to this chapter. Upon a finding of a lack of probable cause, the board shall close the matter.

(4) In any case where probable cause has been determined pursuant to this section with respect to a violation by a licensee, or where the board has received a written complaint by any person furnishing grounds for a determination of probable cause about a violation or where the board has received notice of a decision by the board of accountancy of another state furnishing grounds, the board shall issue a complaint setting forth appropriate charges and set a date for a hearing which shall be conducted in accordance with KRS Chapter 13B.

(5) A licensee, after having been served with the notice of hearing and complaint as provided for in subsection (4) of this section, shall file a written response within twenty (20) days

from the date he was served. If the respondent licensee fails to file a timely response or fails to appear at the hearing, the board may hear evidence against him and may enter a final order as shall be justified by the evidence.

(6) In a hearing under this section, the respondent licensee may appear in person or, in the case of a firm, through a partner, or 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 in accordance with KRS Chapter 13B.

(10) On rendering a final order to revoke, suspend, refuse to renew, or censure the holder of a ***license***~~[certificate or a permit]~~ to practice issued under this chapter, the board shall examine its records to determine whether the respondent ***is authorized or licensed to practice as a certified public accountant***~~[holds a certificate, a registration, or a permit to practice]~~ in any other state. If the board determines that the respondent ***is authorized or licensed to practice***~~[holds a certificate, a registration, or a permit 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 12. KRS 325.370 is amended to read as follows:

(1) In any case where the board has suspended***,***~~[or]~~ revoked***,***~~[a certificate or a permit or]~~ refused to renew a ***license***~~[permit]~~, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the ***license***~~[certificate and permit]~~.

(2) The board shall by administrative regulation, specify the manner in which:

(a) Applications shall be made;

(b) The times within which the applications shall be made, and the circumstances in which hearings, to be conducted in accordance with KRS Chapter 13B, shall be held thereon; and

(c) Any corrective or remedial education, training, or review requirement for reinstatement.

Section 13. KRS 325.380 is amended to read as follows:

(1) No person shall assume or use the title or designation "certified public accountant***," "public accountant,***" or the abbreviation "CPA" or any other title, designation, words, letters,

abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless the person~~[has received a certificate as a certified public accountant under this chapter and]~~ holds a ***license***~~[permit]~~ issued under this chapter~~[which has not been revoked or suspended, and all offices of the person in this Commonwealth for the practice of public accounting are maintained and registered as required under this chapter]~~.

(2) No firm shall assume or use the title or designation "certified public accountants***," "public accountants,***" or the abbreviation "CPA's" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants, unless the firm~~[is registered as a firm of certified public accountants under this chapter,]~~ holds a ***license***~~[permit]~~ issued under this chapter which has not been revoked or suspended, and all offices of the firm in this state~~[for the practice of public accounting]~~ are maintained~~[and registered]~~ as required under this chapter.

(3)~~[No individual shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a public accountant, unless the individual is registered as a public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of the individual in this state for the practice of public accounting are maintained and registered as required under this chapter, or unless the individual has received a certificate as a certified public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of the individual in this state for the practice of public accounting are maintained and registered as required under this chapter.~~

~~(4) No firm shall assume or use the title or designation "public accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of public accountants, unless the firm is registered as a firm of public accountants under this chapter or as a firm of certified public accountants under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of the firm in this state for the practice of public accounting are maintained and registered as required under this chapter.~~

~~(5)]~~ No individuals or firm shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited auditor," "accounting practitioner," "accredited accountant," "expert accountant," "expert auditor," "certified auditor," or any other title or designation likely to be confused with "certified public accountant" and "public accountant" or any of the abbreviations "CA," "AP," "PA," "RA," "LA," or "AA" or similar abbreviations likely to be confused with "CPA."

(4)~~[(6)]~~ No person or firm shall sign or affix his name or a firm name to any document or prepare or issue any document which indicates that the person or firm performed the attest function in the preparation of the documents or that includes any language which indicates that he or the firm has expert knowledge in the use of the attest function, unless the person or firm holds a ***license***~~[permit]~~ to practice ***issued*** under this chapter. This prohibition shall be applicable to issuance by ***any unlicensed***~~[a]~~ person or firm~~[not holding a valid permit]~~ of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements. ***The board shall issue safe harbor language, to be defined by the promulgation of administrative regulations, that nonlicensees may use in***

connection with a compilation of financial information. The provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he holds in the organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties.

(5)~~[(7)]~~ No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a firm, or in conjunction with the designation "and Company" or "and Associates" or a similar designation if there is in fact no bona fide firm ***licensed***~~[registered]~~ under this chapter.

(6)~~[(8)]~~ No firm performing functions permitted by this chapter shall use designations "and Company" or "and Associates" or a similar designation, if there is in fact only one (1) licensee with an ownership interest.

(7)~~[(9)]~~ No person or firm holding a ***license***~~[permit]~~ under this chapter shall ***use***~~[engage in the practice of public accountancy using]~~ a professional or firm name or designation which ***contains the names of any nonlicensees,*** is misleading as to the legal form of the firm, or as to the persons who are partners, officers, shareholders, or any other owners of the firm, or as to any other matters. If more than one (1) certified public accountant has an ownership interest in the firm, the names of one (1) or more deceased, retired, or withdrawn partners, shareholders, or other certified public accountants with an ownership interest may be included in the name of a firm or its successor.

(8)~~[(10)]~~ If the death or retirement of a certified public accountant results in a firm having only one (1) certified public accountant with an ownership interest, the board may permit the firm to continue to use the firm name for no more than two (2) years from the certified public accountant's respective death or retirement.

Section 14. KRS 325.410 is amended to read as follows:

The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "public accountant" shall be prima facie evidence in any action brought under KRS 325.400 or 325.990 that the person whose name is so displayed, caused or procured the display or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device, and that such person is holding himself or itself out to be a certified public accountant ***licensed***~~[or a public accountant holding a permit]~~ to practice under KRS 325.330. In any such action evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

SECTION 15. A NEW SECTION OF KRS CHAPTER 325 IS CREATED TO READ AS FOLLOWS:

Persons registered with the board as "public accountants" by July 1, 1946, shall receive the designation of "Public Accountant Emeritus" and shall be exempt from the payment of licensing fees and the reporting of continuing education hours. No persons shall assume or use the title or designation "Public Accountant Emeritus" unless designated by the board under this section.

Section 16. The following KRS sections are repealed:

325.310 Registration of public accountants -- Use of title "public accountant."

325.320 Partnership or corporation of public accountants -- Registration.

Approved March 9, 2000

CHAPTER 100

(HB 372)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-01, dated December 16, 1999, which abolishes the Unclaimed Property Branch within the Division of Disbursements and Accounting and creates the Division of Unclaimed Property within the Department of the Treasury. The newly created Division of Unclaimed Property shall assume the duties and responsibilities of the abolished Unclaimed Property Branch.

Approved March 9, 2000

CHAPTER 101

(HB 477)

AN ACT relating to the provision of telecommunication services by municipalities and municipal utilities.

WHEREAS, the legislature finds and determines that:

(1) The United States Congress has passed sweeping legislation, known as the Telecommunications Act of 1996, that has opened the local exchange telecommunications market to competition;

(2) The Act requires, among other things, that incumbent local exchange carriers negotiate interconnection agreements with new competitive carriers covering the resale of retail services, the purchase of network facilities , and the interconnection of facilities;

(3) States have authority under the Act to arbitrate and approve interconnection agreements between carriers and to create a universal service fund supported by all competing carriers to advance and support universal service;

(4) The Kentucky Public Service Commission is the administrative agency created by the legislature to regulate telecommunications services in Kentucky:

(5) Municipalities and municipal utilities have begun to enter into the field of providing telecommunications services to the public for compensation;

(6) The provision of services by municipalities and municipal utilities creates a new participant into the increasingly competitive but regulated industry;

(7) Any competitive entry into the telecommunications market by municipalities or municipal utilities, which may create benefits for the citizens of the Commonwealth, correspondingly creates risks for existing providers of telecommunications services; and

(8) A statutory framework for the regulation of entry into the telecommunications market and provision of telecommunications services by municipalities and municipal utilities is in the best interest of the citizens of the Commonwealth;

NOW THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

Any legislative body of any city of the first through the fifth class may provide telecommunications service. Any city that owns, operates or controls, either directly or indirectly, a municipal utility that provides telecommunications services as defined in subsection (3)(e) of Section 5 of this Act shall, as to telephone service solely, be subject to the provisions of KRS Chapter 278 in the same manner as other nonmunicipal providers of telephone services.

Section 2. KRS 96.170 is amended to read as follows:

The legislative body of any city of the third class may, by ordinance, provide the city and its inhabitants with water, light, power, ***and*** heat~~[and telephone service]~~, by contract or by works of its own, located either within or beyond the boundaries of the city; make regulations for the management thereof, and fix and regulate the prices to private consumers and customers. ***Telecommunication service may be provided by any legislative body of any city of the third class by contract or by works of its own, except that any city of the third class that establishes municipal telephone service shall, for purposes of that service solely, be deemed a utility under KRS 278.010 and shall be regulated, as to telephone service, by the Public Service Commission.***

Section 3. KRS 96.190 is amended to read as follows:

(1) The legislative body of any city of the fourth class may provide the city and all persons in the city with water, gas, electric power, light, ***and*** heat,~~[telephone and telegraph service,]~~ by contract with any person or by works and facilities owned or leased by the city and located within or beyond the city boundaries. ***Telecommunication service may be provided by any legislative body of any city of the fourth class by contract or by works of its own, except that any city of the fourth class that establishes municipal telephone service shall, for that service solely, be deemed a utility under KRS 278.010 and shall be regulated as to the telephone service, by the Public Service Commission.***

(2) In all cases where the person furnishing the services is operating under a charter or franchise granted by the General Assembly prior to the adoption of the present Constitution of Kentucky the city legislative body may make and enforce rules and regulations for the furnishing and sale of such services, fix and regulate the quality, character and standards of such services, and fix and regulate the rates charged consumers for such services.

Section 4. KRS 96.520 is amended to read as follows:

(1) Any city of the second, third, fourth, fifth, or sixth class may purchase, establish, erect, maintain, and operate electric light, heat, and power plants, with extensions and necessary appurtenances, within or without the corporate limits of the city, for the purpose of supplying the city and its inhabitants with electric light, heat, power, and telecommunications***. Any city-owned utility created under this section that provides telecommunications services shall be regulated as to that service by KRS Chapter 278. For the***~~[and, for this]~~ purpose ***of providing electric light, heat, power, and telephone***

services, ***a city of the second, third, fourth, fifth, or sixth class*** may enter into and fulfill the terms of an interconnection agreement with any electric or combination electric or gas utility whose rates and service are regulated by the Public Service Commission of Kentucky (or, if not so regulated, operating and having customers only outside of Kentucky), or an affiliate entirely owned by or under complete common ownership with an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky***. Any city of the second, third, fourth, fifth, or sixth class***~~[, and]~~ may establish, erect, maintain, and operate plants, individually or jointly with any of these utilities or utility affiliate. In the case of any joint action, a city and utility or utility affiliate may provide by contract for their respective responsibilities, for operation and maintenance and for the allocation of expenses, revenues, and power. If in the accomplishment of this purpose a city at any time has capacity or energy surplus to the immediate needs of the city and its inhabitants, the surplus, if not disposed of for consumption outside this state, may be disposed of only to an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky, or to an affiliate entirely owned by or under complete common ownership with such a utility.

(2) The city shall proceed in the same manner and be governed by the same conditions as are set forth in KRS 96.360 to 96.510 for the acquisition and operation of a water system, with the following exceptions:

(a) A petition calling for an election on the proposition of purchasing an existing plant shall be signed by at least two hundred (200) qualified voters of the city, rather than by twenty-five percent (25%) of the qualified voters of the city who voted at the last preceding regular election.

(b) Notwithstanding any other laws, bonds may be issued bearing interest at a rate or rates and may be sold on a basis to yield interest at a rate or rates as may be determined upon the sale of the bonds.

(c) Bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed $10,000,000 in the aggregate principal amount may be sold at public or private sale without compliance with KRS 424.360.

(3) This section constitutes a method for the acquisition of an electric light, heat, and power plant by any city of the second, third, fourth, fifth, or sixth class in addition or as an alternate to any other method authorized by statute, provided that the city was operating an electric plant on June 1, 1942, and has not elected to operate under KRS 96.550 to 96.900. No proceedings shall be required for the acquisition of any electric light, heat, or power plant or the issuance of bonds under this section except the proceedings required by KRS 96.360 to 96.510.

Section 5. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

(3) "Utility" means any person except***, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection,*** a city, who owns, controls,~~[or]~~ operates***,*** or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;

(4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(9) "Generation and transmission cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;

(10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

(12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;

(14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15) "Commission" means the Public Service Commission of Kentucky;

(16) "Commissioner" means one (1) of the members of the commission; and

(17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand.

Approved March 14, 2000

CHAPTER 102

(SB 59)

AN ACT relating to the Department of Military Affairs.

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

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following offices and divisions:

(1) Office of Management and Administration, containing the:

(a) Division of Administrative Services;

(b) Division of Facilities;

(c) Bluegrass Station Division; and

(d) Division of Air Transport;

(2) Division of ***Emergency Management***~~[Disaster and Emergency Services]~~;

(3) Office of the Chief of Staff for Federal Army Guard;

(4) Office of the Chief of Staff for Federal Air Guard; and

(5) Kentucky Civil Air Patrol.

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. KRS 17.167 is amended to read as follows:

(1) As used in this section, "felony offender" means any person who has been convicted of, entered an Alford plea to, or pleaded guilty to the commission of a capital offense or a felony.

(2) Any paid or volunteer fire department certified by the Commission on Fire Protection Personnel Standards and Education, ambulance service licensed by the Commonwealth of Kentucky, or rescue squad officially affiliated with a local disaster and emergency services organization or with the Division of ***Emergency Management***~~[Disaster and Emergency Services]~~ may apply to the Justice Cabinet or the Administrative Office of the Courts for a felony offender record check on applicants for employment or membership with the fire department, ambulance service, or rescue squad.

(3) Each application form, provided by a fire department, ambulance service, or rescue squad to an applicant for employment or membership, shall conspicuously state the following: "FOR EMPLOYMENT WITH OR MEMBERSHIP WITH A FIRE DEPARTMENT, AMBULANCE SERVICE, OR RESCUE SQUAD, STATE LAW PERMITS A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT OR MEMBERSHIP."

(4) Any request for records under this section shall be on a form approved by the Justice Cabinet or the Administrative Office of the Courts. The Justice Cabinet and the Administrative Office of the Courts shall not charge a fee for making record checks.

Section 3. KRS 36.255 is amended to read as follows:

(1) The Kentucky Community Crisis Response Board is hereby created as a separate administrative body of state government within the meaning of KRS Chapter 12 and attached for administrative purposes to the Department of Military Affairs.

(2) The membership of the board shall consist of the following:

(a) The commissioner of the Department for Mental Health and Mental Retardation Services, or the commissioner's designee;

(b) The commissioner of the Department for Public Health, or the commissioner's designee;

(c) The commissioner of the Department of Education, or the commissioner's designee;

(d) The commissioner of the Kentucky State Police, or the commissioner's designee;

(e) The Kentucky state fire marshal, or the fire marshal's designee;

(f) The executive director of the Division of ***Emergency Management***~~[Disaster and Emergency Services]~~, or the executive director's designee;

(g) The Attorney General, or the Attorney General's designee;

(h) One (1) representative of local community crisis response teams appointed by the Governor;

(i) Four (4) members appointed by the Governor to represent mental health disciplines;

(j) Two (2) members appointed by the Governor to represent emergency services disciplines;

(k) One (1) member who is a mental health professional licensed for independent clinical practice, to be appointed by the Governor. The licensed mental health professional member shall serve as clinical director for the board;

(l) One (1) member, appointed by the Governor, from a state-wide chaplain's association involved in emergency services, who is trained in grief counseling and has experience in crisis response;

(m) One (1) member from the Kentucky Chapter of the American Red Cross; and

(n) The commissioner of the Department for Social Services or the commissioner's designee.

(3) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall be approved members of the existing community crisis response team.

(4) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall have demonstrated a commitment to the provision of community crisis response services.

(5) The members of the board appointed by the Governor shall serve for two (2) years and may be reappointed for one (1) additional consecutive two (2) year term. All vacancies in appointed members' terms shall be filled by appointment of the Governor for the remainder of the unexpired term.

(6) The board shall elect annually from its membership a chairperson and shall establish other officers and committees as needed to execute the duties of the board.

(7) The board shall meet at least quarterly, and a majority of the members shall constitute a quorum for the transaction of the board's business.

(8) Except for hired and appointed staff, no board member or team member shall receive compensation. However, board members and crisis response team members may receive reimbursement for expenses incurred in the course of providing crisis response services or executing the duties of the board, consistent with state policy governing the reimbursement of state employees for food, travel, and lodging. Except as provided for in KRS 36.260, nothing in the provisions of KRS 36.250 to 36.270 shall be construed to create liability of a private party for expenses incurred or reimbursed under this subsection.

Section 4. KRS 75.470 is amended to read as follows:

Nothing in KRS 75.400 to 75.460 shall be construed to conflict with or supersede the authority of the Natural Resources and the Environmental Protection Cabinet, pursuant to the provisions of KRS Chapter 149, over management of forestry areas, and KRS Chapter 224, over management of hazardous wastes, nor the authority of the Division of ***Emergency Management***[~~Disaster and Emergency Services~~], pursuant to KRS Chapter 39, over response to disasters and emergencies.

Section 5. KRS 95A.020 is amended to read as follows:

(1) There is hereby created the Commission on Fire Protection Personnel Standards and Education, hereinafter called "commission," which shall be attached to the state fire marshal's office in the Department of Housing, Buildings and Construction.

(2) The commission shall be composed of seventeen (17) members, residents of the State of Kentucky, appointed by the Governor. These members should be persons well qualified by experience or education in the field of fire protection or related fields.

(3) The membership of the commission shall include:

(a) Two (2) volunteer firefighters, neither of which is a fire chief or assistant fire chief;

(b) Three (3) paid firefighters, at least one (1) of whom shall be a full-time paid county firefighter and none of whom shall be a fire chief or assistant fire chief;

(c) One (1) trustee of a volunteer fire department or fire district who is not a volunteer firefighter;

(d) Two (2) fire chiefs of paid fire departments;

(e) One (1) licensed physician;

(f) Two (2) fire chiefs of volunteer fire departments;

(g) One (1) teacher or administrator representing the fire and rescue training service of the Kentucky Community and Technical College System;

(h) One (1) representative of the Division of ***Emergency Management***~~[Disaster and Emergency Services]~~ of the Department of Military Affairs;

(i) One (1) mayor of a Kentucky city;

(j) One (1) county judge/executive;

(k) One (1) representative of Kentucky industry or business enterprise; and

(l) One (1) representative of the general public.

The chancellor for the Technical Institutions' Branch of the Kentucky Community and Technical College System and the state fire marshal, or their designees, shall serve as ex officio members of the commission. Their designees shall have full voting rights. Appointive members shall be appointed for a term of four (4) years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he is chosen to succeed.

(4) Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions.

(5) Members of the commission appointed pursuant to this section shall first be appointed on July 15, 1980. The terms of members appointed earlier shall terminate on July 15, 1980, but the Governor may reappoint those members who qualify under the provisions of this section.

Approved March 14, 2000

CHAPTER 103

(HB 417)

AN ACT relating to cellular antenna towers.

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

Section 1. KRS 278.665 is amended to read as follows:

(1) The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of a uniform application, provided under KRS 100.985(5), for a certificate of convenience and necessity to construct cellular antenna towers, and the procedures to carry out the commission's responsibilities under KRS 100.987.

(2) The commission, in establishing the public notice requirements of a uniform application as provided for in subsection (1) of this section, shall distinguish between areas of low and high population densities. At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city or within a rural service area in an urban-county, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will be processed, and informed of the opportunity to intervene in the application. The provisions of this subsection shall not apply to unincorporated areas within a county containing a city of the first class.

Approved March 14, 2000

CHAPTER 104

(HB 436)

AN ACT relating to coal mining.

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

Section 1. KRS 351.010 is amended to read as follows:

(1) As used in this chapter, unless the context requires otherwise:

(a) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department of Mines and Minerals;

(b) "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;

(c) "Board" means the Mining Board created in KRS 351.105;

(d) "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;

(e) "Commissioner" means commissioner of the Department of Mines and Minerals;

(f) "Department" means the Department of Mines and Minerals;

(g) "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;

(h) "Excavations and workings" means the excavated portions of a mine;

(i) "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;

(j) "Gassy mine" means any mine in which there is a record of methane having been ignited, or having been detected with a permissible flame safety lamp, or where methane in the amount of twenty-five hundredths percent (0.25%) or more has been found not less than twelve (12) inches from the roof, face, or rib, using approved methane testers or detectors or by analysis. However on and after June 19, 1976, all mines shall be classified as gassy or gaseous;

(k) "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, nor more than one-half of one percent (0.5%) of carbon dioxide, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;

(l) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;

(m) "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***~~[and]~~ which are administered as distinct units shall be considered a separate mine;

(n) "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;

(o) "Open-pit mine" shall include open excavations and open-cut workings including ***but not limited to*** auger ***operations and highwall mining systems***~~[mines]~~ for the extraction of coal;

(p) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;

(q) "Permissible" ***refers to***~~[means that]~~ 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***~~[bureau]~~;

(r) "Preshift examination" means the examination of ***a***~~[an underground]~~ 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 on-coming shift;

(s) "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;

(t) "Shaft" means a vertical opening through the strata that is~~[or may be]~~ used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;

(u) "Slope" means an inclined opening used for the same purpose as a shaft;

(v) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines; and

(w) "Supervisory personnel" means a person~~[or persons]~~ 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.

(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 2. KRS 351.020 is amended to read as follows:

(1) The Department of Mines and Minerals shall be headed by the commissioner of the Department of Mines and Minerals.

(2) The department shall administer all laws of ***the Commonwealth***~~[this state]~~ relating to mines.

Section 3. KRS 351.030 is amended to read as follows:

~~[The department shall hold one (1) or more hearings on each matter brought before it.]~~All administrative hearings conducted by the department shall be conducted in accordance with KRS Chapter 13B. Following the hearing, the department shall decide each matter in controversy. No person shall be discharged or otherwise discriminated against ***by his or her employer*** for testifying, or for his failure to testify, at these hearings.

Section 4. KRS 351.040 is amended to read as follows:

(1) Any party in interest dissatisfied with an order of the department may commence an equitable action against the department and other interested parties as defendants, to vacate or set aside, in whole or in part, any such order. The action ***shall***~~[may]~~ be brought in the Circuit Court of the county where the subject matter involved in the order, or the well or workable coal bed or part thereof, is located. The court may grant relief from any unlawful or unreasonable order of the department, and render such judgment as appears to it to be equitable and just.

(2) The pendency of the action shall not of itself suspend the operation of the order of the department, but during the pendency of the action any party may secure from the court an

order suspending or staying the operation of the order of the department pending the action by giving to the other parties adequate security, approved by the court, against loss due to the delay in enforcement of the order, in case the order under review is not set aside, and the court may, without security being given, suspend the operation of the order, in whole or in part, on such terms as it deems just and in accordance with the practice of courts of equity; provided, however, that the operation of an order pertaining to safety in coal mines shall not be suspended temporarily pending final decision of the court.

(3) Appeals may be taken to the Court of Appeals as in other cases.

Section 5. KRS 351.090 is amended to read as follows:

(1) The Governor shall appoint an adequate number of mine inspectors to insure at least two (2) inspections annually, provided the mine is in operation the entire year or the proportionate thereof, of all mines in the ***Commonwealth***~~[state]~~ and sufficient additional inspectors to enable the commissioner to provide adequate surveillance of~~[those underground]~~ coal mines where conditions or management policy dictate that more inspections are needed to insure the safety of miners. One (1) or more of the appointees may be designated as electrical mine inspectors. The Governor shall also appoint an adequate number of mine safety analysts and mine safety instructors. The term of office of each mine inspector, each mine safety analyst, each electrical inspector, and each mine safety instructor shall be during the period of capable, efficient service and good behavior.

(2) All mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the commissioner by KRS 351.060, and shall have a thorough and practical knowledge of mining gained by at least five (5) years' experience in coal mines in ***the Commonwealth***~~[this state]~~. All surface mine safety analysts shall have at least five (5) years' experience in surface mines in ***the Commonwealth***~~[this state]~~. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to two (2) years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to one (1) year practical experience in coal mines. ***A person***~~[Persons]~~ desiring to use ***a***~~[their]~~ mining engineering or technology degree for practical experience credit shall file proof of having received ***a***~~[their]~~ degree prior to examination.

(3) No person shall be appointed to the office of mine inspector, underground mine safety analyst, electrical inspector, or mine safety instructor unless he holds a current mine foreman's certificate. No person shall be appointed to the office of surface mine safety analyst unless he holds a current surface mine foreman's certificate. ***A person***~~[Persons]~~ appointed as mine ***inspector***~~[inspectors]~~, mine safety ***analyst***~~[analysts]~~, electrical ***inspector***~~[inspectors]~~, and mine safety ***instructor***~~[instructors]~~ shall pass an examination administered by the board. The commissioner may recommend to the Governor applicants for the positions of mine inspector, mine safety analyst, electrical inspector, or mine safety instructor who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.

(4) Mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.

(5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by inspectors, analysts, and safety instructors who shall verify upon oath that the expenses were incurred in the discharge of their official duties.

(6) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the Secretary of State.

(7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the Governor.

(8) Persons, other than those employed by a company, who by contractual or other rights, perform mine inspection work in any capacity, shall be familiar with mining and possess experience equal to that required of a state mine inspector. They shall also be held responsible for their conduct in the performance of their inspections and related acts. This subsection shall not apply to persons excluded by other laws or those who by agreement with the licensee make mine visits for technical and investigative work.

Section 6. KRS 351.103 is amended to read as follows:

(1) All persons possessing valid certificates as mine inspectors, electrical inspectors, mine safety instructors, assistant mine foreman, mine foreman,~~[fire boss,]~~ shotfirer, and other mining specialties as established by the board, or ***certified*** miner shall be eligible to work at any time as miners, provided they fulfill the annual requirements for retraining and reeducation as provided in KRS 351.105.

(2) Supervisory, clerical, and technically-trained employees of the mine operator whose work contributes only indirectly to mine operations shall not be required to possess a miner's certificate of competency and qualification.

Section 7. KRS 351.105 is amended to read as follows:

(1) The Board of Miner Training, Education, and Certification is abolished and shall be immediately replaced by the Mining Board.

(2) The board shall be made up of eight (8) persons, all of whom shall be citizens of Kentucky and from the coal industry in Kentucky. The board's membership shall reflect a fair representation from eastern Kentucky and western Kentucky, large and small operations, and union and nonunion coal production. The Governor shall appoint the members of the board to include:

(a) Three (3) members representing management; the Alliance of Kentucky Coal shall submit three (3) nominees for each management position on the board;

(b) Three (3) members representing labor; the United Mine Workers of America shall submit three (3) nominees for each labor position on the board;

(c) The commissioner of the Department of Mines and Minerals; and

(d) The director of the Division of Miner Training, Education, and Certification.

The commissioner of the department shall serve as chairman. The director of the Division of Miner Training, Education, and Certification shall be a nonvoting member.

(3) Excluding the commissioner and the director of the Division of Miner Training, Education, and Certification, initial appointments to the board shall be made in the following manner and shall reflect equal representation as to number and term regarding both the management and the labor positions: two (2) members for a period of two (2) years; two (2) members for a period of three (3) years; and two (2) members for a period of four (4) years. After the initial appointments, members of the board shall be appointed to four (4)-year terms. Members of the board, including members of the Board of Miner Training, Education, and Certification abolished by this section, may be reappointed at the expiration of their previous appointment at the pleasure of the Governor. Members shall continue to serve until a successor is appointed and qualified.

(4)[~~ As soon as practicable after the members of the board have been appointed, the commissioner shall call an organizational meeting to implement the provisions of this section.~~

~~(5)~~] Two (2) of the persons appointed to the board shall be employed in nonsupervisory positions at mines in this ***Commonwealth***[~~state~~] and shall have a minimum of five (5) years' underground experience in the industry and a mine foreman's certificate. Two (2) of the persons shall be employed in supervisory positions by coal companies operating in the ***Commonwealth***[~~state~~] and shall have a minimum of five (5) years' experience in the coal mining industry and a mine foreman's certificate. One (1) of each of the members holding supervisory and nonsupervisory mine positions shall have a minimum of five (5) years' practical experience working in a surface or underground coal mine. The director of the Division of Miner Training, Education, and Certification shall have a minimum of five (5) years' practical underground mining experience.

(5)[~~(6)~~] Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section. The vacancy shall be filled by the Governor within thirty (30) days from the date the vacancy occurs.

(6)[~~(7)~~] A quorum of the board shall be five (5) voting members; the board may act officially by a majority of those members who are present, except that no action shall be taken without a majority of affirmative votes. Action concerning revocation, suspension, or probation of a mine's license or a miner's certification shall require two-thirds (2/3) of the voting members present. When necessary for the commissioner to be absent ***or to recuse himself***, he is empowered to name an alternate to serve as chairman.

(7)[~~(8)~~] Each member of the board shall receive one hundred fifty dollars ($150) each day while actually engaged in the performance of the work of the board, shall receive mileage at the rate provided by the state's travel regulation for each mile actually traveled from the home of the member to the place of the meeting and returning therefrom, and shall receive reimbursement for food and lodging at a reasonable and customary rate, which shall be paid out of the State Treasury upon proper requisition approved by the commissioner.

(8)[~~(9)~~] The board shall act on all matters brought before it by the department and, after hearing, issue orders with respect to these matters.

(9)[~~(10)~~] The board shall meet periodically at the direction of the commissioner to review ***this chapter and*** KRS ***Chapter***[~~Chapters 351 and~~] 352 and make recommendations regarding the amendment of those chapters.

(10)[~~(11)~~] The board shall review and approve all administrative regulations proposed by the department ***that relate to the mining of coal or the certification of miners*** before those

administrative regulations[~~proposals~~] are promulgated in accordance with KRS Chapter 13A.

(11)[~~(12)~~] No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

(12)[~~(13)~~] The board may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its programs and standards.

Section 8. KRS 351.107 is amended to read as follows:

(1) ***A person***[~~Persons~~] desiring to obtain experience as a shotfirer may not charge or detonate explosives in ***an underground***[~~a~~] mine unless ***he or she is***[~~they are~~] under the direction and within sight and sound of a certified shotfirer. No person shall charge or detonate explosives within ***an underground***[~~a~~] mine unless that person has successfully completed a training program and passed a test administered by the department. The test shall include at a minimum a determination of the person's ability to test for mine gases and to safely handle and detonate explosives in an underground coal mine.

(2) The commissioner shall issue a shotfirer's certificate to the person upon successfully passing the test.

[~~(3) The board shall determine when the training program for shotfirers is sufficiently available to the work force in the state and thereafter shall establish the effective date after which the requirements of this section shall apply to all persons detonating explosives in underground coal mines.~~]

Section 9. KRS 351.108 is amended to read as follows:

Mine superintendents shall hold a mine foreman certificate ***issued by the commissioner***.

Section 10. KRS 351.109 is amended to read as follows:

(1) An individual is a qualified and certified person, within the meaning of this chapter, to perform electrical work, other than work on energized surface, high voltage lines, if he has at least one (1) year of experience under direct supervision of a qualified electrician in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and he attains a satisfactory grade on each of the series of written tests administered by the department and required in subsection (2) of this section.

(2) The series of written tests shall include, but not be limited to, the following subjects:

(a) Direct current theory and application;

(b) Alternating current theory and application;

(c) Electric equipment and circuits;

(d) Permissibility of electric equipment;

(e) Requirements of both federal and state laws; and

(f) Pertinent sections of the National Electrical Code.

(3) A score of at least eighty (80) percent on each of the written tests shall be deemed to be a satisfactory grade. Recognition shall be given to practical experience in that one (1) percentage point shall be added to an individual's score in each test for each additional year of experience beyond the one (1) year minimum requirement specified in subsection (1) of this section; however, in no case shall an individual be given more than five (5) percentage points for such practical experience.

(4) An individual may, within thirty (30) days from the date on which he received notification from the department of his test scores, repeat those ***sections*** on which he received an unsatisfactory score. If further retesting is necessary after this initial repetition, a minimum of thirty (30) days from the date of receipt of notification of the initial retest scores shall elapse prior to such further retesting, whereupon the entire series of written tests shall be retaken.

(5) An individual qualified and certified in accordance with this section shall, in order to retain qualification and certification, satisfactorily complete annually a retraining program approved by the department.

Section 11. KRS 351.120 is amended to read as follows:

(1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner who has passed the examination given by direction of the board for that position.

(2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such.

(3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows:

(a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and

(b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman.

(4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972.

(5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant.

(6) No certificate shall be granted to any person who does not present to the board satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. For the

purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file proof of having received their degree prior to the examination.

(7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine.

(8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section.

(9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section.

(10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting.

(11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts.

Section 12. KRS 351.1291 is amended to read as follows:

(1) All inexperienced surface coal miners shall complete a sixteen (16) hour course of instruction devised or approved by the department in subjects including, but not limited to: accident prevention, cutting and welding, equipment operation, fire protection, first-aid methods, ground control and transportation, handling and use of explosives, mine communications, mine electrical safety standards, mining law, including ***the***

statutory~~[miners']~~ rights ***of miners***, safety around bins and hoppers, and any other subjects deemed appropriate by the department. For purposes of this section, "inexperienced coal miners" means all persons who have not previously worked at least forty-five (45) days at a surface coal mine in this Commonwealth.

(2) All surface coal miners shall complete an eight (8) hour course of annual retraining devised or approved by the department in the subjects identified in subsection (1) of this section.

(3) The commissioner shall certify all surface coal miners who complete the courses of instruction required in subsections (1) and (2) of this section.

Section 13. KRS 351.160 is amended to read as follows:

(1) The commissioner of the department shall annually make a report to the Governor of his proceedings during the preceding calendar year. The annual report shall be prepared and printed as soon as possible after the close of the calendar year. The annual report shall cover the complete operation of the mines in this ***Commonwealth***~~[state]~~ during the preceding calendar year, enumerating all accidents occurring in or about any such mines during that year, and giving such other information as the commissioner deems useful, and making such suggestions as he deems important as to further legislation on the subject of mining.

(2) The commissioner shall keep and index a permanent record of all inspections made by himself and of all reports relating to inspection of mines furnished to him by mine inspectors. All such records of the department shall be public records and shall, at all times, be open to the inspection of the public, and shall be laid before the Governor upon his request at any time.

(3) The department shall furnish certified copies of any such records, when requested to do so, upon payment of such fee as is generally charged by courts of record for certified copies. Such fee shall be paid into the Treasury of the state.

Section 14. KRS 351.170 is amended to read as follows:

The licensee of each commercial coal mine shall give at the end of each calendar year accurate information, on ***blank forms***~~[blanks]~~ furnished by the commissioner, as to the number of accidents that have occurred, the number of persons employed, the tons of coal mined, and any other related information that the commissioner requests.

Section 15. KRS 351.192 is amended to read as follows:

Any person who is qualified by a federal or state agency to perform mine rescue planning and recovery operations, including mine rescue instructors and mine rescue team members, and any person designated by an operator furnishing a mine rescue team to supervise, assist in planning, or provide service thereto, who in good faith performs, or fails to perform, any act or service in connection with such mine rescue planning and recovery operations shall not be liable for any civil damages as a result of any such acts or omissions~~[, and shall not be required to participate, except voluntarily, in any investigation, including any administrative hearing, in connection therewith; provided however, that nothing contained herein shall be construed to exempt from liability any person responsible for an overall mine rescue operation, including an operator of an affected facility and any person assuming responsibility therefor under federal or state statutes or regulations]~~.

Section 16. KRS 352.140 is amended to read as follows:

(1) No operator or superintendent of any mine worked by shaft, slope, or incline shall place in charge of any engine or drum used for lowering or hoisting any persons employed in the mine any but competent and sober engineers or drum runners. Where automatic elevators are used and all safety devices are provided, the services of a hoisting engineer are not required. Hoisting engineers and drum runners shall pass a test as to their knowledge of hoisting equipment and the precautions to be taken when raising or lowering men or materials. Certification of hoisting engineers and drum runners shall be under such conditions and by tests prescribed by the ***commissioner***~~[department]~~.

(2) No engineer in charge of such machinery shall allow any person except such as may be designated for this purpose by the operator or superintendent to interfere with any part of the machinery.

(3) No person shall interfere with or intimidate the engineer or drum runner in the discharge of his duties.

(4) In a mine worked by shaft, slope, or incline, no more than twenty (20) persons shall ride in any cage or car at one (1) time, without the approval of the mine inspector and the commissioner of the department, and no person shall ride on a loaded cage or car, except that where special man-cars or cages are employed to haul workmen on inclines the commissioner may regulate the method and procedure of handling of man-cars, cages, and workmen. Each cage or elevator installed after June 16, 1972, which is used for lowering and raising men shall have at least two and one-half (2-1/2) square feet of floor space for each person.

Section 17. KRS 352.190 is amended to read as follows:

For every fifty (50) men and fraction thereof employed underground, the operator of each mine shall keep on hand at the mine one (1) properly constructed stretcher, one (1) waterproof and one (1) woolen blanket, and all other necessary equipment ***required***~~[advised]~~ by the department.

Section 18. KRS 352.220 is amended to read as follows:

(1) The following shall apply to underground installations:

(a) On all haulage roads, landings, and partings where men are required to regularly work or pass under bare power wires placed less than six and one-half (6-1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;

(b) All machine feed wires shall be placed on insulators which shall be so placed as to prevent the wires coming in contact with the coal;

(c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons~~[or animals]~~ are required to travel shall be safely guarded or protected from the persons~~[or animals]~~ coming in contact therewith, as provided in paragraph (a) of this subsection;

(d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when

protected as provided for in paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;

(e) All power wires and cables in hoisting shafts or manway compartments shall be properly insulated, substantially fixed, and well protected;

(f) Ground wires for low-voltage circuits shall be at least one-half (1/2) as large as the circuit wires;

(g) Extra length or long trailing cables shall be spread out in long open loops on clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables in suspended long loops shall be acceptable;

(h) One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat and spark under load shall not be used;

(i) Single conductor trailing cables shall not be used on cutting machines;

(j) Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit;

(k) The frames of hand-held electrically driven tools and portable sump pumps shall be properly grounded, and the hand-held tools and portable pumps shall be properly protected by fuses, circuit breakers, or other no less effective devices to provide the minimum overload and shortcircuit protection required by the department;

(l) All pump frames and all pipe lines shall be grounded to the rail or the grounding system at~~[about]~~ two hundred (200) foot intervals, except nonmetallic pipes or pipes using insulated type couplings or pipes installed remotely from track or power systems;

(m) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track;

(n) ~~[After June 16, 1972,]~~All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than one-half

(1/2) the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit;

(o) High voltage cables shall have disconnecting switches, overload protective devices, and lightning arresters at or near the outside end of the cable;

(p) Permanent battery charging stations, permanent pump installations, motor generator sets, rotary converters, and oil filled transformers and switches used underground shall be housed in fireproof enclosures ventilated by a separate split of air direct to the main return. Underground stations containing transformers or circuit breakers filled with inflammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture occur, and shall be of fireproof construction. Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with noninflammable liquid or inert gas. Sectional type portable power centers, portable transformers, and distribution centers which are essentially fireproof are not required to be placed on separate splits of air but shall be stationed in well ventilated places out by last open crosscuts;

(q) All mine locomotives shall be fused or otherwise protected at the switch or at the nip;

(r) Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. ~~[After June 16, 1972,]~~Only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with controls at locations recommended by the mine inspector. This does not prevent the use of belting which is being used on June 16, 1972, but the use of rubber belting shall be under such conditions as may be prescribed by the commissioner;

(s) Telephone lines shall be provided with lightning arresters where the lines enter the mine and at the boxes on the outside;

(t) Telephone lines crossing trolley wires shall be carefully guarded in a nonconductive conduit;

(u) Insulating mats shall be placed in front of switchboards, beside stationary motors, in decks of locomotives, and all electrical installations where required;

(v) Ground wires in trailing cables shall be tested periodically for open circuit and high resistance joints;

(w) Power circuits in tipples, buildings, cleaning plants, etc., and all inside electrical circuits shall be deenergized when not in use over a long period; and

(x) Where electric circuits cross over or pass under belt conveyors the wiring shall be protected by conduit.

(2) The following shall apply to surface installations:

(a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;

(b) Protective barriers shall be so constructed between high-voltage wires and telephone wires, trolley circuits, and any other similar conveyor wires or circuits as to prevent their failure by the falling of the high tension lines across the other circuits, wires, or conveyors;

(c) On four (4) wire circuits, the fourth or neutral wire terminating at transformers, or elsewhere, shall be of substantial construction to minimize any possibility of the wire being ***severed***~~[cut in two (2)]~~ or damaged mechanically;

(d) On low-voltage circuits, wires shall be supported on insulators except when cables made for use without insulators, which are of a design that can be safely used without insulators, are used;

(e) Lightning arresters shall be installed on all circuits entering a mine, regardless of voltage. Overload protection and disconnect switches of sizes and ratings approved by the department shall also be provided;

(f) Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;

(g) All transformer tanks shall be effectively grounded;

(h) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of dust accumulations; and

(i) Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height.

(3) (a) Notwithstanding any provisions of subsections (1) or (2) of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsections (1) or (2) of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsections (1) or (2) of this section; and

(b) The department may prescribe~~[any other]~~ administrative regulations with respect to the aboveground or underground installations in connection with any mine operation when information is made available indicating that regulation is reasonably necessary to prevent injury to, or loss of, life and property.

Section 19. KRS 352.230 is amended to read as follows:

(1) ~~[After June 16, 1972,]~~All electrical equipment purchased for face use in underground mines shall be of the permissible type. The commissioner or his authorized representative shall reject any modification to mining equipment which would endanger the health or safety of employees.

(2) No person shall be placed in charge of electrical face equipment in any mine unless he is a qualified person, capable of determining the safety of the roof, face, and ribs of the working places and detecting the presence of explosive gas~~[where necessary]~~. Operators of electrical face equipment shall undergo an examination to determine their fitness to detect explosive gas before they are permitted to have charge of electric face equipment and shall have a minimum of forty-five (45) days of actual mining experience. Safety committeemen,

shotfirers, and others whose duty may require them to make examination for gas shall undergo and pass an examination or possess a mine foreman's certificate before using a flame-safety lamp underground. The examination shall be given by the mine inspector, blank forms therefor to be furnished by the department. A copy shall be retained on file at the mine office and the original shall be sent to the department fully made out and signed by the applicant and approved by the mine inspector.

(3) No electric face equipment shall be brought ***inby***~~[within]~~ the last breakthrough next to the working face until the equipment operator has made an inspection for explosive gas using a flame-safety lamp or other approved device or instrument in the place where the equipment is to work, unless the examination is then made by some other competent person authorized and appointed for that purpose by the mine foreman. If any explosive gas is found in the place, the electric equipment shall not be taken in until the gas is removed.

(4) While the electric equipment is operating at the face, an examination for gas shall be made at not more than twenty (20) minute intervals. If gas is found in excess of one percent (1%), the power shall be disconnected from the equipment and left disconnected until the gas is removed and the place reported safe by a certified official.

(5) Headlights shall be installed and maintained in a permissible and working order on all mobile and face equipment at all times the equipment is in operation.

(6) Headlights shall be mounted to provide maximum illumination where it will be most effective and shall be protected from damage by guarding or locations.

(7) At all times when mining equipment is being used, it shall be maintained in safe working order.

Section 20. KRS 352.260 is amended to read as follows:

(1) Any operator of a mine shall designate only certified persons as shotfirers to prepare the cartridge and set off and discharge the shots.

(2) Shotfirers shall at all times be under the direction of ***a certified***~~[the]~~ mine foreman.

(3) The following conditions apply when shooting coal from the solid:

(a) ***All licensees***~~[After July 15, 1982, all coal mine operators]~~ engaged in shooting coal from the solid shall submit an application for a permit to the commissioner on a form prescribed by the department.

(b) Before said permit is issued by the commissioner he shall have an investigation conducted of the mine to determine the adequacy of the proposed solid blasting plan in complying with ***KRS Chapter 351 and this chapter***~~[all state laws]~~ and ***administrative*** regulations applicable to blasting ***coal in an*** underground ***mine***~~[coal]~~.

(c) The mine inspector shall have the authority to stop production at the mine by the issuance of a closure order to any operator who fails to obtain a permit when shooting coal from the solid.

(4) When using the method of solid blasting, no more than one (1) face shall be charged or detonated simultaneously.

(5) When shooting coal from the solid, not more than two (2) adjacent openers or cut holes shall be primed with detonators having the same delay period. The nominal delay intervals

between the succeeding rows of horizons shall not be less than fifty (50) milliseconds nor more than one hundred (100) milliseconds.

Section 21. KRS 352.290 is amended to read as follows:

A suitable record book shall be kept at the mine office of every mine wherein fire bosses are employed, and immediately after the examination of the mine or any portion thereof, by a fire boss, he shall enter and sign a record of the examination in the book with ink~~[or indelible pencil]~~. The record shall clearly show the time taken in making the examination, the nature and location of any danger discovered in the mine, and what has been done to correct dangerous conditions. If any danger is discovered, the fire boss shall immediately report its location to the mine foreman, or in his absence to the assistant mine foreman in charge, who shall take immediate action to remove the danger. When a station is located inside a mine the fire boss shall enter and sign a report both in the record book kept there and in a record book in the mine office on the surface. The record books of the licensee shall at all times during working hours be accessible to the mine inspector and the miner or his representative.

Section 22. KRS 352.310 is amended to read as follows:

Any fire boss who fails to perform his duties, or who makes a false report of the condition of any place in the portion of the mine allotted to him for examination, shall be suspended by the mine foreman, and his name shall be given to the mine inspector for prosecution. If he is found guilty ***by the board***, he shall return his certificate of qualification~~[as fire boss]~~ to the department.

Section 23. KRS 352.320 is amended to read as follows:

(1) All commercial coal mines shall employ a certified mine foreman therein to properly carry out the plans and rules when approved by the commissioner of the department and to be responsible for compliance with the provisions of KRS ***Chapter***~~[Chapters]~~ 351 and ***this chapter***~~[352]~~.

(2) When the mine workings become so extensive that the mine foreman is unable personally to carry out the duties required of him by law, the operator or superintendent shall employ a sufficient number of persons holding suitable certificates of qualifications to act as assistants to the mine foreman, and under his instructions.

Section 24. KRS 352.340 is amended to read as follows:

The mine foreman or his assistants shall visit and carefully examine each working place in the mine ***at least*** every four (4) hours~~[or oftener]~~ while the mine employees are at work. He shall examine as live workings, on regular inspections, all places in live sections that are temporarily abandoned. If the mine foreman finds any place to be in a dangerous condition, he shall not leave the place until it is made safe, or until the employees working therein are removed until the place is made safe. He shall see that every mine liberating explosive gas is kept free of standing gas in all working places and roadways, and that all accumulations of explosive or noxious gases in the worked-out or abandoned portions of any mine are removed as soon as possible after discovery. He shall ensure that all preshift examinations are conducted by a certified person and that examinations of conveyor belts have been conducted. He shall not allow any person who may be endangered by the presence of explosive or noxious gases to enter that portion of the mine until the gases have been removed. He shall direct and see that all dangerous places and the entrances to worked-out and abandoned places in all mines are properly barricaded across the openings, so that no person will enter, and that danger ***signs***~~[signals]~~ are posted upon the barricade to warn persons of existing danger. He shall give prompt attention to the removal of all dangers reported

to him by his assistants, the fire boss or any person working in the mine, and if it is impracticable to remove the danger at once he shall notify every person whose safety is menaced thereby to remain away from the portion where the dangerous condition exists. He or his assistants, fire bosses, or other certified persons shall, at least once every week, travel and examine all air courses, escapeways, seals on the return, roads, and openings that give access to old workings or pillar falls, and make a record of the condition of all places where danger has been found. The record shall be made with ink~~[or indelible]~~ pencil in the record book provided for that purpose.

Section 25. KRS 352.350 is amended to read as follows:

(1) The mine foreman shall notify, in writing, the ***licensee***~~[operator]~~ or superintendent of the mine of his inability to comply with any of the requirements of the mining laws, and the ***licensee***~~[operator]~~ or superintendent shall at once attend to the matter complained of by the mine foreman so as to enable him to comply with the mining laws.

(2) The mine foreman shall each day enter and sign plainly with ink~~[or indelible pencil]~~, in a book provided for that purpose, a report of the condition of the mine. The report shall clearly state any danger that comes under his observation during the day or is reported to him by his assistants or by the fire bosses, and shall state what action was taken to correct such danger, whether or not there is a proper supply of material on hand for the safe working of the mine, and whether or not the mining laws are being complied with. The mine foreman shall each day read carefully, and countersign with ink~~[or indelible pencil]~~, all reports entered in the record book of the fire bosses.

(3) The mine superintendent, mine foreman and assistant foreman shall be held jointly responsible for the immediate compliance with the provisions of KRS ***Chapter***~~[Chapters]~~ 351 and ***this chapter***~~[352]~~.

Section 26. KRS 352.400 is amended to read as follows:

(1) The licensee of any mine may adopt special rules consistent with KRS ***Chapter***~~[Chapters]~~ 351 and ***this chapter***~~[352]~~ for the government and operation of his mine, and covering all the work pertaining thereto in and out of the mine. Before the rules are put into effect they shall be approved in writing by the commissioner. The rules, when adopted and approved in writing by the commissioner, shall be printed on cardboard in the language spoken by seventy-five percent (75%) or more of the employees at the mine, and shall be posted on a bulletin board or some other conspicuous place about the mine where they may be seen by the employees at the mine. Before the rules are so adopted, approved and posted, the representative of the employees at the mine shall be given a copy thereof, and be deemed to have agreed thereto, before the employees are required to obey the rules.

(2) The mine rules shall be printed in a form prescribed by the commissioner.

(3) The licensee shall furnish each employee a copy of the mine rules, and each employee shall sign a statement indicating his receipt of a copy of the rules and his agreement to comply with them.

(4) The mine rules shall be included in the subjects taught during annual retraining of the mine's employees.

~~[(5) On or after April 9, 1996, if new mine rules require special safety equipment or protective clothing to be used or worn by the employees, the licensee shall provide the equipment or clothing to the miners at no cost to them.]~~

Section 27. KRS 352.410 is amended to read as follows:

(1) Each superintendent shall, on behalf and at the expense of the operator, keep on hand at or within convenient distance of the mine, not to exceed 500 feet, a sufficient quantity of all materials and supplies required to preserve the safety of employees, as ordered by the mine foreman and required by law. If the superintendent cannot procure the necessary materials or supplies, he shall at once notify the mine foreman, who shall withdraw the men from the mine until the materials or supplies are received.

(2) The superintendent shall, at least once each week, read and examine carefully and countersign all reports entered in the mine record book of the mine foreman.

(3) The operator or superintendent shall cooperate with the mine foreman and other officials in the fulfillment of their duties under KRS ***Chapter***~~[Chapters]~~ 351 and ***this chapter***~~[352]~~, and shall direct that the mine foreman and all other employees under him comply with the law, especially when his attention is called by the mine inspector or by the commissioner to any violations of the laws.

(4) The superintendent shall keep on hand at the mine a supply of printed rules, notices, and record books required by this chapter. The superintendent shall see that rules, notices, and record books are delivered to the proper persons at the mine and are properly cared for, and that the rules and notices are posted in conspicuous places at or near the entrance to the mine and kept legible.

Section 28. KRS 352.430 is amended to read as follows:

(1) The operator or superintendent of every mine shall furnish the mine inspector proper facilities for entering the mine and making examinations or obtaining information.

(2) If any inspector discovers that any mine does not conform to the provisions of KRS ***Chapter***~~[Chapters]~~ 351 and this chapter in respect to the safety of employees, or that by reason of any defect or practice not specifically covered by these chapters in or about the mine, the lives or health of persons employed therein are endangered, he shall immediately issue an emergency order to the licensee or superintendent. If he deems it necessary for the immediate protection from imminent danger of bodily harm of the persons employed in the mine, he shall withdraw the men who may be endangered. If the entire mine is affected by the dangerous condition, all men shall be withdrawn and production shall be halted until all defects causing the imminently dangerous condition are corrected. If an imminent danger affects only a portion of the mine, the persons whose safety may be menaced thereby shall be withdrawn from the affected part of the mine and production halted in that area until the dangerous condition is corrected. However, where production is necessary to correct the unsafe condition, it shall be permitted to that extent, using only the necessary personnel. Production at the affected area of a mine from which men are withdrawn pursuant to this section may be resumed upon reinspection by a mine inspector and a finding by that inspector that the mine is no longer imminently unsafe.

(3) In all emergency hearings, ***a departmental attorney,*** the Attorney General, the Commonwealth's attorney, or the county attorney of the judicial circuit or county in which the mine is situated shall appear for the ***Commonwealth***~~[state]~~ and defend the action.

Section 29. KRS 352.460 is amended to read as follows:

If the operator or superintendent of any mine fails to furnish to the commissioner any map required by KRS 352.450 and 352.480, the commissioner may cause a correct survey and map of the mine or extensions thereof to be made at the expense of the owner, lessee or operator of the mine, and the cost of the map shall be recoverable from the owner, lessee or operator in the same manner as debts are recoverable by law. If at any time the commissioner has reason to believe that any map furnished under KRS 352.450 and 352.480 is materially incorrect, so that it will not serve the purpose for which it was intended, he may have a survey and map made or corrected, and the expense of making the survey, map or correction shall be paid by the owner, lessee or operator of the mine, or recovered in the same manner as debts are recoverable by law; but if the map furnished by the operator or superintendent is found to be correct, the expense of the survey and drafting of the map shall be paid by the ***Commonwealth***~~[state]~~.

Section 30. KRS 352.470 is amended to read as follows:

(1) The correctness of each map provided for by KRS 352.450 or 352.460 shall be certified only by a professional engineer or land surveyor registered in Kentucky. KRS 322.290 requires registrants to practice only in areas of competence. The certification shall read as follows:

"I, the undersigned, hereby certify that***, to the best of my knowledge and belief,*** this map is correct, ***and that***~~[shows to the best of my knowledge and belief]~~ all the information required by the mining laws of this ***Commonwealth is set out within***~~[state]~~, and covers the period ending ...., ... Certifying Agent

Acknowledged before me, a ...., this .... day of .....

.....

.....SEAL"

(2) The commissioner may reject any map as incomplete if its accuracy is not so attested.

Section 31. The following KRS sections are repealed:

351.128 Underground mine employing 2 to 25 persons required to employ person with first-aid training.

351.195 Miners required to wear safety glasses.

Approved March 14, 2000

CHAPTER 105

(HB 456)

AN ACT relating to tobacco.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

The Commissioner shall promulgate administrative regulations establishing the height and weight requirements of a basket of tobacco when placed on a warehouse floor for the purpose of sale. In establishing the requirements, the Commissioner shall consider traditional height

and weight standards for baskets of tobacco, and shall consider experimental marketing standards that may be applied from time to time.

Section 2. KRS 248.990 is amended to read as follows:

(1) Any tobacco warehouseman, agent, manager, solicitor, corporation or organization that violates any of the provisions of KRS 248.320 to 248.340 or subsection (3) of KRS 248.350 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100), and, if a corporation, it shall forfeit all corporate rights and privileges.

(2) Any person who violates any of the provisions of KRS 248.400 shall be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500).

(3) Any person who violates any of the provisions of KRS 248.370, ***or***~~[248.390,]~~ 248.440***,*** or willfully violates ***an administrative***~~[a]~~ regulation of the department, or who refuses to pay the fee provided for by KRS 248.290***,*** shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for not more than three (3) months, or both.

(4) Any person who violates any of the provisions of KRS 248.410 or 248.420 shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(5) Any person who fails or refuses to post notices in accordance with subsection (1) of KRS 248.430 shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each day of failure or refusal.

(6) Any person who violates subsection (2) of KRS 248.430 shall be fined five hundred dollars ($500) for each offense.

(7) Any person who violates any of the provisions of subsection (1) of KRS 248.450 shall be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500) for each offense.

(8) Any person who violates any of the provisions of subsection (2) of KRS 248.450 shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each day of violation.

(9) Any person who violates KRS 248.610 shall be fined not less than $100 nor more than $1,000, or imprisoned in the county jail for not more than one (1) year, or both.

(10) Any person who violates any of the provisions of subsection (1) or subsection (2) of KRS 248.350 shall for each offense be fined not less than fifteen hundred dollars ($1,500) nor more than three thousand dollars ($3,000), or be imprisoned for not less than three (3) months nor more than twelve (12) months, or both.

Section 3. The following KRS section is repealed:

248.390 Maximum height and weight of baskets of tobacco.

Approved March 14, 2000

CHAPTER 106

(HB 466)

AN ACT relating to sports.

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

Section 1. KRS 229.051 is amended to read as follows:

Before a permit is granted to any person to hold***, promote, or act as a booker for*** a professional boxing or a wrestling match or exhibition, the applicant shall file with the commission a bond in the sum of five thousand dollars ($5,000), to be approved as to form and the sufficiency of the sureties by the commission, conditioned for the payment of the tax imposed by KRS 229.031. Upon the approval of the bond, the commission shall issue to the applicant a certificate of filing and approval, which shall be filed by the applicant with the commission, with the application for the permit. ***The***~~[No such]~~ permit shall ***not*** be issued until ***the***~~[such]~~ certificate has been filed.

Section 2. KRS 229.081 is amended to read as follows:

A~~[No]~~ person shall ***not*** participate in a professional match in any of the following enumerated capacities ***or in any other capacity as set out in administrate regulations promulgated by the commission*** without holding a license issued by the commission and meeting all eligibility requirements as established by the commission by promulgation of administrative regulations:

(1) Contestant;

(2) Judge;

(3) Manager;

(4) Physician;

(5) Referee;

(6) Timekeeper; or

(7) Trainer.

Licenses issued under this section shall expire on December 31 of the year in which they are issued. The commission may establish a schedule of compensation to be paid to officials for participating in a professional match by promulgation of administrative regulations. The compensation shall be paid by the person conducting the match, and by no other person.

Section 3. KRS 229.101 is amended to read as follows:

A~~[No]~~ boxing or wrestling match or exhibition shall ***not consist***~~[be]~~ of more than twelve (12) rounds~~[in length except championship matches, which shall be limited in the discretion of the commission]~~.

Section 4. KRS 229.111 is amended to read as follows:

Contestants in a professional boxing or wrestling match or exhibition shall be examined by a reputable licensed physician appointed by the commission, and shall ***meet the health and fitness requirements as established in administrative regulations promulgated by the commission***~~[be in excellent health]~~ before participating in such a boxing or wrestling match or exhibition.

Section 5. KRS 229.240 is amended to read as follows:

All peace officers, ***who are***~~[on being]~~ informed or ***who have***~~[having]~~ reason to believe that a professional match that is ***in violation of***~~[not authorized under]~~ this chapter ***or administrative regulations promulgated in accordance with this chapter*** is about to take place, or that there is training or preparation for such a contest, in any place within their jurisdiction, shall suppress and prevent it. For this purpose any peace officer may enter any place where such contest is being~~[held]~~ or will be held or where there is training or preparation for such a contest and may arrest without a warrant any person who does not submit satisfactory proof that he ***or she*** has ***the***~~[whatever]~~ license or permit~~[is]~~ required by this chapter.

Section 6. KRS 229.991 is amended to read as follows:

(1) Any person who violates subsection (1) of KRS 229.071 or subsection (1) of KRS 229.021 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or imprisoned in the county jail for not more than six (6) months, or both.

(2) Any person who violates subsections (2), (3) or (4) of KRS 229.021 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned in the county jail for not more than ninety (90) days, or both.

(3) Any person who violates KRS 229.081 where ***the***~~[such]~~ violation does not constitute a violation of KRS 229.021, shall be fined not less than ***one hundred dollars ($100)***~~[twenty-five ($25)]~~ nor more than five hundred dollars ($500).

(4) Any peace officer who willfully fails to execute the duties required of him by KRS 229.240 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500).

(5) Any person who violates any of the provisions of this chapter for which no specific penalty is provided shall be fined not less than ten ***dollars*** ($10) nor more than one hundred dollars ($100).

(6) Any person who fails to pay the taxes required by KRS 229.031 or ascertained to be due under KRS 229.041 together with the expenses incurred in the examination, within twenty (20) days after notice to the delinquent person of the amount fixed by the commission shall ipso facto forfeit his license. In addition he shall forfeit and pay into the State Treasury an additional amount equal to the taxes found to be due.

(7) Any person who violates the provisions of KRS 229.121 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) and no person who has been guilty of such an offense shall be allowed to participate in any boxing or wrestling match or exhibition for one (1) year after being found guilty of the offense.

(8) Any person failing to make the report required by subsections (2) or (4) of KRS 229.031 shall be liable for any tax the Commonwealth may lose as a result of his failure to make the required report.

Approved March 14, 2000

CHAPTER 107

(HCR 12)

A CONCURRENT RESOLUTION confirming the appointment of Jennifer M. Headdy to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by Executive Order 99-1338 and letter of October 5, 1999, the Governor appointed Jennifer M. Headdy and submitted her appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Jennifer M. Headdy meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the appointment of Jennifer M. Headdy to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Ms. Jennifer M. Headdy, 914 North Main Street, Henderson, Kentucky 42420 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 14, 2000

CHAPTER 108

(HCR 81)

A CONCURRENT RESOLUTION confirming the appointment of Ronald J. Carson to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, by Executive Order 99-1694 and letter of December 21, 1999, the Governor appointed Ronald J. Carson to an unexpired term on the Kentucky Long-Term Policy Research Center Board and submitted his appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Ronald J. Carson meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the appointment of Ronald J. Carson to the Kentucky Long-Term Policy Research Center Board for an unexpired term ending October 6, 2002.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Mr. Ronald J. Carson, 215 Evergreen Road, Frankfort, Kentucky 40601 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 14, 2000

CHAPTER 109

(HCR 29)

A CONCURRENT RESOLUTION confirming the appointment of Judy Lyne to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on July 8, 1998, the Legislative Research Commission appointed Judy Lyne to the Long-Term Policy Research Center Board and by letter of December 14, 1999, has submitted her appointment for the General Assembly's confirmation; and

WHEREAS, the House of Representatives and the Senate find that Judy Lyne meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the appointment of Judy Lyne to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 2002.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Mrs. Charles (Judy) Lyne, 1068 Lyne-Johnson Road, Olmstead, Kentucky 42265-9132.

Approved March 14, 2000

CHAPTER 110

(HJR 15)

A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge currently under construction connecting US 25E and US 119 over the Cumberland River in honor of Joan Asher Cawood.

WHEREAS, Joan Asher Cawood, who was born on November 20, 1934, in Bell County, Kentucky, is the fourth generation of the Asher family to serve the people of Bell County, Eastern Kentucky, and the entire Commonwealth through public service both as elected officials and in appointed posts; and

WHEREAS, the Asher family name has become synonymous with development through the family's efforts in establishing the first railroad from Pikeville to Harlan and the building of roads and bridges that helped open up an isolated region; and

WHEREAS, Joan Asher Cawood's great-grandfather, Thomas Jefferson Asher, whose work in the coal and railroad industries helped provide jobs and foster development in Eastern Kentucky, was elected in 1913 by the citizens of Bell County to the office of County Judge and served without accepting a salary; and

WHEREAS, Joan Asher Cawood's grandfather, Hugh Howard Asher, served as State Highway Commissioner in the 1920's and later served as the Chairman of the Republican Party in Bell County; and

WHEREAS, Joan Asher Cawood's father, Thomas Edward Asher, was elected to serve as both Magistrate and Jailer in Bell County, served as Chief U.S. Marshal for the Eastern District of Kentucky from 1969 until his retirement in 1977, served as Republican Party Chairman, and was named to the Republican Hall of Fame in the 5th Congressional District for his extraordinary public service; and

WHEREAS, Joan Asher Cawood's contribution to her family's long history of public service began with her election as Bell County Clerk in 1977; and

WHEREAS, Joan Asher Cawood continues her uninterrupted service to the people of Bell County as County Clerk to this day; and

WHEREAS, Joan Asher Cawood, in the most recent election of 1998, was elected by the largest margin in a county election in the history of Bell County; and

WHEREAS, Joan Asher Cawood is a devoted and loving mother of three fine sons: Paul C. Cawood, Jr., William E. Cawood, and Howard A. Cawood; and

WHEREAS, Joan Asher Cawood has also been an active force in the civic and community life of Bell County through her involvement in the First Presbyterian Church, the Business and Professional Women's Club, and the Republican Women's Organization, among other organizations; and

WHEREAS, the accomplishments and service of Joan Asher Cawood and the entire Asher family deserve lasting recognition;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name the bridge currently under construction connecting US 25E and US 119 over the Cumberland River the "Joan Asher Cawood Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Joan Asher Cawood Bridge" to facilitate their erection upon completion of the bridge.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Manchester, Kentucky.

Approved March 14, 2000

CHAPTER 111

(HJR 39)

A JOINT RESOLUTION directing the Transportation Cabinet to name various roads and bridges in Floyd County in accordance with KRS 177.074.

WHEREAS, the Civil War was a defining moment in this great nation's history, a time when the very fate of the Union hung in the balance; and

WHEREAS, a strategic Civil War battle occurred on January 10, 1862, at Middle Creek in Floyd County, Kentucky; and

WHEREAS, the Battle of Middle Creek was the largest single Civil War battle in Eastern Kentucky; and

WHEREAS, the Confederate Forces in the Battle of Middle Creek were bravely led by Brigadier General Humphrey Marshall; and

WHEREAS, the Union Forces in the Battle of Middle Creek were led by Colonel James A Garfield, who would later become the 20th President of the United States; and

WHEREAS, Middle Creek Battlefield was named a National Historic Landmark by the United States Department of the Interior, National Park Service in October, 1992; and

WHEREAS, it is fitting that we remember this battle and the heroic men who fought in it;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Transportation Cabinet is directed to name Kentucky Route 114 in Floyd County the "Middle Creek National Battlefield Parkway."

Section 2. That the Transportation Cabinet is directed to name Kentucky Route 404 in Floyd County the "Floyd County Civil War Highway."

Section 3. That the Transportation Cabinet is directed to name the bridge on Kentucky Route 404 over the Right Fork of Middle Creek in Floyd County the "Brigadier General Humphrey Marshall Bridge."

Section 4. That the Transportation Cabinet is directed to name the bridge on Kentucky Route 114 over Middle Creek at Kentucky Route 122 in Floyd County the "Colonel James A. Garfield Bridge."

Section 5. That the Transportation Cabinet is directed to name the bridge on Kentucky Route 114 over the CSX Railway at Kentucky Route 2555 in Floyd County the "Middle Creek National Battlefield Bridge."

Section 6. That the Transportation Cabinet shall immediately begin preparing the appropriate highway "brown" signs naming the routes described in Sections 1 to 5 of this Resolution to facilitate and coordinate their placement and erection with the Middle Creek Battlefield Foundation, Inc. upon the effective date of this Resolution.

Section 7. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Pikeville, Kentucky.

Approved March 14, 2000

CHAPTER 112

(HJR 72)

A JOINT RESOLUTION directing the Transportation Cabinet to name a portion of Kentucky Route 15 in Perry County in memory of Edward L. "Buggy" Clemons.

WHEREAS, Edward L. "Buggy" Clemons was a life-long resident of Hazard, Kentucky; and

WHEREAS, Edward L. "Buggy" Clemons was a tireless supporter of local schools and was very involved in myriad civic organizations; and

WHEREAS, Edward L. "Buggy" Clemons, as a prominent local businessman, was a major employer in Perry County;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name the portion of Kentucky Route 15 in Perry County from Hazard High School to Hazard Community College the "Edward L. "Buggy" Clemons Memorial Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Edward L. "Buggy" Clemons Memorial Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. The Clerk of the House of Representatives is directed to transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Jackson, Kentucky.

Approved March 14, 2000

CHAPTER 113

(HJR 76)

A JOINT RESOLUTION directing the Transportation Cabinet to rename Kentucky Route 168 in Boyd County in honor of former County Judge/Executive Paul F. Purvis.

WHEREAS, Paul F. Purvis became a resident of the City of Ashland in Boyd County at the age of three (3); and

WHEREAS, Paul F. Purvis worked and owned Valley Auto Supply in Ashland for many years; and

WHEREAS, Paul F. Purvis has been a dedicated activist in civic, community, and religious organizations for over forty-five (45) years; and

WHEREAS, Paul F. Purvis began his political career in 1973 when he was elected Boyd County Commissioner; and

WHEREAS, recognized as an altruistic public servant, the citizens of Boyd County elected Paul F. Purvis County Judge/Executive in 1977; and

WHEREAS, Paul F. Purvis served two (2) terms as Boyd County Judge/Executive before retiring from elected office;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet shall rename Kentucky Route 168 in Boyd County, from the junction with United States Route 23 at Catlettsburg to the junction with United States Route 23 north of the City of Ashland, in honor of former County Judge/Executive Paul F. Purvis.

Section 2. The Transportation Cabinet is directed to erect signs at each junction mentioned in Section 1 of this Resolution that read as follows: "The Paul F. Purvis Highway". The signs shall be erected within thirty (30) days of the effective date of this Resolution.

Approved March 14, 2000

CHAPTER 114

(HJR 70)

A JOINT RESOLUTION directing the Public Protection and Regulation Cabinet and the Natural Resources and Environmental Protection Cabinet to enter into a memorandum of understanding regarding the underground petroleum storage tank program and declaring an emergency.

WHEREAS, the Commonwealth has determined that the environmental risks from leaking underground petroleum storage tanks must be addressed by regulating the installation, operation, and closure of the tanks, corrective action for leaks from the tanks, and by providing a financial mechanism to help pay for correction action for those leaks; and

WHEREAS, the Public Protection and Regulation Cabinet, through its Office of Petroleum Storage Tank Environmental Assurance Fund, has the responsibility of administering the fund

which is used to help pay for tank corrective action and the Natural Resources and Environmental Protection Cabinet has the responsibility to regulate the operation and closure of underground petroleum storage tanks, and corrective action for leaks from those tanks; and

WHEREAS, a failure of the two agencies to work more closely in making decisions on how site clean-ups should be conducted has led to persistent concerns about cost overruns, inappropriate expenses, and fraudulent claims; and

WHEREAS, better communication and coordination between the two agencies would help achieve the state purpose of managing the risks to human health, safety, and the environment arising from the use of underground petroleum storage tanks, while preserving the financial soundness of the fund, and allowing the fund to be used cost effectively to clean up more sites;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Public Protection and Regulation Cabinet and the Natural Resources and Environmental Protection Cabinet shall immediately negotiate and enter into a memorandum of understanding (MOU) for the following purposes:

(1) To clearly define the respective responsibilities, authority, and resources assigned to each agency to achieve the purposes set out in Subchapter 60 of KRS Chapter 224 and coordinate those responsibilities, authority, and resources to protect human health, safety, and the environment while making cost effective use of the fund;

(2) To set out that the Natural Resources and Environmental Protection Cabinet's technical review of site investigations and remediation plans be conducted in a way that requires protection of human health, safety, and the environment;

(3) To set out that the Public Protection and Regulation Cabinet's review of site investigations and remediation plans be conducted in a way that requires the most cost effective approach to protecting human health, safety, and the environment;

(4) To share information relating to identifying, investigating, and cleaning up releases at underground petroleum storage tank sites; and

(5) To jointly establish criteria to prioritize the investigation and clean-up of existing sites where releases have occurred and to estimate future site remediation needs and jointly establish a schedule to achieve clean-ups at these sites in a manner to protect human health, safety, and the environment through the most efficient and cost effective means.

Section 2. The agencies shall submit a draft memorandum of understanding to the House Committee on Natural Resources and Environment and the Senate Committee on Agriculture and Natural Resources, if the General Assembly is in session, or to Interim Joint Committee on Agriculture and Natural Resources if the General Assembly is not in session.

Section 3. The agencies shall jointly report to the Interim Joint Committee on Agriculture and Natural Resources by July 30 immediately preceding a regular session of the General Assembly on the status of the memorandum of understanding.

Section 4. Whereas coordination between the Public Protection and Regulation Cabinet and the Natural Resources and Environmental Protection Cabinet is necessary to protect human health, safety, and the environment through the efficient operation of the underground petroleum

storage tank program and at the lowest effective cost to the fund, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 15, 2000

CHAPTER 115

(HB 203)

AN ACT relating to agricultural districts.

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

Section 1. KRS 262.850 is amended to read as follows:

(1) This section shall be known as "the Agricultural District and Conservation Act."

(2) It is the policy of the state to conserve, protect and to encourage development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the policy of this state to conserve and protect the agricultural land base as a valuable natural resource which is both fragile and finite. The pressure imposed by urban expansion, transportation systems, water impoundments, surface mining of mineral resources, utility rights-of-way and industrial development has continually reduced the land resource base necessary to sufficiently produce food and fiber for our future needs. It is the purpose of this section to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an important resource.

(3) The local governing administrative body for an agricultural district shall be the conservation district board of supervisors. The Soil and Water Conservation Commission shall be responsible for statewide administration of the agricultural district program and shall have sole authority to certify or deny agricultural district petitions. The commission may apply for assistance and funds from the Federal Farmland Protection Act of 1981 (PL 97-377) which may be available for the development of the agricultural district program and may accept easements as provided in KRS 65.410 to 65.480.

(4) Any owner or owners of land may submit a petition to the local conservation district board of supervisors requesting the creation of an agricultural district within the county. The petition shall include a description of the proposed area, description of each land parcel, location of the proposed boundaries, petitioners' names and addresses, adjacent landowners' names and addresses, and other pertinent information as required in the petition application. The boundary of an agricultural district shall be contiguous. No land shall be included in an agricultural district without the consent of the owner.

(5) Upon receipt of a petition, the local conservation district board of supervisors shall notify the fiscal court and any local or regional planning or zoning body, if any, by sending a copy of the petition and accompanying materials to that body.

(6) The following factors shall be considered by the local conservation district board of supervisors and the Soil and Water Conservation Commission when considering the formation of any agricultural district:

(a) The capability of the land to support agricultural production, as indicated by: soil, climate, topography or other natural factors;

(b) The viability of active farmlands, as indicated by: markets for farm products, extent and nature of farm improvements, present status of farming, anticipated trends in agricultural economic conditions and technology;

(c) That the proposed agricultural district meets the minimum size limit of two hundred fifty (250) contiguous acres, unless the local conservation district board and the Soil and Water Conservation Commission allow fewer than two hundred fifty (250) contiguous acres if the proposed area meets a minimum annual production performance established by the district board and approved by the commission;

(d) County development patterns and needs and the location of the district in relation to any urban development boundaries within the county;

(e) Any matter which may be relevant to evaluate the petition; and

(f) Whether an application is from more than one (1) farm owner, in which case a preference shall be given to the application.

(7) The local soil and water conservation district board of supervisors shall review the petition application and submit a recommendation to the Soil and Water Commission within sixty (60) days of receipt. The local conservation district recommendation shall be submitted to the commission in the form of approval, approval with modifications, or denial of the petition accompanied by justification for such a denial.

(8) The Soil and Water Conservation Commission shall review the recommendation of the district board of supervisors and certify or deny the agricultural district's petition within sixty (60) days of receipt.

(9) Upon the approval of a petition by the Soil and Water Conservation Commission, the commission shall notify the area development district in which the agricultural district will lie, the local county clerk, and the secretary of the Governor's Cabinet.

(10) Land within the boundary of an agricultural district shall not be annexed.

(11) ***The owners of land within the boundary of an agricultural district shall be exempt under Section 2 of this Act from any assessment authorized for the extension of water service lines until the land is removed from the district and developed for nonagricultural use.*** Any member, or any successor heir of the member, of an agricultural district may withdraw from the district upon notifying the local conservation district board of supervisors in writing.

(12) It shall be the policy of all state agencies to support the formation of agricultural districts as a means of preserving Kentucky's farmlands and to mitigate the impact of their present and future plans and programs upon the continued agricultural use of land within an agricultural district.

(13) Agricultural districts shall be comprised only of agricultural land as defined in KRS 132.010.

(14) An agricultural district shall be established for five (5) years with a review to be made by the local soil and water conservation district board of supervisors at the end of the five-year period and every five (5) years thereafter. Each owner of land shall agree to remain in the district for a five (5) year period, which is renewable at the end of the five (5) years. However, the board shall make a review any time upon the written request of a local

government which demonstrates that the review is necessary in order to consider development needs of the local government. The board shall consider whether the continued existence of the district is justified, any adjustments which may be necessary due to urban or county development, and other factors the board finds relevant. The board shall revise the district as necessary based on the review and subject to approval of the State Soil and Water Conservation Commission. Before the state commission takes final action, all interested parties shall be given the opportunity to request the state commission to amend or overturn the local board's decision.

(15) The withdrawal of a member from a district reducing the remaining acreage of agricultural district land to less than two hundred fifty (250) acres or resulting in the remaining land being noncontiguous shall not cause the decertification of the district.

(16) Any member of an agricultural district who has received a summons of condemnation proceedings being instituted concerning the member's land located in the district may request the local soil and water conservation district board of supervisors to hold a public hearing on the proposed taking of land. However a hearing under this section shall not be held if the petitioner in the condemnation proceeding is a utility as defined in KRS 278.010(3) and obtained a certificate of convenience and necessity as required by KRS 278.020(1).

(17) (a) The board shall notify the local property valuation administrator of the farms which belong to an agricultural district and whenever a farm is withdrawn from a district. The board shall also inform all members of a district of the right to have their land assessed by the local property valuation administrator at the land's agricultural use value and shall offer advice and assistance on obtaining such an assessment.

(b) The board shall also notify the local property valuation administrator whenever a farm is released or withdrawn from an agricultural district.

(18) The board may allow an amendment to an existing certified agricultural district if approved by the commission.

SECTION 2. A NEW SECTION OF KRS CHAPTER 74 IS CREATED TO READ AS FOLLOWS:

(1) When a water district extends its water lines within its district or extends its water lines under KRS 74.110 beyond the district's territorial limits, and the extension would benefit land within an agricultural district created under Section 1 of this Act, the assessment against the land within the agricultural district for the cost of the extension shall be deferred. The assessment shall become payable when the land is removed, in part or in its entirety, from the agricultural district and developed for nonagricultural use. If only part of the land is removed from the agricultural district, the deferred assessment shall be prorated and paid only on the portion of the land removed. The land remaining in the district shall continue to benefit from the deferred assessment.

(2) The owner of land for which the assessment of costs for a water line extension has been deferred shall pay for any connection to provide water service from the water line extension to the land benefited by the deferred assessment.

Approved March 16, 2000

CHAPTER 116

(HJR 9)

A JOINT RESOLUTION directing the Transportation Cabinet to name KY 101 from the Beaver Dam Chapel to KY 259 at Rhoda and KY 259 from Rhoda to KY 70 the "Veterans Memorial Highway" and to erect appropriate highway signs.

WHEREAS, it is the Armed Forces that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless servicemen have sacrificed their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, hundreds of patriotic men and women of Edmonson County have answered their nation's call to service in times of great need; and

WHEREAS, our veterans deserve our gratitude and recognition for their devotion and service to our Commonwealth and our nation;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name KY 101 from the Beaver Dam Chapel to KY 259 at Rhoda and KY 259 from Rhoda to KY 70 the "Veterans Memorial Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Veterans Memorial Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Bowling Green, Kentucky.

Approved March 16, 2000

CHAPTER 117

(HB 175)

AN ACT relating to farm safety.

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

Section 1. KRS 247.406 is amended to read as follows:

(1) For a county organization to be eligible for funding, the following requirements shall be met:

(a) The organization shall be incorporated as nonprofit under KRS Chapter 273; and

(b) The organization shall submit a business plan to the department detailing how the corporation will operate and how it intends to incorporate a farm safety plan in its overall farm safety program.

(2) If the county organization's business plan is approved by the department, and if funding is available, the department shall distribute a grant of ***two***~~[one]~~ thousand dollars ***($2,000)***~~[($1,000)]~~ to the organization.

(3) The county organization shall make an annual written report to the department regarding the activities of the organization's farm safety program and the disposition of the grant money.

Approved March 16, 2000

CHAPTER 118

(SB 110)

AN ACT relating to public utilities.

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

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

(3) "Utility" means any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The ***collection, transmission, or*** treatment of sewage for the public, for compensation, if the facility is a subdivision ***collection, transmission, or*** treatment facility plant ***that is affixed to real property and is***~~[,]~~ located in a county containing a city of the first class or ***is*** a sewage ***collection, transmission, or*** treatment facility ***that is affixed to real property, that is*** located in any other county***,*** and ***that*** is not subject to regulation by a metropolitan sewer district ***or any sanitation district created pursuant to KRS Chapter 220***;

(4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(9) "Generation and transmission cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;

(10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

(12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;

(14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15) "Commission" means the Public Service Commission of Kentucky;

(16) "Commissioner" means one (1) of the members of the commission; and

(17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand.

Approved March 16, 2000

CHAPTER 119

(HB 252)

AN ACT changing the classification of the City of Hebron Estates in Bullitt County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Hebron Estates, in Bullitt County, is such as to justify its being classified as a city of the fifth class;

NOW THEREFORE,

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

Section 1. The City of Hebron Estates, in Bullitt County, is transferred from the sixth to the fifth class of cities.

Approved March 16, 2000

CHAPTER 120

(HB 277)

AN ACT relating to watershed conservancy districts.

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

Section 1. KRS 262.720 is amended to read as follows:

(1) Within thirty (30) days after such petition has been filed with the board of supervisors, it shall cause due notice to be given as provided in KRS 262.010(4) of the hearing upon the practicability and feasibility of creating such subdistrict. All interested parties shall have the right to attend such hearing and be heard. If it shall appear at the hearing that other lands should be included or that lands included in the petition should be excluded, the board of supervisors may permit such inclusion or exclusion, provided the land area involved still meets the requirements of KRS 262.705.

(2) If it appears upon the hearing that it may be desirable to include within the proposed district, territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of a further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing shall be held. After final hearing, if the board of supervisors determines, upon the facts presented at the hearing and upon other available information, that there is need, in the interest of the public health, safety and welfare for such a district to function in the territory considered, it shall make and record the determination and shall define, by metes and bounds, or by recognizable terrain features and description, the boundaries of the watershed district.

(3) If the board determines after the hearing that it is not feasible for such district to function in the territory considered, it shall make and record the determination and shall deny the petition.

(4) If the board determines that there is a need for a conservancy district, the board of supervisors shall establish a proposed maximum budget for the maintenance of the

proposed conservancy district, to be funded either by millage or flat rate sufficient to meet the budget.

Section 2. KRS 262.725 is amended to read as follows:

After the board of supervisors has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for creation of the proposed watershed conservancy district, it shall consider the question whether the operation of a district within the proposed boundaries with the powers conferred upon such districts in KRS 262.745 is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, within a reasonable time after entry of the finding that there is need for the organization of the district and the determination of the boundaries of the district, hold a referendum within the ***conservation***~~[proposed]~~ district upon the proposition of the creation of the district ***to identify boundaries and give notification of funding options***. Due notice of the referendum shall be given as provided in KRS 262.010 (4). Such notice shall state the date of holding the referendum, the hours of opening and closing the polls, and shall designate one or more places within the proposed district as polling places. The board shall appoint a polling superintendent and other necessary polling officers giving equal representation to the proponents and opponents of the question involved.

Section 3. KRS 262.760 is amended to read as follows:

Within the first quarter of each calendar year, the board of directors shall prepare an itemized budget of the funds needed for administration, construction, operation and maintenance of works of improvement. After approval of such budget by the board of supervisors, the board of directors shall, by order or resolution, levy a tax sufficient to meet such budget, ***either by millage rate or per acre rate***~~[not to exceed five (5) mills per dollar of the fair cash value, as equalized by the Revenue Cabinet, of all real property within the district, except any levy necessary to provide a sinking fund for retirement of bonds authorized by KRS 262.750 and except any levy necessary to provide for the improvement, continuing operation, or maintenance of works of improvement within the district authorized by KRS 262.748]~~. A copy of such budget and order or resolution shall be certified to the county clerk of the county or counties involved.

Section 4. KRS 262.763 is amended to read as follows:

(1) An audit of the accounts of each watershed conservancy district shall take place ***once every four (4) years unless the district receives or expends four hundred thousand dollars ($400,000) or more in any year, in which case the district shall provide for the performance of an annual audit***~~[annually]~~. The board of directors of each watershed conservancy district shall select to make the audit certified public accountants who have no personal interest in the financial affairs of the board of directors or in any of its officers or employees.

(2) Immediately upon completion of each audit, the accountant shall prepare a report of his findings and recommendations. This report shall be to the board of directors and in such number of copies as specified by the board of directors. Immediately following receipt of the audit report, the board of directors shall cause a summary of the report or the text of the report to be advertised for the district by publication in a newspaper of general circulation in the area encompassed by the watershed conservancy district. The actual expense of any audit authorized under this section shall be borne by the watershed conservancy district.

(3) The board of directors shall forward a copy of the newspaper in which the audit report appeared to the State Auditor of Public Accounts.

Section 5. KRS 262.765 is amended to read as follows:

(1) The board of directors of a watershed conservancy district shall prepare and furnish to the property valuation administrator by January 1 each year a list of the landowners in each county involved showing the real property subject to assessment, and the property valuation administrator of the county or counties involved shall indicate, for the use of the clerk, such information on the tax rolls. The list furnished the property valuation administrator by the board of directors shall: list the landowners in alphabetical order by taxing districts as shown on the previous year's tax roll, list the total acreage and the acreage in the watershed conservancy district owned by each landowner, and show that part of the previous year's assessment attributable to real property within the watershed conservancy district on those parcels which are not entirely within the district.

(2) When the property tax rolls are delivered to the county clerk by the property valuation administrator, as required by law, the county clerk shall compute the tax due the district from each landowner in accordance with the rate fixed by the board of directors and the value ***or acreage*** of the real property indicated on the tax roll. The computation shall be made on the regular tax bills in such manner as may be directed by regulation of the Revenue Cabinet.

Approved March 16, 2000

CHAPTER 121

(HB 423)

AN ACT relating to the structure and function of cities upon reclassification to the second class and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 81 IS CREATED TO READ AS FOLLOWS:

(1) Any city located in a county containing a city of the first class which is reclassified as a city of the second class after the effective date of this Act shall be exempt from the provisions of KRS 90.300 to 90.400, KRS 95.430 to 95.500, and KRS 95.851 to 95.991 relating to the organization and structure of civil service systems, police departments, fire departments, and pension systems in cities of the second class.

(2) In lieu of the requirements of these statutes, any city reclassified as a city of the second class shall ensure that police and fire protection services are provided for the citizens of the city in the same manner and at least at the same level of service as was being provided prior to the reclassification.

(3) Nothing in this section shall prevent a city from restructuring or creating a new civil service system, police department, or fire department after a reclassification to a city of the second class. Any city that restructures or creates a new civil service system, police department, or fire department may adopt any of the provisions of KRS 90.300 to 90.400, KRS 95.430 to 95.500, and KRS 95.851 to 95.991 relating to the organization and

structure of civil service systems, police departments, fire departments, and pension systems in cities of the second class.

(4) If fire protection service is being provided by a fire protection district in any city that is reclassified as a city of the second class, the reclassification shall in no way affect the operations of the fire protection district and the services it provides. If at any time after a city is reclassified as a city of the second class, the fire protection district ceases to exist or fails to adequately provide for the fire protection needs of the city, the city shall have the right to create its own fire department or secure some other means for the provision of adequate fire protection services.

Section 2. Whereas the reclassification of cities can only occur during a session of the General Assembly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 16, 2000

CHAPTER 122

(HB 424)

AN ACT relating to elections.

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

Section 1. KRS 117.275 is amended to read as follows:

(1) At the count of the votes in any precinct, any candidate or slate of candidates and any representatives to witness and check the count of the votes therein, who are authorized to be appointed as is provided in subsection (7) of this section, shall be admitted and be permitted to be present and witness the count.

(2) As soon as the polls are closed, and the last voter has voted, the judges shall immediately lock and seal the operating lever, mechanism or other device of the voting equipment so that the voting and counting mechanism will be prevented from operation, and they shall sign a certificate stating:

(a) That the voting equipment has been locked against voting and sealed;

(b) The number of voters, as shown on the public counters;

(c) The number registered on the protective or accumulative counter or device, if any; and

(d) The number or other designation of the voting equipment, which certificate shall be returned by the judges of election to the officials authorized by law to receive it. The judges shall compare the number of voters, as shown by the counter of the voting equipment, with the number of those who have voted as shown by the protective or accumulative counter or device, if any.

(3) Where voting equipment is used which does not print the candidates' names, lever numbers, and total votes received on a general return sheet or record for that equipment, the procedure to be followed shall be: the judges, in the presence of the representatives mentioned in subsection (1) of this section, if any, and of all other persons who may be lawfully within the polling place, shall make visible the registering counters, and, for that purpose, shall

unlock and open the doors, or other covering concealing the counters, giving full view of all the counter numbers. The judges shall, under the scrutiny of the representatives, and in the order of the offices as their titles are arranged on the machine, read and announce, in distinct tones, the results as shown by the counter numbers for each candidate or slate of candidates and for and against each question voted on. The counters shall not be read consecutively along the party rows or columns, but shall always be read along the office columns or rows, completing the canvass for each office or question before proceeding to the next. The vote as registered shall be entered by the judges, in ink, on quadruplicate return sheets, and also on a general return sheet and statement, all of which, after the canvass is completed, shall be signed by the election officers. The total votes cast for each candidate, and slate of candidates, and for and against each question, shall be entered on the general and quadruplicate return sheets and statement. The proclamation of the result of the votes cast shall be announced distinctly and audibly by one (1) of the judges, who shall read the name and the vote cast for each candidate, and slate of candidates, and the vote for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the voting equipment, and any necessary corrections shall be made by the judges, and the door or other cover of the voting equipment shall then be closed and locked.

(4) If any officer shall decline to sign the return, he shall state his reason in writing, and a copy thereof, signed by him, shall be enclosed with the return. Each of the return sheets shall be enclosed in an envelope, which shall be securely sealed, and each of the officers shall write his name across the fold of the envelope. One (1) of the quadruplicate return sheets, along with the general return sheet and the write-in roll, if any write-in votes were cast in the precinct, shall be directed to the county board of elections of the county in which the election is being held, one (1) to the county clerk of the county in which the election is being held and one (1) to the local governing body of each of the two (2) dominant political parties***, but a local governing body of a dominant political party may decline a copy of the precinct election return by filing a written declination with the county board of elections prior to the election, and upon this declination, a printed copy shall not be issued to the political party so declining. The declination on file shall be effective for that election and any subsequent elections until revoked by the local governing body of a dominant political party by filing a written revocation with the county board of elections***. The envelope shall have endorsed thereon a certificate of the election officers, stating the number of the machine, the precinct where it has been used, the number on the seal, and the number on the protective or accumulative counter or device at the close of the polls. Following the tabulation of all votes cast in the election, including absentee votes and write-in votes, the county board shall mail the tabulation sheets showing the results from each precinct to the State Board of Elections and the county clerk shall mail or deliver the precinct lists from each precinct to the State Board of Elections.

(5) In primary elections at which each party's slates of candidates seeking the nomination of their parties for Governor and Lieutenant Governor are voted on, the Secretary of State, upon receiving the certified results of voting from each county's precincts for those offices, shall determine whether a runoff primary shall be necessary for either or both parties pursuant to KRS 118.245. The Secretary of State shall, within twenty-four (24) hours of making his determination, inform the affected slates of candidates, the county clerks, the county boards of elections, the State Board of Elections, the Registry of Election Finance,

and the news media of his determination, and the date of the runoff primary, which shall be subject to change if an election contest or vote recount shall be requested.

(6) As soon as possible after the completion of the count, the two (2) judges shall return to the county board of elections the keys to the voting machine received and receipted for by them, and the county clerk in which the precinct is located shall have the voting machine properly boxed or securely covered and removed to a proper and secure place of storage.

(7) In primary elections, each candidate, slate of candidates, or group of candidates may designate to the county board of elections a representative to witness and check the vote count. In regular elections, the governing authority of each political party, each candidate for member of board of education, independent candidate, or independent ticket may designate a representative to the county board of elections to witness and check the vote count. The county board of elections shall authorize representatives of the news media to observe the taking of the tally of votes from the voting machine in each precinct in each primary, regular or special election.

(8) If supplemental paper ballots have been approved, as provided in KRS 118.215, after the polls are closed, the precinct election officials shall stamp "Unused" on all supplemental paper ballots not used. The election officers shall string all used ballots' stubs upon a string provided for that purpose, and the stubs shall be placed in an envelope. The two (2) judges shall return to the county clerk's office the locked ballot box, all ballot stubs, spoiled ballots, and unused ballots at the same time as the tabulation of votes from the voting machine is delivered. The county clerk shall issue a receipt for the number of ballot stubs, unused ballots, spoiled ballots and the ballot box. The county board of elections, or its designee, shall count and tally the paper ballots manually or with the use of tabulating equipment which does not involve an additional voting system. The results of the vote tally shall be certified by the county board of elections to the county clerk and to the Secretary of State. The county board of elections shall authorize the candidates, slates of candidates, or their representatives, and representatives of the news media to be present during the counting of the paper ballots. Except as otherwise required in this chapter that certain records and papers relating to specified elections be retained for twenty-two (22) months, the county clerk shall retain the paper ballots for sixty (60) days, after which time they shall be destroyed in a manner to render them unreadable by the county board of elections if no contest or recount action has been filed.

Approved March 16, 2000

CHAPTER 123

(HB 433)

AN ACT relating to violating graves.

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

Section 1. KRS 525.115 is amended to read as follows:

(1) A person is guilty of violating graves when he intentionally:

(a) Mutilates the graves, monuments, fences, shrubbery, ornaments, grounds, or buildings in or enclosing any cemetery or place of sepulture; or

(b) Violates the grave of any person by destroying, removing, or damaging the headstone or footstone, or the tomb over the enclosure protecting any grave; or

(c) Digs into or plows over or removes any ornament, shrubbery, or flower placed upon any grave or lot.

(2) The provisions of subsection (1) of this section shall not apply to ordinary maintenance and care of a cemetery nor the removal and relocation of graves pursuant to procedures authorized by and in accordance with applicable statutes.

(3) Violating graves is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(4) The court shall order the defendant to restore the cemetery to its pre-damage condition.

Approved March 16, 2000

CHAPTER 124

(HB 497)

AN ACT relating to traumatic brain injury.

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

Section 1. KRS 211.470 is amended to read as follows:

As used in KRS 211.470 to 211.478:

(1) "Board" means the Traumatic Brain Injury Trust Fund Board created pursuant to KRS 211.472;

(2) "Cabinet" means the Cabinet for ***Health Services***~~[Human Resources]~~;

(3) "Traumatic brain injury" means a partial or total disability caused by injury to the central nervous system from physical trauma, damage to the central nervous system from anoxia, hypoxic episodes, allergic conditions, toxic substances, or other acute medical clinical incidents resulting in impaired cognitive abilities or impaired physical functioning. "Traumatic brain injury" does not include:

(a) Strokes that can be treated in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries for which there are no known or obvious injuries to the ***intracranial***~~[intercranial]~~ central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation and birth defect related disorders of long standing nature; or

(f) Neurological degenerative, metabolic, and other medical conditions of a chronic, degenerative nature.

(4) "Trust fund" means the traumatic brain injury trust fund created pursuant to KRS 211.476.

Section 2. KRS 211.472 is amended to read as follows:

(1) The Kentucky Traumatic Brain Injury Trust Fund Board is hereby created for the purpose of administering the trust fund. The board shall be composed of nine (9) members including the secretary of the Cabinet for ***Health Services***~~[Human Resources]~~ or the secretary's designee, the executive director of the Brain Injury Association of Kentucky or the executive director's designee, the state medical epidemiologist, and the following members, to be appointed by the Governor:

(a) One (1) member shall be a neurosurgeon;

(b) One (1) member shall be a neuropsychologist or psychiatrist;

(c) One (1) member shall be a rehabilitation specialist;

(d) One (1) member shall be a social worker experienced in working with brain-injured individuals; and

(e) Two (2) members shall be family members of or individuals with a brain injury.

(2) Board members shall not be compensated for serving, but shall be reimbursed for ordinary travel expenses, including meals and lodging incurred in the performance of their duties.

(3) The terms of appointed board members shall be four (4) years, except that the terms of initial members shall be staggered to end as follows:

(a) Two (2) on June 30, 2000;

(b) Two (2) on June 30, 2001; and

(c) Two (2) on June 30, 2002.

(4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves two (2) consecutive four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(5) A majority of the full authorized membership shall constitute a quorum.

(6) The board shall elect, by a majority vote, a director who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The director shall be elected or reelected for each calendar year.

(7) The board may establish any organizational structure it determines is necessary to accomplish its functions and duties, including the hiring of any necessary support personnel. The administrative costs of the board shall be limited to three percent (3%) of the proceeds from the trust fund.

(8) Meetings of the board shall be held at least twice a year but may be held more frequently, as deemed necessary, subject to call by the director or by the request of a majority of the board members.

(9) The board shall be attached to the cabinet for administrative purposes.

Section 3. KRS 211.474 is amended to read as follows:

The board shall:

(1) Promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 to 211.478;

(2) Formulate policies and procedures for determining individual eligibility for assistance from the trust fund in accordance with the following guidelines:

(a) The trust fund shall serve as a funding source of last resort for residents of the Commonwealth of Kentucky. To be eligible for assistance from the trust fund, an individual must have exhausted all other funding sources that cover the type of services sought through the trust fund. Individuals who have continuing health insurance benefits, including Medicaid, may access the trust fund for services that are needed but not covered by insurance or any other funding source. Individuals who qualify for institutional care through Medicaid shall not qualify for services through the trust fund;

(b) All individuals receiving assistance from the fund shall receive case management services;

(c) Expenditures on behalf of any one (1) brain-injured individual may not exceed fifteen thousand dollars ($15,000) for any twelve (12) month period, and may not exceed a lifetime maximum of sixty thousand dollars ($60,000). At its discretion and subject to fund availability, the board may waive the expenditure or time limitations or both in special circumstances;

(d) Services covered by the trust fund shall include:

1. Case management;

2. Community residential services;

3. Structured day program services;

4. Psychological ***and mental health*** services;

5. Prevocational services;

6. Supported employment;

7. Companion services;

8. Respite care;

9. Occupational therapy; and

10. Speech and language therapy***;***~~[.]~~

(e) Covered services shall not include institutionalization, hospitalization, ***or*** ~~[environmental modifications, special medical equipment and supplies,]~~ medications~~[, and behavioral programs]~~;

(3) Establish a confidential medical registry for traumatic brain and spinal cord injuries occurring in the Commonwealth of Kentucky, or to residents of the Commonwealth of Kentucky.

(a) The board may promulgate administrative regulations requiring licensed or certified professionals or health services providers to report the occurrence of brain and spinal cord injuries, relevant medical and epidemiological information about the injuries, and other information describing the circumstances of the injury to the board or its

designated agent. The reporting of data by licensed hospitals under this section shall be limited to that which is reported to the cabinet~~[for Human Resources]~~ pursuant to KRS 216.2920 to 216.2929 and the board shall obtain this data from the cabinet~~[for Human Resources]~~. Each licensed hospital shall grant the board, upon presentation of proper identification, access to the medical records of patients with reportable brain and spinal cord injuries for the sole purpose of collecting additional information that is not available in the data obtained from the cabinet~~[for Human Resources]~~. All costs associated with copying medical records shall be borne by the board. No liability of any kind shall arise or be enforced against any licensed hospital or hospital employee for providing the board access to a patient's medical record.

(b) The board and its designated agent, if one is appointed, shall observe the same confidentiality requirements established for the Kentucky birth surveillance registry in KRS 211.670;

(4) Investigate the needs of brain-injured individuals and identify gaps in current services;

(5) Assist the cabinet in developing programs for brain-injured individuals;

(6) Monitor and evaluate services provided by the trust fund; and

(7) Provide the Governor, the General Assembly, and the Legislative Research Commission an annual report by January 1 of each year summarizing the activities of the board and the trust fund.

Approved March 16, 2000

CHAPTER 125

(HB 515)

AN ACT relating to the Department for the Blind.

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

Section 1. KRS 163.470 is amended to read as follows:

(1) There is created within the Cabinet for Workforce Development the Department for the Blind.

(2) The commissioner shall be appointed by the Governor upon the recommendation of the secretary of the Cabinet for Workforce Development to whom he shall be directly responsible.

(3) The department shall be the state agency responsible for all rehabilitation services for the blind and the visually impaired and other services as deemed necessary. The department shall be the agency authorized to expend all state and federal funds designated for rehabilitation services for the blind and visually impaired. The Office of the Secretary of the Cabinet for Workforce Development is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services for the blind and visually impaired. The State Treasurer is designated as the custodian of all funds and shall make disbursements for rehabilitation purposes upon certification by the commissioner.

(4) (a) The Kentucky Department for the Blind ***State Rehabilitation***~~[Advisory]~~ Council is hereby created and established to accomplish the purposes and functions enumerated in ***the Rehabilitation Act of 1973, as amended***~~[Title I, Subtitle B Section 126 of the Rehabilitation Act Amendments of 1992]~~. Members of the~~[advisory]~~ council shall be appointed by the Governor from recommendations submitted by the Department for the Blind consistent with the federal mandate to include a majority of individuals who are blind or visually impaired representing specified organizations, service providers, and advocacy groups. The composition, qualifications, and terms of service of the ~~[advisory]~~council shall conform to those prescribed by the federal law. There shall be statewide representation on the council.

(b) ***1. Except as provided in subparagraph (2) of this paragraph, any vacancy occurring in the membership of the Department for the Blind State Rehabilitation Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.***

2. The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.

(c) Each member of the Department for the Blind ***State Rehabilitation***~~[Advisory]~~ Council may receive a per diem of one hundred dollars ($100), not to exceed six hundred dollars ($600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Kentucky Department for the Blind ***State Rehabilitation***~~[Advisory]~~ Council. The per diem and expenses shall be paid out of the federal funds appropriated under ***the Rehabilitation Act of 1973, as amended***~~[Title I part A of the Rehabilitation Act Amendments of 1992, Pub. L. 102-569]~~.

(5) The department shall establish and implement policies and procedures for the carrying out of the program of services for the blind.

(6) At the close of each biennium, the department shall prepare a financial report and present it to the secretary of the Cabinet for Workforce Development and to the Governor. The biennial report shall be published. The biennial report shall also contain a precise review of the work of the department and contain necessary suggestions for improvement.

(7) The department shall coordinate its functions with other appropriate public and private agencies.

(8) The department shall perform all other duties as required of it by law.

(9) The commissioner shall hire personnel as necessary to carry out the work of the department and the provisions of KRS 163.450 to 163.470. Preference shall be given to hiring qualified blind persons.~~[Hiring and promotional personnel practices shall not be discriminatory because of age, sex, race, disability, or national origin. Department employees shall receive compensation and travel expenses as allowed other employees of the Commonwealth.]~~

(10) There shall be created under the authority of the department, to be directed by the commissioner, a Division of Client Services which shall provide intake and rehabilitation

counseling services; distribute or sell technical educational and other aids to the blind; provide educational materials such as recorded texts, braille or large-type texts, or such other materials as may be deemed necessary for the education of the blind; research into the development of new technical aids for the blind, mobility training, work evaluation, personal adjustment, independent living, and other services as needed for blind adults, and services for the blind who have other disabilities; and promote employment of the blind in public and private sectors.

(11) There shall be established under the authority of the department to be directed by the commissioner, a Division of Business Enterprises. This division shall manage and supervise the Vending Facilities Program and license qualified blind persons as vendors. In connection therewith, the department shall be authorized to own or lease vending equipment for the operation of vending facilities in federal, state, private, and other buildings. The set-aside charges levied shall comply with the existing federal regulations as specified in 34 CFR 395.9. One (1) or more facility placement agents shall be employed to locate and establish additional vending facilities. The Department for the Blind shall make such surveys as may be deemed necessary to determine the vending facility opportunities for blind vendors in state buildings or on other property owned, leased, or otherwise occupied by the state government and shall install vending facilities in suitable locations on such property for the use of the blind. All of the net income from vending machines which are on the same property as a vending facility shall be paid to the blind vendor of the vending facility. Whenever there exists a conflict of interest between state agencies seeking to vend merchandise on the same state property, the agencies shall negotiate a fair agreement which shall protect the interest of both from unreasonable competition. The agreement shall be submitted to the custodial authority having jurisdiction over the property for approval. Provided, however, that in all situations the blind vendor shall be permitted to vend all items of merchandise customarily sold at similar vending facilities.

(12) There shall be established under authority of the department, to be directed by the commissioner, a Division of Industries for the Blind which shall provide industrial evaluation, training, and employment. Emphasis shall be on placement in public employment and long-term sheltered employment at industries for the blind. The Division of Industries for the Blind shall be abolished, effective July 1, 2000. The department, at all times, shall be authorized to provide industrial evaluation, training, and employment.

(13) The department shall provide staff services which shall include fiscal management, staff development and training, program development and evaluation, public information office, and other staff services as may be deemed necessary.

(14) The provisions of any other statute notwithstanding, the commissioner is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.

Approved March 16, 2000

CHAPTER 126

(HCR 19)

A CONCURRENT RESOLUTION confirming the appointment of Bill Weinberg to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed Bill Weinberg as a member of the Kentucky Board of Education representing the Seventh Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Bill Weinberg's name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Bill Weinberg meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Bill Weinberg to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Bill Weinberg, Post Office Box 727, Hindman, Kentucky 41822, in writing, of the General Assembly's action.

Approved March 16, 2000

CHAPTER 127

(HCR 21)

A CONCURRENT RESOLUTION confirming the reappointment of Craig True to the Kentucky Board of Education.

WHEREAS, in accordance with KRS 156.029, the Governor has reappointed Craig True as a member of the Kentucky Board of Education representing the Sixth Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Craig True's name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Craig True meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Craig True to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Craig True, 10 Memory Lane, Fort Thomas, Kentucky 41075, in writing, of the General Assembly's action.

Approved March 16, 2000

CHAPTER 128

(HCR 23)

A CONCURRENT RESOLUTION confirming the appointment of R. Keith Travis to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed R. Keith Travis as a member of the Kentucky Board of Education representing the First Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered R. Keith Travis' name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that R. Keith Travis meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of R. Keith Travis to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and R. Keith Travis, 4290 Lakeview Church Road, Benton, Kentucky 42025, in writing, of the General Assembly's action.

Approved March 16, 2000

CHAPTER 129

(HCR 24)

A CONCURRENT RESOLUTION confirming the reappointment of Jane A. Venters to the Kentucky Board of Education.

WHEREAS, in accordance with KRS 156.029, the Governor has reappointed Jane A. Venters as a member of the Kentucky Board of Education representing the Third Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Jane A. Venters' name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Jane A. Venters meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Jane A. Venters to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Jane A. Venters, 302 North Maple Street, Somerset, Kentucky 42501, in writing, of the General Assembly's action.

Approved March 16, 2000

CHAPTER 130

(HCR 53)

A CONCURRENT RESOLUTION directing the Legislative Research Commission to study the impact of immigration on public services and the private sector.

WHEREAS, the United States Bureau of the Census indicates that immigration will be an increasing feature of population growth in the United States; and

WHEREAS, according to the March 1999 Current Population Survey, Kentucky is experiencing significant immigration growth, with an increase of eighty-eight percent in the number of immigrants coming into the Commonwealth from 1997 to 1999; and

WHEREAS, immigrants are a growing part of the Kentucky labor force, filling occupations experiencing a shortage of labor, such as physicians in rural Kentucky and agricultural workers in tobacco and horse farm areas; and

WHEREAS, the Center for Immigration Studies reports that immigrant households are more likely to live in poverty than native households; and

WHEREAS, there exists no comprehensive study of immigration's impact on Kentucky;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate direct the Legislative Research Commission to study the impact of immigration on public services and the private sector in Kentucky. The study shall include a descriptive analysis of the current status of immigration in Kentucky and an analysis of the fiscal and economic impact of immigration on the state. The study shall address the following subjects:

(1) The number of immigrants, their country of origin, and their demographic profile;

(2) The location of immigrants within the state;

(3) Length and duration of residence in the state;

(4) Services immigrants are likely to need, the cost of the services, and the governmental or other organizations that bear the cost;

(5) The state and federal benefits for which immigrant households are eligible;

(6) Indirect costs and benefits from immigration;

(7) Employment patterns of immigrants in Kentucky and their effect on the availability of labor in those sectors in which they are employed; and

(8) The level of spending by immigrants and its impact on the local and state economy.

Section 2. The Legislative Research Commission shall transmit the results of the study required by Section 1 of this Resolution to the appropriate interim joint committees prior to the 2002 Regular Session of the General Assembly.

Section 3. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 16, 2000

CHAPTER 131

(HJR 48)

A JOINT RESOLUTION directing the Transportation Cabinet to name KY 118 from US 421 to the Daniel Boone Parkway (the Hyden Spur) in Leslie County in honor of Tim Couch.

The memories of brisk autumn afternoons of the not too distant past are made sweeter because of this native son of Eastern Kentucky, who came out of the mountains of Appalachia to place the University of Kentucky among the pantheon of the nation's college gridiron elite, who has gone after too short a time to measure himself against the finest athletes in the world, and

who, all the while, has represented his family, hometown, university, and state with aplomb and class: Tim Couch.

WHEREAS, the Commonwealth was deeply blessed when on July 31, 1977, Elbert and Janice Couch became the proud parents of a son, Timothy Scott Couch; and

WHEREAS, Tim Couch's athletic talent first garnered notice at Leslie County High School, where he was an All-State performer in both football and basketball; and

WHEREAS, Tim Couch was perhaps the finest high school football player ever produced in Kentucky, holding state and national high school career records with 872 pass completions, 12,104 passing yards, and 133 touchdown passes, and leading the Leslie County High School Eagles to a four year record of 38-13 and two trips to the Class AAA state semifinals; and

WHEREAS, Tim Couch, in his senior year of 1995, was named Kentucky's "Mr. Football", the Gatorade Circle of Champions "Kentucky Player of the Year", the USA Today "National Offensive Player of the Year", and was generally considered the best high school football player in the nation; and

WHEREAS, Tim Couch, after an intense recruiting battle that involved every major power in college football, decided to stay at home and help revive the flagging gridiron fortunes of the University of Kentucky Wildcats; and

WHEREAS, Tim Couch showed flashes of brilliance in his freshman season that were a foreshadowing of the two very special seasons to come; and

WHEREAS, Tim Couch, armed with the sophisticated "Air Raid" attack of new head coach Hal Mumme, set the college football world on fire during the 1997 season, engineering a monumental upset of Southeastern Conference power Alabama, marking the first time the Wildcats had beaten the Crimson Tide in 75 years; and

WHEREAS, because of his exploits during the 1997 season, Tim Couch was named honorable mention All-American by the Football News, second team All-SEC, and was a finalist for the Davey O'Brien Award, given to the nation's top quarterback; and

WHEREAS, Tim Couch continued his "Air Raid" on opponents in 1998, throwing for at least 300 yards in every game and leading the Wildcats to a 7-5 record and a trip to Kentucky's first New Year's Day bowl game in almost 50 years; and

WHEREAS, Tim Couch's achievements during the 1998 season earned him All-American honors from several sources, unanimous first team All-SEC honors, and a fourth-place finish in the 1998 Heisman Memorial Trophy balloting; and

WHEREAS, at the conclusion of his collegiate career, Tim Couch had practically rewritten the Kentucky and Southeastern Conference record books, holding almost every major single game, season, and career passing record; and

WHEREAS, Tim Couch, feeling that he must continue to test himself against the best, decided to forego his final year of eligibility at Kentucky and was subsequently selected by the expansion Cleveland Browns with the first overall selection of the 1999 NFL Draft; and

WHEREAS, Tim Couch has continued his pattern of preternatural athletic success in the professional ranks, being named Cleveland's starting quarterback in just his second professional game and being named the NFL's "Offensive Player of the Month" for October 1999, justifying Cleveland's decision to hitch its wagon to Tim Couch's star; and

WHEREAS, Tim Couch was voted Kentucky's "Sportsman of the Year" in a Lexington Herald-Leader statewide poll of sportswriters and broadcasters in both 1995 and 1997; and

WHEREAS, both the Lexington Herald-Leader and Sports Illustrated magazine named Tim Couch one of the fifty most significant Kentucky sports figures of the 20th century; and

WHEREAS, in addition to Tim Couch's athletic exploits, he has shown a willingness to assist in charitable and civic organizations; and has given his time to such causes as the DARE program and the Children's Miracle Network; and

WHEREAS, Tim Couch has brought honor and glory to himself, his family, his university, his state, and his hometown through his athletic feats and his service to the community;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Transportation Cabinet is directed to name KY 118 from US 421 to the Daniel Boone Parkway in Leslie County (the Hyden Spur) the "Tim Couch Pass".

Section 2. That the Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Tim Couch Pass" to facilitate their erection upon the effective date of this Resolution.

Section 3. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to Tim Couch, to the Secretary of the Transportation Cabinet, and to the District Highway Engineer in Manchester, Kentucky.

Approved March 16, 2000

CHAPTER 132

(HJR 73)

A JOINT RESOLUTION creating a Task Force on Senior Citizens and the Workforce, providing for the membership thereof, and specifying activities and responsibilities.

WHEREAS, the population of Kentucky aged 55-75 will grow nearly four times greater than the state's population aged 25-55 (46 percent to 12 percent) during the period 1990 to 2010; and

WHEREAS, the ratio of Kentuckians between ages 25-55 to Kentuckians aged 55 and older will decline by the year 2010 to 1.6:1 from its 1990 level of 2:1, with the disparity estimated to grow through the year 2025; and

WHEREAS, a full complement of skilled workers in the state's workforce is necessary for a healthy economy and successful economic development; and

WHEREAS, a strong ratio of workers to nonworkers is necessary to provide adequate financial support for programs addressing the retired and elderly; and

WHEREAS, senior citizens represent a reservoir of talent that must be retained in the workforce; and

WHEREAS, there is a trend both nationally and in the Commonwealth for workers to retire at an ever-increasing younger age; and

WHEREAS, a substantial number of senior citizens demonstrate an interest in remaining in the workforce, but under different schedules and in different jobs;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. There is hereby created a Task Force on Senior Citizens and the Workforce.

Section 2. The Task Force on Senior Citizens and the Workforce shall be composed of the following 18 members:

(1) Six members appointed by the Governor. The members may be employees of the Executive Branch of state government or may be at-large members;

(2) Six legislative members (three Representatives and three Senators) appointed by the Speaker of the House and the President of the Senate, respectively; and

(3) Six at-large members appointed by the Legislative Research Commission. In making the appointments the Commission shall consult with organizations including, but not limited to, organizations representing labor, management, senior citizens, and retired persons, and with the state's universities, community and technical colleges, and local governments. The Commission shall coordinate its appointments with the at-large appointments of the Governor.

Section 3. The Task Force on Senior Citizens and the Workforce shall:

(1) Identify the age characteristics of Kentucky's present and future workforce;

(2) Examine the role of senior citizens in the state's present and future workforce;

(3) Identify the accommodations and incentives necessary to attract and retain senior citizens in the workforce;

(4) Determine the needs of senior citizens to remain productive members of the workforce;

(5) Evaluate the ability of existing programs to attract and retain senior citizens in the workforce, including those intended to provide the necessary education to qualify for entry or retention in the workforce;

(6) Recommend improvements in existing programs and the creation of new programs, if indicated, addressing senior citizens in the workforce, including programs through which prospective employers can identify and access qualified senior citizens; and

(7) Promote public awareness of the value of senior citizens in the workforce and initiate dialogue between citizens and policymakers in this regard.

Section 4. The Task Force on Senior Citizens and the Workforce shall be authorized, subject to the approval by the Legislative Research Commission, to conduct meetings throughout the state and to sponsor a conference for the purpose of gaining and exchanging information and publicizing the activities of the Task Force.

Section 5. Co-chairs of the Task Force on Senior Citizens and the Workforce shall be appointed by the Legislative Research Commission from among the legislative members of the Task Force.

Section 6. The Task Force on Senior Citizens and the Workforce shall submit its findings and recommendations to the Governor and the Legislative Research Commission by September 30, 2001.

Section 7. Staff services for this task force shall be furnished by the Legislative Research Commission, with officers and agencies of the Executive Branch providing any assistance that may be requested by the Commission or its Director.

Approved March 16, 2000

CHAPTER 133

(HJR 78)

A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge on Kentucky Route 168 in Boyd County over the Little Hoods Creek in honor of W. Richard "Dick" Martin.

WHEREAS, W. Richard "Dick" Martin is well known throughout the Ashland and Boyd County communities for his lifelong commitment to radio; and

WHEREAS, W. Richard "Dick" Martin began his broadcasting career in 1946 with WCMI, the first AM radio station to serve Ashland, as well as all of the communities of northeastern Kentucky; and

WHEREAS, W. Richard "Dick" Martin worked not only as a sports broadcaster as the voice of the Ashland Tomcats from 1947 until 1975, but he also served as program director, general manager, and Vice President of WCMI; and

WHEREAS, in 1969 W. Richard "Dick" Martin brought the first FM radio station to the Ashland area; and

WHEREAS, W. Richard "Dick" Martin was instrumental in the formation of the Eastern Kentucky Economic Development Corporation in 1985; and

WHEREAS, W. Richard "Dick" Martin was a dedicated public servant who served as the Mayor of the City of Ashland from 1988 until 1991; and

WHEREAS, during his tenure as mayor, W. Richard "Dick" Martin helped the City of Ashland achieve the prestigious designation of "All Kentucky City"; and

WHEREAS, W. Richard "Dick" Martin has been active in civic, community, and religious organizations for over forty (40) years;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name bridge number B00055 on Kentucky Route 168 in Boyd County located over Little Hoods Creek at the northwest city limits of the City of Ashland in honor of W. Richard "Dick" Martin.

Section 2. The Transportation Cabinet shall erect signs at each end of the bridge approach on Kentucky Route 168 naming the bridge the " W. Richard "Dick" Martin Bridge" within thirty (30) days of the effective date of this Resolution.

Approved March 17, 2000

CHAPTER 134

(HB 507)

AN ACT relating to absentee voting and declaring an emergency.

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

Section 1. KRS 117.085 is amended to read as follows:

(1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. Except as provided in paragraph (b) of this subsection, all applications for an absentee ballot shall be transmitted only by mail or in person at the option of the voter, except that the county clerk shall hand an application for an absentee ballot to a voter permitted to vote by absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The absentee ballot application shall be restricted to the use of the voter or the spouse, parents, or children of the voter. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, and those who are incarcerated in jail but have yet to be convicted and persons who qualify under subparagraph 5. of paragraph (a) of this subsection, no absentee ballots shall be mailed to a voter who resides within the county in which he is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for an absentee ballot as provided in this section and who is properly registered as stated in his application.

(a) The following voters may apply to cast their votes by absentee ballot at any time not later than the close of business hours seven (7) days before the election:

1. Voters permitted to vote by absentee ballot pursuant to KRS 117.075;

2. Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;

3. Students who temporarily reside outside the county of their residence and other voters who temporarily reside outside the state but who are still eligible to vote in this state;

4. Persons who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime; and

5. Persons who are prevented from voting in person at the polls on election day and from casting an absentee ballot in person in the county clerk's office on all days absentee voting is conducted prior to election day because their employment location requires them to be absent from the county all hours and all days absentee voting is conducted in the county clerk's office.

(b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for an absentee ballot by means of the federal post-card application, which may be transmitted to the county clerk's office by mail or by facsimile machine. The application may be used to register, reregister, and to apply for an absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to the application form upon receipt.

(c) Any other qualified voter in the county who is not permitted to vote by absentee ballot under paragraph (a) of subsection (1) of this section who shall be absent from the county on any election day may, at any time during normal business hours on at least any of the twelve (12) working days before the election, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above.

(d) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, and any alternate precinct election officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he is registered receives his appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.

(e) ***Any pregnant woman who is in her last trimester of pregnancy at the time she wishes to vote under this paragraph may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections. She may vote at any time during business hours on at least any of the twelve (12) working days before the election up to the close of business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections, which shall contain the woman's sworn statement that she is in fact in her last trimester of pregnancy at the time she wishes to vote, and shall be made in person to the county clerk, at any time during any of the twelve (12) working days before the election. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election as prescribed above.***

(f) The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.

(g)~~[(f)]~~ Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.

(2) The clerk shall type the name of the voter permitted to vote by absentee ballot on the application form for that person's use and no other. The absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for an absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.

(3) If the county clerk finds that the voter is properly registered as stated in his application and qualifies to receive an absentee ballot by mail, he shall mail to the voter an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.

(4) Absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.

(5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election and fifteen (15) days prior to each runoff primary.

(6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, and precinct number. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope

immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.

(7) Any person who has received an absentee ballot by mail but who knows at least seven (7) days before the date of the election that he will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his absentee ballot and vote in person. He shall return his absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, and the voter may vote in the precinct in which he is properly registered.

Section 2. KRS 117.086 is amended to read as follows:

(1) The voter returning his absentee ballot by mail shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. A resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas who has received an absentee ballot transmitted by facsimile machine shall transmit the voted ballot to the county clerk by mail only, conforming with ballot security requirements that may be promulgated by the state board by administrative regulation. In order to be counted, the ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.

(2) Any voter who shall be absent from the county on election day, but who does not qualify to receive an absentee ballot by mail under the provisions of KRS 117.085, and all members of county boards of elections***,***~~[and]~~ precinct election officers***, and pregnant women*** qualified to vote prior to the election under the provisions of ***Section 1 of this Act***~~[KRS 117.085]~~, shall vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. The clerk may provide for such voting by the voting equipment in general use in the county either at the precinct, the equipment as may be used to tabulate absentee ballots, or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:

(a) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, who receives assistance to vote shall complete the voter assistance form required by KRS 117.255.

(b) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, whose qualifications are challenged by any clerk or deputy shall complete an "Oath of Voter" affidavit.

(3) When the clerk uses general voting equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office or other place designated by the

county board of elections, and approved by the State Board of Elections, shall sign an "Absentee Ballot Signature Roster."

(4) The clerk shall designate a location within his office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than his main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424 and similar notice by mail shall be given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.

(5) The State Board of Elections shall promulgate administrative regulations to provide for casting ballots as provided in subsection (2) of this section.

(6) The clerk shall deposit all of the absentee ballots returned by mail in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are counted. All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.

(7) The clerk shall keep a list of all persons who return their absentee ballots by mail or cast their ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of votes cast by absentee ballots returned by mail and on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, cast in any election as a part of the official returns of the election.

Section 3. Whereas the provisions of this Act are necessary to administer the May primary election in a fair and effective manner with respect to pregnant voters, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 17, 2000

CHAPTER 135

(HB 377)

AN ACT relating to branching and acquisition of banks in Kentucky.

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

Section 1. KRS 287.180 is amended to read as follows:

(1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on

these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.

(2) Any corporation presently or after July 13, 1990, engaged in the business of banking, and meeting the requirements of this subsection, may apply to the commissioner for permission to establish, within any ***state, the District of Columbia, or a territory of the United States***[~~county in which its principal office or an existing branch is located~~], a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the commissioner shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch. The following conditions shall apply to applications for branches:

(a) The permission to open a branch shall lapse one (1) year after the commissioner has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the commissioner, be extended for any period of time he deems to be necessary; and

(b) An application to establish a branch office shall be approved or disapproved by the commissioner based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.

(3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future pursuant to the terms of this section.

(4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided the commissioner shall determine that the public convenience and necessity will be served by the operation[~~, and provided further that, at the time of the merger or purchase, each of the banks involved shall have been in operation for a period of five (5) years or more~~]. The bank which does not survive the merger shall surrender its charter.

(5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.

(6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the commissioner. In the discretion of the

commissioner the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

Section 2. KRS 287.172 is amended to read as follows:

(1) A national banking association may convert into or merge with a state bank under a state charter, provided that~~[:~~

~~(a)~~] the action taken complies with federal law~~[;~~

~~(b) In the case of a merger, the institutions to be merged are located in the same city or county]~~.

(2) In the case of each conversion, a written plan of conversion shall be submitted, in duplicate, to the commissioner. Such plan shall be in form satisfactory to the commissioner, shall prescribe the terms and conditions of the conversion and the mode of carrying it into effect, and shall have annexed thereto and forming a part thereof the proposed articles of incorporation of the state bank which is to result from the conversion. Such articles of incorporation shall be in the form prescribed by law for the organization of state banks, with such variations, if any, as shall be satisfactory to the commissioner. With such plan of conversion there shall be submitted, in duplicate, to the commissioner a certificate of the president, secretary or cashier of the national banking association certifying that all steps have been taken which are necessary under federal law to the consummation of the conversion. The commissioner shall approve or disapprove such plan of conversion within sixty (60) days of the submission thereof to him. In considering the approval or disapproval of the conversion plan the commissioner shall take into account:

(a) Any pending administrative or judicial action to which the bank or any officer or director of the bank is a party;

(b) The performance of the converting national bank for the five (5) years preceding the application for conversion as compared to similarly situated state-chartered banks; and

(c) The proposed name of the bank after conversion which shall not be the same as or deceptively similar to any existing state-chartered bank.

If the commissioner shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of such certificate submitted therewith and the original of the approval of the commissioner, in the office of the commissioner, and the other duplicate of such plan, together with a duplicate of such certificate and a duplicate of the commissioner's approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. After such filing in the office of the commission, the conversion shall become effective upon the filing and recording of the articles of incorporation as provided in KRS 287.050, unless a later date is specified in the plan, in which event the conversion shall become effective upon such later date. If the commissioner shall disapprove the conversion plan, he shall state his reasons for such disapproval in writing to which the converting national bank shall have the right of appeal as permitted by law.

(3) In the case of each merger, a written plan of merger shall be submitted, in duplicate, to the commissioner. Such plan shall be in form satisfactory to the commissioner and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the state bank, as receiving corporation, if such name is to be changed. Such plan may also name the persons who shall constitute the

first board of directors of the state bank after the merger shall have been accomplished, provided that the number and qualifications of such person shall be in accordance with the provisions of KRS Chapter 287 relating to the number and qualifications of directors of a state bank; or such plan may provide for a meeting of the stockholders to elect a board of directors within sixty (60) days after such merger, and may make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the commissioner the following:

(a) By the national banking association, a certificate of the president, secretary or cashier of such association certifying that all steps have been taken which are necessary under federal law to the consummation of their merger;

(b) By the state bank, a certificate of the president, secretary or cashier certifying that such plan of merger has been approved by the board of directors of the state bank by a majority vote of all the members thereof, that such plan has been submitted to the stockholders of the state bank at a meeting thereof held; upon notice of at least fifteen (15) days, specifying the time, and place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published pursuant to KRS Chapter 424, and that such plan of merger has been approved at such meeting by the vote of the stockholders owning at least two-thirds (2/3) in amount of the stock of the state bank.

(4) The commissioner shall approve or disapprove such plan of merger within sixty (60) days of such submission thereof to him. If the commissioner shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of each of such certificates and the original of the approval of the commissioner, in the office of the commissioner, and the other duplicate of such plan, together with a duplicate of each of such certificates and a duplicate of the commissioner's approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. Upon such filing in the office of the commissioner, the merger shall become effective, unless a later date is specified in the plan, in which event the merger shall become effective upon such later date.

(5) At the time when such conversion or merger becomes effective:

(a) The resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers and duties, the resulting bank is a state bank;

(b) All of the property, rights and powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and deemed to have assumed all of the debts, liabilities, obligations and duties of the national banking association and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the resulting state bank; provided, however, that the resulting state bank shall not, through such conversion or merger, acquire power to engage in any business or to exercise any right, privilege or franchise which is not conferred by the provisions of KRS Chapter 287 upon such resulting state bank;

(c) Any reference to the national banking association in any contract, will or document, whether executed or taking effect before or after the conversion or merger, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will or document;

(d) A pending action or other judicial proceeding to which the national banking association is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion or merger, but may be prosecuted to final judgment, order or decree in the same manner as if the conversion or merger had not been made; or the resulting state bank may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against the national banking association if the conversion or merger had not occurred.

Section 3. KRS 287.900 is amended to read as follows:

(1) For purposes of this section and KRS 287.905:

(a) "Bank" means any institution organized under this chapter, the banking laws of another state, or the National Bank Act, as amended, to do a banking business~~[. However, it shall not include an "interim bank" chartered solely for the purpose of facilitating the acquisition of an existing bank unless the existing bank has been in existence for less than five (5) years]~~;

(b) "Bank holding company," "company," and "control" have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. secs. 1841 et seq.). "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;

(c) "Individual" means a natural person, partnership, association, business trust, voting trust, or similar organization. Individual does not include a corporation; and

(d) "Deposit" has the meaning accorded it in the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder; excluded, however, from deposits are all interbank deposits and all deposits in foreign branches and international banking facilities, as shown in the reports made by all federally-insured depository institutions to their respective supervisory authorities.

(2)~~[Any individual, or any bank holding company having its principal place of business in this state, may acquire control of one (1) or more banks or bank holding companies wherever located, except that no individual, who on July 13, 1984, controls a bank or bank holding company wherever located, and no bank holding company wherever located, may acquire, directly or indirectly, control of a bank having its principal place of business in this state if the bank was chartered after July 13, 1984, and if, at the time of the acquisition, the bank has been in existence less than five (5) years. The provisions of this subsection shall not prohibit the organization of a one (1) bank holding company for the purpose of acquiring control of a bank even if the bank was chartered after July 13, 1984, and has been in existence less than five (5) years at the time of the acquisition.~~

~~(3)]~~ No individual or bank holding company wherever located may acquire control of any bank or bank holding company if, upon the acquisition, the individual or bank holding company would control banks in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions

in this state as reported in the most recent year-end reports made by the institutions to their respective supervisory authorities which are available at the time of the acquisition.

(3)[~~(4)~~] The limitations set forth in this section or any other provision of this chapter or any regulation promulgated thereunder, as now in effect or amended after July 13, 1984, shall not apply to the acquisition of a bank if, in his discretion, the commissioner, if the bank is organized under the laws of this state, or the comptroller of the currency, if the bank is a national bank, determines that an emergency exists and the acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.

(4)[~~(5)~~] The provisions of this section shall not be construed to prohibit or restrict the merger or consolidation of banks or bank holding companies having their principal places of business in the same county and the operation by the merged or consolidated corporation of the banks, nor to prohibit the sale of any bank or bank holding company to, and the purchase thereof by, any other bank or bank holding company with its principal place of business in the same county and the operation of the bank as a branch so long as the provisions of KRS 287.180(4) have been satisfied.

Section 4. KRS 287.915 is amended to read as follows:

(1) Notwithstanding any other provision of KRS Chapter 287:

(a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and

(b) Any combination authorized by this section shall not require the approval of the commissioner of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the commissioner of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.

(2) Following any combination authorized by this section:

(a) The surviving bank may, subject to the approval of the commissioner as provided in KRS 287.180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;

(b) Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than quarterly to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;

(c) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and

(d) With the approval of the commissioner, all of a bank's offices in a county may be transferred, by a purchase and assumption or other transaction, by the bank to a newly chartered bank having its principal office in the same county, or to an existing bank.~~[If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be in excess of five (5) years.]~~

(3) For purposes of this section:

(a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;

(b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;

(c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;

(d) "Surviving bank" means a bank into which a combined bank has been combined;

(e) "Bank" includes a national bank, savings and loan association, and federal savings bank~~[but does not include a bank which has been in existence less than five (5) years]~~; and

(f) "Individual", "bank holding company" and "deposit" shall have the same meanings attributed to them in KRS 287.900(1).

Section 5. KRS 287.920 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and

(b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky pursuant to an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky pursuant to an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state

applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(4) ~~[The bank to be acquired in an interstate merger transaction under the provisions of subsection (3) of this section shall have been involved in operation for a period of five (5) years or more.]~~No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent year-end reports made by the institutions to their respective supervisory authorities which are available at the time of the transaction.

(5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.

(6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.

(7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:

(a) Authorized under the laws of the host state for banks chartered by the host state; or

(b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Approved March 17, 2000

CHAPTER 136

(SB 14)

AN ACT relating to regulating emissions from mobile sources of air pollutants.

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

Section 1. KRS 77.115 is amended to read as follows:

(1) The air pollution control board is hereby declared to be the governing body of an air pollution control district, and shall manage and control all the affairs and property of such district, and shall exercise all the powers of such district not otherwise delegated by this chapter. In a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board shall assume all of the duties and responsibilities of the hearing board appointed under KRS 77.105, and the hearing board shall be abolished.

(2) Notwithstanding any provision of this chapter to the contrary, in a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board

shall have regulatory authority for the district, and the city or county, as appropriate, shall exercise funding and administrative control of the district.

(3) If an air pollution control board finds the need for and requires the implementation of a vehicle exhaust testing program, the program shall prohibit emissions of, regulate, or control only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-710 to 224.20-765.

Section 2. KRS 77.170 is amended to read as follows:

(1) ***Except for subsection (3) of this section,*** the General Assembly does not, by the provisions of this chapter, intend to occupy the field. ***Except for subsection (3) of this section,*** the provisions of this chapter do not prohibit the enactment or enforcement of any local ordinance stricter than the provisions of KRS 77.150 to 77.180 and stricter than the rules and regulations adopted pursuant to KRS 77.180 to 77.240, which local ordinance prohibits, regulates, or controls air pollution.

(2) ***Except for subsection (3) of this section,*** the provisions of this chapter do not supersede any such local ordinance. If it should be held that the provisions of this chapter supersede the provisions of any local ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance, was in full force and effect.

(3) Local ordinances prohibiting, regulating, or controlling emissions from mobile sources of air pollutants shall prohibit emissions of, regulate, or control only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-710 to 224.20-765.

Section 3. KRS 224.20-130 is amended to read as follows:

(1) Each county which pursuant to the provisions of KRS Chapter 77 has established or will establish a local air pollution control program, shall submit a synopsis of said program together with such standards and procedures as are enacted by regulations to the cabinet for approval within a period of ninety (90) days from the enactment hereof, or a period of ninety (90) days of the establishment of said local program.

(2) If, after review by the cabinet, and a public hearing held in the county activating a district, the cabinet determines that the air pollution control district has adopted standards and procedures and has the necessary staff to implement the program in a manner consistent with the objectives of this chapter, concurrent jurisdiction may be granted the air pollution control district for the administration and enforcement of the aforesaid statutes. ***Except for the limit on authority established by subsection (1) of Section 3 of this Act,*** the air pollution control district shall adopt no regulation or standard less stringent than a regulation or standard adopted by the cabinet, and shall submit prepared regulations and standards to the cabinet for prior concurrence. Periodic reports shall be made to the cabinet and to the commission as shall be provided for by regulation. If the cabinet shall determine, after hearing with notice, that a district program is not being administered in accordance with the statutes and regulations of the cabinet or the district, the grant of authority may be suspended, revoked, or modified by order of the cabinet. ***The enactment or enforcement of a regulation by an air pollution control district that finds the need for and requires the implementation of a vehicle exhaust testing program, if the program is not limited to prohibiting the emissions of, regulating, or controlling only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-***

710 to 224.20-765, shall cause an automatic revocation of an existing grant of authority or an automatic denial of a requested grant of authority.

(3) This provision shall in no way diminish the authority of the cabinet to administer and enforce the provisions of this chapter.

(4) The cabinet shall be empowered to enforce any and all regulations or standards in any district when concurrent jurisdiction is granted.

(5) When enforcement actions are taken by the district, the local Commonwealth's, county, and city prosecuting attorneys, instead of the Attorney General shall prosecute such actions.

Approved March 17, 2000

CHAPTER 137

(HB 126)

AN ACT relating to sick leave for public school teachers and employees.

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

Section 1. KRS 161.155 is amended to read as follows:

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, grandchildren, ***daughters-in-law and sons-in-law, brothers and sisters,*** parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.

(2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.

(3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any

school year. Any district board of education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.

(4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

(5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(7) (a) A district board of education shall establish a sick leave donation program to permit teachers to voluntarily contribute sick leave to teachers in the same school district who are in need of an extended absence from school. A teacher who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher who is authorized to receive the sick leave donated. A teacher may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

(b) A teacher may receive donations of sick leave if:

1. The teacher or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher to be absent for at least ten (10) days;

2. The teacher's need for the absence and use of leave are certified by a licensed physician;

3. The teacher has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and

4. The teacher has complied with the school district's policies governing the use of sick leave.

(c) While an employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.

(d) Any sick leave that remains unused, is not needed by a teacher, and will not be needed in the future shall be returned to the teacher donating the sick leave.

(e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.

(8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(9) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

Approved March 17, 2000

CHAPTER 138

(HB 346)

AN ACT relating to utilities.

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

Section 1. KRS 278.160 is amended to read as follows:

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

(3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878 (1)(c)1.

Approved March 17, 2000

CHAPTER 139

(HB 407)

AN ACT relating to oil and gas.

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

Section 1. KRS 353.510 is amended to read as follows:

As used in KRS 353.500 to 353.720, unless the context otherwise requires:

(1) "Department" means the Department of Mines and Minerals as defined in KRS 351.010;

(2) "Commissioner" means the commissioner of the Department of Mines and Minerals as defined in KRS 351.010;

(3) "Director" means the director of oil and gas conservation as provided in KRS 353.530;

(4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;

(5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;

(6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof;

(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined in subsection (7) of this section as oil;

(9) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" as used herein;

(10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools;

(11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts;

(12) "Abandoned," when used in connection with a well or hole, means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of oil or gas or for the injection or disposal of fluid therein;

(13) "Workable bed" means:

(a) A coal bed actually being operated commercially;

(b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years; or

(c) A coal bed which, from outcrop indications or other definite evidence, proves to the satisfaction of the commissioner to be workable, and which, when operated, will require protection if wells are drilled through it;

(14) "Well" means a borehole drilled, ***shaft driven, or hole dug*** or ***such*** proposed ***or otherwise used***~~[to be drilled,]~~ for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced, or~~[a borehole drilled or proposed to be drilled]~~ for the purpose of injecting any water, gas, or other fluid therein or one into which any water, gas, or other fluid is being injected;

(15) "Shallow well" means any well drilled and completed at a depth less than four thousand (4,000) feet except, in the case of any well drilled and completed east of longitude line 84 degrees 30'; shallow well means any well drilled and completed at a depth less than four thousand (4,000) feet or above the base of the lowest member of the Devonian Brown Shale, whichever is the deeper in depth;

(16) "Deep well" means any well drilled and completed below the depth herein provided for a shallow well;

(17) "Operator" means any owner of the right to develop, operate**,** and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

(18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subsection (17) of this section;

(19) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable oil or gas in such area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed,

has taken the action necessary to have a specified area established for production from a well, such area shall be a drilling unit;

(20) "Underground source of drinking water" means those subsurface waters identified as such in regulations promulgated by the department which shall be consistent with the definition of underground source of drinking water in regulations promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42 U.S.C. secs. 300(f) et seq.;

(21) "Underground injection" means the subsurface emplacement of fluids by well injection but does not include the underground injection of natural gas for purposes of storage;

(22) "Endangerment of underground sources of drinking water" means underground injection which may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons;

(23) "Class II well" means wells which inject fluids:

(a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; and

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure;

(24) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Section 2. KRS 353.565 is amended to read as follows:

(1) There is hereby created in the Department of Mines and Minerals, the "Kentucky Oil and Gas Conservation Commission" which shall be composed of five (5) members. Four (4) of the members shall be appointed by the Governor and the fifth member, who shall serve as chairman of the commission, shall be the director of oil and gas conservation and who shall serve in an ex officio capacity as a nonvoting member except in the case of a tie. The four (4) members appointed by the Governor shall be residents of this state and not more than one (1) of them may be directly employed in the exploration for or the production of oil or gas, or deriving more than fifty percent (50%) of that person's income from the exploration for or production of oil or gas, or engaged in a business directly servicing or supplying these activities. No member of the commission shall participate in the deliberations of the commission or vote on any matter before the commission in which he, his employer, or any business unit in which he has a financial interest is an interested party, but a member of the commission is not prohibited from deliberating or voting on matters of general interest, such as the fixing of statewide spacing patterns, affecting him, his employer, or a business unit in which he has financial interest as a member of a class of persons to be affected by an administrative regulation or order of the commission. The commission shall not contain more than one (1) representative from any one (1) operator, including subsidiaries or affiliates. Of the four (4) members appointed by the Governor, two (2) shall be residents of eastern Kentucky and two (2) shall be residents of western Kentucky. Longitude 84 deg. 30 min. shall be deemed as the division line between eastern Kentucky and western Kentucky.

(2) The members of the commission, except the chairman, shall be appointed for terms of four (4) years each, except that:

(a) The original appointments shall be for terms of one (1), two (2), three (3), and four (4) years respectively; and

(b) Of the members appointed after July 15, 1998, one (1) member appointed to fill the term expiring June 21, 1999, shall serve until January 21, 2000; one (1) member appointed to fill the term expiring June 21, 2000, shall serve until January 21, 2001; one (1) member appointed to fill one (1) of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2002; and one (1) member appointed to fill the second of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2003; and subsequent appointments shall be for four (4) year terms ending on January 21. Each member appointed by the Governor shall serve until his successor has been appointed and qualified. Members may be reappointed by the Governor to serve successive terms. The members of the commission, before performing any duty hereunder, shall take an oath which shall be certified by the officer administering it. The oath in writing and the certificate shall be filed in the office of the Secretary of State. Vacancies in the membership appointed by the Governor shall be filled by appointment by him and for the unexpired term of the member whose office shall be vacant, and the appointment shall be made by the Governor within sixty (60) days of the occurrence of a vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance of office.

(3) The commission shall meet at times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two (2) members. Notification of each meeting shall be given in writing to each member by the chairman at least five (5) days in advance of the meeting. Any three (3) members, one (1) of which may be the chairman, shall constitute a quorum for the transaction of any business, including the holding of hearings. A majority of the commission present shall be required to determine any issue brought before it for decision.

(4) Each member of the commission, except the chairman, shall receive ***one hundred*** fifty dollars ***($150)***~~[($50)]~~ per diem not to exceed one hundred (100) days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission, including the chairman, shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

(5) The commission shall execute and carry out, administer, and enforce the provisions of KRS 353.651 and 353.652. The commission may make any investigation of records and facilities as it deems proper.

(6) If an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of an administrative regulation or order without first having a hearing, an emergency regulation may be promulgated in accordance with KRS Chapter 13A and an emergency order may be issued in accordance with KRS 13B.125.

(7) The commission shall have specific authority to:

(a) Promulgate and enforce reasonable administrative regulations and issue orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission, and otherwise administer the provisions of KRS 353.651 and 353.652; and

(b) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of its duties under the provisions of KRS 353.651 and 353.652.

(8) Any interested person may have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission promptly shall call a hearing thereon, and, after the hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of the hearing, shall take appropriate action with regard to the subject matter thereof as it may deem appropriate. If the hearing is adjudicatory in nature, it shall be conducted in accordance with KRS Chapter 13B.

(9) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool, or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among these owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool, or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when the agreements are approved by the commission, are hereby authorized and shall not be held or construed to violate any of the laws of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.

(10) Nothing in this section shall be construed as giving to the commission the right or authority to supersede the authority of the department in the administration of KRS 353.060.

Section 3. KRS 353.590 is amended to read as follows:

(1) Any person seeking a permit required by KRS 353.570 shall submit to the department a written application in a form prescribed by the department.

(2) Each application shall be accompanied by a specified fee as follows:

(a) The fee shall be three hundred dollars ($300) for each well to be drilled, deepened, or reopened for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole.

(b) If the department receives delegation of authority for administration of the underground injection control program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended), the department may, by administrative regulation, establish a fee or schedule of fees in an amount not to exceed fifty dollars ($50) per well, in addition to the fees imposed by paragraph (a) of this subsection, upon each application to drill, deepen, or reopen a well for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole. The fees or schedule of fees to

be established by administrative regulation shall not exceed an amount sufficient to recover the costs incurred by the department in administering the Underground Injection Control Program less any other state or federal funds which are made available for this purpose.

(c) All money paid to the State Treasurer for fees required by paragraph (b) of this subsection shall be for the sole use of the department in the administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended).

(3) All money paid to the State Treasurer for licenses and fees required by KRS 353.500 to 353.720 shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.

(4) Each application shall be accompanied by a plat, which shows the location and elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a professional land surveyor ***licensed*** in accordance with the provisions of KRS Chapter 322.

(5) When any person submits to the Department of Mines and Minerals an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall, except as provided in this section, require from the well operator a bond in the sum of five hundred dollars ($500) for a well to be drilled to a depth of five hundred (500) feet or less; one thousand dollars ($1,000) for a well to be drilled to a depth between five hundred and one (501) feet and one thousand (1,000) feet; one thousand five hundred dollars ($1,500) for a well to be drilled to a depth between one thousand and one (1,001) feet and one thousand five hundred (1,500) feet; two thousand dollars ($2,000) for a well to be drilled to a depth between one thousand five hundred and one (1,501) feet and two thousand (2,000) feet; two thousand five hundred dollars ($2,500) for a well to be drilled to a depth between two thousand and one (2,001) feet and two thousand five hundred (2,500) feet; three thousand dollars ($3,000) for a well to be drilled to a depth between two thousand five hundred and one (2,501) feet and three thousand (3,000) feet; three thousand five hundred dollars ($3,500) for a well to be drilled to a depth between three thousand and one (3,001) feet and three thousand five hundred (3,500) feet; four thousand dollars ($4,000) for a well to be drilled to a depth between three thousand five hundred and one (3,501) feet and four thousand (4,000) feet; and five thousand dollars ($5,000) for a well to be drilled to a depth of more than four thousand (4,000) feet. The bonds shall be made in favor of the Department of Mines and Minerals, conditioned that the wells upon abandonment shall be plugged in accordance with the administrative regulations of the department and that all records required by the department be filed as specified. An operator may petition the department to amend the drilling depth and bond amount applicable to a particular well and shall not proceed to drill to a depth greater than that authorized by the department until the operator is so authorized except pursuant to administrative regulations promulgated by the department. The commission may establish a bond in a sum greater than five thousand dollars ($5,000) for any well to be drilled to a depth of more than four thousand (4,000) feet if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established above. All bonds shall remain in effect until the plugging of the well is approved by the department, or the bond is released by the department. Any well operator in

lieu of the bond may file with the department a blanket bond in a sum of ten thousand dollars ($10,000), covering all wells drilled or to be drilled in the Commonwealth by the principal in the bond, and the acceptance and approval by the department of the blanket bond shall be in full compliance with the above provision requiring an individual well bond. A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds, and a property bond may be executed by an operator who owns all of the surface and mineral rights of a tract proposed for drilling. A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may also be accepted by the department. If an operator is required to post individual well bonds exceeding a total of five thousand dollars ($5,000) or elects to post a blanket bond, the certificate of deposit shall be accepted by the department in lieu of that portion of the amount of the bonds exceeding five thousand dollars ($5,000). The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety authorized to do business in the Commonwealth. A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the oil and gas well plugging fund, created in subsection (9) of this section, to be used in accordance with the purposes described therein. All cash bonds being held by the department on July 13, 1990, shall likewise be deposited in the interest-bearing account, with the proceeds to be used for the purposes established for the oil and gas well plugging fund. The bond amounts shall be applicable only to permits issued upon and after July 13, 1990. All bonds posted for permits issued prior to July 13, 1990, shall remain in full force and effect for the duration of the permits.

(6) A successor to the well operator shall post bond***, pay a twenty-five dollar ($25) fee per well to the department,*** and notify the department in writing in advance of commencing use or operation of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.

(7) If the requirements of subsection (5) of this section with respect to proper plugging upon abandonment and submission of all required records on all well or wells have not been complied with within the time limits set by the department, by administrative regulation, or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this chapter or the administrative regulations of the department. If the operator has not reached an agreement with the department or has not complied with the requirements set forth by it within forty-five (45) days after mailing of the notice, the bond shall be forfeited to the department.

(8) A bond forfeited pursuant to the provisions of this chapter may be collected by an attorney for the department or by the Attorney General, after notice from the director.

(9) All sums received under subsection (5) of this section or through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the oil and gas well plugging fund, which shall be an interest-bearing account

with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned wells coming within the authority of the department pursuant to this chapter. The plugging of any well pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.

(10) Upon request by any person applying for a permit for a geological or structure test hole, the department shall keep the location and elevation of the hole confidential until the information is allowed to be released by the person obtaining the permit.

(11) For the purpose of this chapter, "water supply well" shall not include:

(a) Any well for a potable water supply for domestic use or for livestock; or

(b) Any water well used primarily for cooling purposes in an industrial process.

Section 4. KRS 353.651 is amended to read as follows:

The following provisions of this section shall apply to any deep well:

(1) Drilling units:

(a) The commission shall, after notice and a hearing, to be conducted in accordance with KRS Chapter 13B, regulate the drilling and location of wells in any pool and the production therefrom so as to prevent reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counterdrainage) so that each owner in a pool shall have the right and opportunity to recover his fair and equitable share of the recoverable oil and gas in such pool.

(b) For the prevention of waste, to protect and enforce the correlative rights of the owners in a pool, and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the commission shall, after notice and a hearing, to be conducted in accordance with KRS Chapter 13B, establish drilling units for each pool. The spacing of wells in proved oil and gas fields shall be governed by administrative regulations promulgated for that particular field. Wells drilled in areas not covered by special field administrative regulations shall be governed by statewide administrative regulations promulgated by the commission.

(c) Each well permitted to be drilled upon any drilling unit shall be drilled in accordance with the administrative regulations promulgated by the commission and in accordance with a spacing pattern fixed by the commission for the pool in which the well is located, with any exceptions that may be reasonably necessary where it is shown, in accordance with administrative regulations promulgated by the commission, that the unit is partly outside the pool or for some other reason a well otherwise located on the unit would not be likely to produce in paying quantities, or topographical conditions are such as to make the drilling at the location unduly burdensome. Whenever an exception is granted, the commission shall take action as will offset any advantage which the person securing the exception may have over other owners by reason of the drilling of the well as an exception.

(d) No drilling unit established by the commission shall be smaller than the maximum area which can be drained efficiently by one (1) deep well so as to produce the reasonable maximum recoverable oil or gas in such area, unless an exception is granted in accordance with administrative regulations promulgated by the commission.

(e) An order establishing drilling units may be modified, altered, extended, amended, or vacated by the commission after notice and hearing as prescribed above.

(2) Pooling of interests in drilling units:

(a) When two (2) or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, and after the commission has given notice to all persons reasonably known to own an interest in the oil or gas in the drilling unit, and after a hearing conducted in accordance with KRS Chapter 13B, the commission shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for the sharing production therefrom. Each pooling order shall be upon terms and conditions which are just and reasonable.

(b) All operations, including, but not limited to, the commencement, drilling, or operation of a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of those operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from the tract by a deep well drilled thereon.

(c) Any pooling order under the provisions of subsection (2) of this section shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, and abandoning the deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the acreage in the pooled tracts owned or under lease to each owner; and shall make provision for payment of all reasonable costs thereof, including reasonable charge for supervision and for interest on past due accounts, by all those who elect to participate therein. Upon the application of any operator having an interest in the drilling unit, the person or persons selected to drill and operate the deep well shall be determined by competitive bids under the procedure set out in KRS 74.260.

(d) Upon request, any pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in the risk and cost of the drilling of a deep well may elect to surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be determined by the commission; or to participate in the drilling of the deep well on a limited or carried basis on terms and conditions

which, if not agreed upon, shall be determined by the commission to be just and reasonable.

(e) If an operator owning an interest in a pooled drilling unit elects not to participate in the risk and cost of drilling of a deep well thereon, and another operator owning an interest therein, shall drill and operate, or pay the costs of drilling and operating a deep well as provided in the commission's order, then the operating owner shall be entitled to the share of production from the tracts or portions thereof accruing to the interest of the nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or portions thereof, or exclusive of one-eighth (1/8) of the production attributable to all unleased tracts or portions thereof, until the market value of the nonparticipating owner's share of the production, exclusive of any royalty, overriding royalty or one-eighth (1/8) of production, equals ***two (2)***~~[one and one-fourth (1-1/4)]~~ times the share of the costs payable by or charged to the interest of the nonparticipating owner.

(f) If a dispute shall arise as to the costs of drilling and operating a deep well, the commission shall determine and apportion the costs, within ninety (90) days from the date of written notification to the commission of the existence of such dispute.

(3) This section shall not apply to wells drilled, deepened, or reopened for the injection of water, gas, or other fluids into any subsurface formation.

Approved March 17, 2000

CHAPTER 140

(HB 429)

AN ACT relating to blood testing.

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

Section 1. KRS 438.250 is amended to read as follows:

(1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee,~~[or]~~ probationer***, or patient or resident of any health facility owned or operated by the Commonwealth,*** or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV), hepatitis~~[A,]~~ B~~[,]~~ and C ***viruses***, and ***any other disease, if testing for that disease is recommended by the most current guidelines of the Centers for Disease Control and Prevention, and if testing for any of these conditions is recommended, then testing will be conducted as recommended by the Centers for Disease Control and Prevention***~~[tuberculosis]~~.

(2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1).

However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.

(3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.

(4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.

(5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

Approved March 17, 2000

CHAPTER 141

(HB 148)

AN ACT relating to assisted living communities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15 of this Act:

(1) "Activities of daily living" means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;

(2) "Assistance with self-administration of medication" means:

(a) Reminding the client to take medications;

(b) Reading the medication's label;

(c) Confirming that medication is being taken by the client for whom it is prescribed;

(d) Opening the dosage packaging or medication container, but not removing or handling the actual medication;

(e) Storing the medication in a manner that is accessible to the client; and

(f) Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device;

(3) "Assisted living community" means a series of living units on the same site, operated as one (1) business entity, and certified under Section 4 of this Act to provide services for five (5) or more adult persons not related within the third degree of consanguinity to the owner or manager;

(4) "Client" means an adult person who has entered into a lease agreement with an assisted living community;

(5) "Danger" means physical harm or threat of physical harm to one's self or others;

(6) "Health services" has the same meaning as in KRS 216B.015;

(7) "Instrumental activities of daily living" means activities to support independent living including, but not limited to, housekeeping, shopping, laundry, chores, transportation, and clerical assistance;

(8) "Living unit" means a portion of an assisted living community occupied as the living quarters of a client under a lease agreement;

(9) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device including, but not limited to, a walker, crutches, or wheelchair; and

(10) "Office" means the Office of Aging Services.

SECTION 2. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) Each living unit in an assisted living community shall:

(a) Be at least two hundred (200) square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement;

(b) Include at least one (1) unfurnished room with a lockable door, private bathroom with a tub or shower, provisions for emergency response, window to the outdoors, and a telephone jack;

(c) Have an individual thermostat control if the assisted living community has more than twenty (20) units; and

(d) Have temperatures that are not under a client's direct control at a minimum of seventy-one (71) degrees Fahrenheit in winter conditions and a maximum of eighty-one (81) degrees Fahrenheit in summer conditions if the assisted living community has twenty (20) or fewer units.

(2) Each client shall be provided access to central dining, a laundry facility, and a central living room.

(3) Each assisted living community shall comply with applicable building and life safety codes.

SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) The assisted living community shall provide each client with the following services according to the lease agreement:

(a) Assistance with activities of daily living and instrumental activities of daily living;

(b) Three (3) meals and snacks made available each day;

(c) Scheduled daily social activities that address the general preferences of clients; and

(d) Assistance with self-administration of medication.

(2) Clients of an assisted living community may arrange for additional services under direct contract or arrangement with an outside agent, professional, provider, or other individual designated by the client if permitted by the policies of the assisted living community.

(3) Upon entering into a lease agreement, an assisted living community shall inform the client in writing about policies relating to the contracting or arranging for additional services.

(4) Each assisted living community shall assist each client upon a move-out notice to find appropriate living arrangements. Each assisted living community shall share information provided from the office regarding options for alternative living arrangements at the time a move-out notice is given to the client.

SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Health Services shall establish by the promulgation of administrative regulation under KRS Chapter 13A, an initial and annual certification review process for assisted living communities that shall include an on-site visit. This administrative regulation shall establish procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.

(2) No assisted living community shall operate unless its owner or manager has:

(a) Filed a current application for the assisted living community to be certified by the office; or

(b) Received certification of the assisted living community from the office.

(3) No business shall market its services as an assisted living community unless its owner or manager has:

(a) Filed a current application for the assisted living community to be certified by the office; or

(b) Received certification of the assisted living community from the office.

(4) The office shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the office.

(5) Individuals designated by the office to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.

(6) Upon conducting a certification review, the office shall assess an assisted living community certification fee in the amount of twenty dollars ($20) per living unit that in the aggregate for each assisted living community is no less than three hundred dollars ($300) and no more than one thousand six hundred dollars ($1,600). The office shall submit to the Legislative Research Commission, by June 30 of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.

(7) Notwithstanding any provision of law to the contrary, the office may request any additional information from an assisted living community or conduct additional on-site visits to ensure compliance with the provisions of Sections 1 to 15 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) The office shall report to the Division of Licensing and Regulation any alleged or actual cases of health services being delivered by the staff of an assisted living community.

(2) An assisted living community shall have written policies on reporting and recordkeeping of alleged or actual cases of abuse, neglect, or exploitation of an adult under KRS 209.030.

(3) Any assisted living community staff member who has reasonable cause to suspect that a client has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation under KRS 209.030.

SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

A client shall meet the following criteria:

(1) Be ambulatory or mobile nonambulatory, unless due to a temporary health condition for which health services are being provided in accordance with subsections (2) and (3) of Section 3 of this Act; and

(2) Not be a danger.

SECTION 7. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

A lease agreement, in no smaller type than twelve (12) point font, shall be executed by the client and the assisted living community and shall include:

(1) Client data, for the purpose of providing service, to include:

(a) A functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living;

(b) Emergency contact person's name;

(c) Name of responsible party or legal guardian, if applicable;

(d) Attending physician's name;

(e) Information regarding personal preferences and social factors;

(f) Advance directive under KRS 311.621 to 311.643, if desired by the client; and

(g) Optional information helpful to identify services that meet the client's needs.

(2) Assisted living community's policy regarding termination of the lease agreement;

(3) Terms of occupancy;

(4) General services and fee structure;

(5) Information regarding specific services provided, description of the living unit, and associated fees;

(6) Provisions for modifying client services and fees;

(7) Minimum thirty (30) day notice provision for a change in the community's fee structure;

(8) Minimum thirty (30) day move-out notice provision for client nonpayment, subject to applicable landlord or tenant laws;

(9) Provisions for assisting any client that has received a move-out notice to find appropriate living arrangements prior to the actual move-out date;

(10) Refund and cancellation policies;

(11) Description of any special programming, staffing, or training if an assisted living community is marketed as providing special programming, staffing, or training on behalf of clients with particular needs or conditions;

(12) Other community rights, policies, practices, and procedures;

(13) Other client rights and responsibilities, including compliance with subsections (2) and (3) of Section 3 of this Act; and

(14) Grievance policies that minimally address issues related to confidentiality of complaints and the process for resolving grievances between the client and the assisted living community.

SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) An assisted living community shall provide any interested person with a:

(a) Consumer publication, as approved by the office, that contains a thorough description of Kentucky laws and regulations governing assisted living communities;

(b) Standard consumer checklist provided by the office; and

(c) Description of any special programming, staffing, or training if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions.

(2) An assisted living community may refer a request for information required in subsection (1)(a) of this section to the office.

SECTION 9. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) Staffing in an assisted living community shall be sufficient in number and qualification to meet the twenty-four (24) hour scheduled and unscheduled needs of its clients and the services provided.

(2) One (1) awake staff member shall be on site at all times.

(3) An assisted living community shall have a designated manager who is at least twenty-one (21) years of age, has at least a high school diploma or a General Educational Development diploma, and has demonstrated management or administrative ability to maintain the daily operations.

(4) No employee who has an active communicable disease reportable to the Department for Public Health shall be permitted to work in an assisted living community if the employee is a danger to the clients or other employees.

SECTION 10. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

Assisted living community staff and management shall receive orientation and in-service education on the following topics as applicable to the employee's assigned duties:

(1) Client rights;

(2) Community policies;

(3) Adult first aid;

(4) Cardiopulmonary resuscitation;

(5) Adult abuse and neglect;

(6) Alzheimer's disease and other types of dementia;

(7) Emergency procedures;

(8) Aging process;

(9) Assistance with activities of daily living and instrumental activities of daily living;

(10) Particular needs or conditions if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions; and

(11) Assistance with self-administration of medication.

SECTION 11. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit have a bathtub or shower.

(2) Any assisted living community that was open or under construction on or before the effective date of this Act shall have a minimum of one (1) bathtub or shower for each five (5) clients.

(3) Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit shall be at least two hundred (200) square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement.

SECTION 12. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) Any assisted living community that provides services without filing a current application with the office or receiving certification by the office may be fined up to five hundred dollars ($500) per day.

(2) Any business that markets its services as an assisted living community without filing a current application with the office or receiving certification by the office may be fined up to five hundred dollars ($500) per day.

SECTION 13. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

Religious orders providing assistance with activities of daily living, instrumental activities of daily living, and self-administration of medication to vowed members residing in the order's

retirement housing shall not be required to comply with the provisions of Sections 1 to 15 of this Act.

SECTION 14. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

Any business, not licensed or certified in another capacity, that complies with some provisions of Sections 1 to 15 of this Act but does not provide assistance with any activities of daily living or assistance with self-administration of medication shall not be eligible for certification as an assisted living community under Sections 1 to 15 of this Act.

SECTION 15. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

If a person or business seeks financing for an assisted living community project, the office shall provide written correspondence to the lender, upon request, to denote whether the architectural drawings and lease agreement conditionally comply with the provisions of Sections 1 to 15 of this Act. The office may charge a fee of no more than two hundred fifty dollars ($250) for the written correspondence to the lender.

Section 16. KRS 216.785 is amended to read as follows:

As used in KRS 216.785 to 216.793, unless the context otherwise requires:

(1) ***"Assisted living community" shall have the same meaning as in Section 1 of this Act.***

(2) "Crime" means a conviction of or a plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside the Commonwealth of Kentucky is a crime if the offense would have been a felony in Kentucky if committed in Kentucky.

(3)[~~(2)~~] "Direct service" means personal or group interaction between the employee and the nursing facility resident or the senior citizen.

(4)[~~(3)~~] "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in nursing facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies.

(5)[~~(4)~~] "Senior citizen" means a person sixty (60) years of age or older.

Section 17. KRS 216.789 is amended to read as follows:

(1) No long-term care facility as defined by KRS 216.535(1)***,***[~~ or~~] nursing pool providing staff to a nursing facility***, or assisted living community*** shall knowingly employ a person in a position which involves providing direct services to a resident ***or client*** if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.

(2) A nursing facility***,***[~~ or~~] nursing pool providing staff to a nursing facility***, or assisted living community*** may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.

(3) Each long-term care facility as defined by KRS 216.535(1)***,***[~~ or~~] nursing pool providing staff to a nursing facility***, or assisted living community*** shall request all conviction information from the Justice Cabinet for any applicant for employment pursuant to KRS 216.793.

(4) The long-term care facility**,**~~[or]~~ nursing pool providing staff to a nursing facility***, or assisted living community*** may temporarily employ an applicant pending the receipt of the conviction information.

Section 18. KRS 216.793 is amended to read as follows:

(1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in ***an assisted living community,***~~[a]~~ nursing facility**,** or nursing pool providing staff to a nursing facility**,** or in a position funded by the Department for Social Services or the Office of Aging Services of the Cabinet for Families and Children and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed five dollars ($5) per application.

Section 19. The following KRS section is repealed:

209.200 Assisted living residences -- Requirements for certification -- Procedures.

Approved March 20, 2000

CHAPTER 142

(HB 448)

AN ACT relating to rape crisis centers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Health Services shall designate one (1) nonprofit corporation in each area development district to serve as the regional rape crisis center. The designated agency shall serve as the regional planning authority for crisis and advocacy services for victims of sexual assault in the district in which the center is located.

(2) The rape crisis center shall retain the designation unless it has been rescinded by the cabinet based on an annual review of the center's performance or the annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.

(3) A rape crisis center designated by the cabinet shall provide services that include, but are not limited to:

(a) Crisis counseling;

(b) Mental health and related support services;

(c) Advocacy;

(d) Consultation;

(e) Public education; and

(f) The provision of training programs for professionals.

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the provisions of KRS 210.410, the secretary of the Cabinet for Health Services or any other state or local government entity is hereby authorized to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional rape crisis centers.

(2) To be eligible for grants from any state government entity, a rape crisis center shall provide the services listed in subsection (3) of Section 1 of this Act and shall operate in a manner consistent with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) A rape crisis center designated by the cabinet shall establish a board consisting of at least fifteen (15) members. At least one (1) member shall represent each county located in the area development district served by the center.

(2) Each rape crisis center shall:

(a) Act as the administering authority for the regional rape crisis center;

(b) Assess the availability and quality of services to victims of sexual assault within the district;

(c) Facilitate working relationships with other criminal justice, mental health, and other agencies that will improve the delivery of services to victims of sexual assault;

(d) Submit to the cabinet annually a plan and budget for services to be provided in the next fiscal year;

(e) Recruit and promote local financial support for the center from private and public sources; and

(f) Oversee and be responsible for the management of the rape crisis center in accordance with the plan and budget adopted by the board and administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

All client records, requests for services, and reports that directly or indirectly identify a client or former client of a rape crisis center are confidential and shall not be disclosed by any person except as provided by law. The cabinet shall have access to client records, requests for services, and reports relating to any rape crisis center for the limited purpose of monitoring the center, and the cabinet shall promulgate an administrative regulation in accordance with KRS Chapter 13A that will set forth the process by which access to these documents will be gained,

the nature of the monitoring that will take place, and the measures to be used to ensure confidentiality of the people identified in the records.

Section 5. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

(1) "Abortion facility" means any place in which an abortion is performed;

(2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;

(3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;

(4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars ($1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;

(5) "Cabinet" means the Cabinet for Health Services;

(6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:

(a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or

(b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;

(7) "Capital expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;

(8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;

(9) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;

(10) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;

(11) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;

(12) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;

(13) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;

(14) "Nonclinically-related expenditures" means expenditures for:

(a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or

(b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:

1. Parking facilities;

2. Telecommunications or telephone systems;

3. Management information systems;

4. Ventilation systems;

5. Heating or air conditioning, or both;

6. Energy conservation; or

7. Administrative offices;

(15) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;

(16) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;

(17) "Record" means, as applicable in a particular proceeding:

(a) The application and any information provided by the applicant at the request of the cabinet;

(b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;

(c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;

(d) Any staff reports or recommendations prepared by or for the cabinet;

(e) Any recommendation or decision of the cabinet;

(f) Any testimony or documentary evidence adduced at a hearing;

(g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and

(h) Any other items required by administrative regulations promulgated by the cabinet;

(18) "Secretary" means the secretary of the Cabinet for Health Services;

(19) ***"Sexual assault examination facility" means a licensed health facility, emergency medical facility, primary care center, or a children's advocacy center or rape crisis center that is regulated by the Cabinet for Health Services or the Cabinet for Families and Children, and that provides sexual assault examinations under Section 6 of this Act;***

(20) "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;

(21)[~~(20)~~] "Substantial change in a health service" means:

(a) The addition of a health service for which there are review criteria and standards in the state health plan;

(b) The addition of a health service subject to licensure under this chapter; or

(c) The reduction or termination of a health service which had previously been provided in the health facility;

(22)[~~(21)~~] "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;

(23)[~~(22)~~] "Substantial change in a project" means a change made to a pending or approved project which results in:

(a) A substantial change in a health service, except a reduction or termination of a health service;

(b) A substantial change in bed capacity, except for reductions;

(c) A change of location; or

(d) An increase in costs greater than the allowable amount as prescribed by regulation;

(24)[~~(23)~~] "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;

(25)[~~(24)~~] "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;

(26)[~~(25)~~] "To establish" means to construct, develop, or initiate a health facility;

(27)[~~(26)~~] "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and

(28)[~~(27)~~] "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 6. KRS 216B.400 is amended to read as follows:

(1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his inability to pay for services to be rendered by the hospital.

(2) Every hospital of this state which offers emergency services shall provide that a physician or a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, is available on call twenty-four (24) hours each day for the examinations of persons reported to any law enforcement agency to be victims of sexual offenses as defined by KRS 510.010 to 510.140***,***[~~ and~~] KRS 530.020***, 530.064, and 531.310***.

(3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in Section 5 of this Act. An examination under this section shall apply only to an examination of a victim.

(4) The physician or sexual assault nurse examiner, acting under a statewide medical protocol which shall be developed by the chief medical examiner, and promulgated by the secretary of justice pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported victim, or upon the request of the reported victim, examine such person for the purpose of gathering physical evidence. This examination shall include, but not be limited to:

(a) Basic emergency room treatment and evidence gathering services; and

(b) Laboratory cultures and tests, as appropriate, to test for venereal disease of the victim.

(5)[~~(3)~~] Each reported victim shall be informed of available services for treatment of venereal disease, pregnancy, and other medical and psychiatric problems. Pregnancy counseling will not include abortion counseling or referral information.

(6)[~~(4)~~] Each reported victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.

(7)[~~(5)~~] Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

(8)[~~(6)~~] The examinations ***provided in accordance with***[~~required under~~] this section shall be paid for by the Office of the Attorney General at a rate to be determined by the Attorney General by administrative regulation. The state shall reimburse the hospital ***or sexual assault examination facility,*** and the physician or sexual assault nurse examiner as provided in administrative regulations promulgated by the Office of the Attorney General pursuant to KRS Chapter 13A. No charge shall be made to the victim for these examinations, either by the hospital, ***the sexual assault examination facility,*** the physician, the sexual assault nurse examiner, the victim's insurance carrier, or the Commonwealth.

Section 7. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

(1) "Board" shall mean Kentucky Board of Nursing.

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.

(3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

(a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

(b) Planning, implementation, and evaluation based on nationally-accepted standards of nursing practice.

(5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.

(6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

(a) The care, counsel, and health teaching of the ill, injured, or infirm.

(b) The maintenance of health or prevention of illness of others.

(c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses. Components of medication administration include, but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency;

2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;

3. Intervening when emergency care is required as a result of drug therapy;

4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;

5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and

6. Instructing an individual regarding medications.

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses.

(7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, and nurse practitioner pursuant to KRS 314.042.

(8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally-established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include, but not be limited to, prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.

(9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.

(10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

(c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(d) Teaching, supervising, and delegating except as limited by the board.

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.

(12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

(13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.

(14) "Sexual assault nurse examiner" shall mean a registered nurse who has completed the required education and clinical experience and been credentialed by the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400***(4)***[~~(2)~~].

Approved March 20, 2000

CHAPTER 143

(SB 190)

AN ACT relating to a state arboretum garden.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

The University of Kentucky-Fayette County Arboretum shall be designated as the official state botanical garden of the Commonwealth of Kentucky.

Approved March 21, 2000

CHAPTER 144

(HB 237)

AN ACT relating to children's advocacy centers.

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

Section 1. KRS 431.600 is amended to read as follows:

(1) Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for Families and Children. Cabinet for Families and Children social workers shall be available to assist in all investigations under this section but shall be lead investigators only in those cases of reported or suspected sexual abuse of a child in which a person exercising custodial control or supervision, as defined in KRS 600.020, is the alleged or suspected perpetrator of the abuse. Additional team members may include Commonwealth's and county attorneys, ***children's advocacy center staff,*** mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A.

(2) Local protocols shall be developed in each county or group of contiguous counties by the agencies and persons specified in subsection (1) of this section specifying how the state protocols shall be followed within the county or group of contiguous counties. These protocols shall be approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

(3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.

(4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.

(5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.

(6) Commonwealth's attorneys and county attorneys and the Cabinet for Families and Children and other team members shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.

(7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future

protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the child victim.

(8) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with a child shall be conducted at a children's advocacy center.

Section 2. KRS 431.650 is amended to read as follows:

(1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.

(2) The commission shall be comprised of the following members:

(a) The commissioner of the Department for Social Services or a designee;

(b) The commissioner of the Department for Mental Health and Mental Retardation Services or a designee;

(c) One (1) family service worker who is employed by the Department for Social Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Families and Children;

(d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for ***Health Services***~~[Families and Children]~~;

(e) The commissioner of the Kentucky State Police or a designee;

(f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice Cabinet;

(g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;

(h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;

(i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;

(j) The commissioner of the Department of Education or a designee;

(k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education;~~[and]~~

(l) ***The executive director of the Governor's Office of Child Abuse and Domestic Violence Services or a designee;***

(m) One (1) representative of a children's advocacy center who shall be appointed by the Governor;

(n) One (1) physician appointed by the Governor; and

(o) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.

(3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

(4) The commission shall elect a chairperson annually from its membership.

Section 3. KRS 431.660 is amended to read as follows:

(1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse shall:

(a) Prepare and issue a model protocol for local multidisciplinary teams regarding investigation and prosecution of child sexual abuse ***and the role of children's advocacy centers on multidisciplinary teams***.

(b) Review and approve protocols prepared by local multidisciplinary teams.

(c) Advise local multidisciplinary teams on the investigation and prosecution of child sexual abuse.

(d) Receive data on child sexual abuse cases collected by the Prosecutors Advisory Council and issue annual reports.

(e) Collect data on the operation of local multidisciplinary teams.

(f) Seek funding to support special projects relating to the operation of local multidisciplinary teams.

(g) Receive and review complaints regarding local multidisciplinary teams, and make appropriate recommendations.

(h) Recommend to the Governor, Legislative Research Commission, and Supreme Court changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate effective intervention of child sexual abuse cases and the investigation and prosecution of perpetrators of child sexual abuse, and which may improve the opportunity for victims of child sexual abuse to receive treatment.

(2) The Kentucky Multidisciplinary Commission on Child Sexual Abuse may, within budget limitations, establish and maintain necessary offices, appoint employees, and prescribe the duties and compensation for the appointed employees.

Section 4. KRS 620.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, as used in this chapter, unless the context requires otherwise:

(1) "Case permanency plan" means a document identifying decisions made by the cabinet, for both the biological family and the child, concerning action which needs to be taken to assure that the child in foster care expeditiously obtains a permanent home;

(2) "Case progress report" means a written record of goals that have been achieved in the case of a child;

(3) "Case record" means a cabinet file of specific documents and a running record of activities pertaining to the child;

(4) ***"Children's advocacy center" means an agency that advocates on behalf of children alleged to have been abused; that assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and promoting the coordination of services for children alleged to have been abused; and that provides services that include, but are not limited to, forensic medical examinations, mental health and related support services, court advocacy, consultation, training, and staffing of multidisciplinary teams;***

(5) "Foster care" means the provision of temporary twenty-four (24) hour care for a child for a planned period of time when the child is:

(a) Removed from his parents or person exercising custodial control or supervision and subsequently placed in the custody of the cabinet; and

(b) Placed in a foster home or private child-caring facility or child-placing agency but remains under the supervision of the cabinet;

(6)[~~(5)~~] "Local citizen foster care review board" means a citizen board which provides periodic permanency reviews of children placed in the custody of the cabinet by a court order of temporary custody or commitment under this chapter;

(7)[~~(6)~~] "Multidisciplinary teams" means local teams operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse pursuant to KRS 431.600;

(8)[~~(7)~~] "Permanence" means a relationship between a child and an adult which is intended to last a lifetime, providing commitment and continuity in the child's relationships and a sense of belonging;

(9)[~~(8)~~] "Preventive services" means those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family;

(10)[~~(9)~~] "Reasonable efforts" means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home;

(11)[~~(10)~~] "Reunification services" means remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family; and

(12)[~~(11)~~] "State citizen foster care review board" means a board created by KRS 620.310.

SECTION 5. A NEW SECTION OF KRS CHAPTER 620 IS CREATED TO READ AS FOLLOWS:

(1) The secretaries of the Cabinet for Families and Children, the Cabinet for Health Services, and the Justice Cabinet are authorized to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers.

(2) To be eligible for grants from any state government entity, a children's advocacy center shall meet the statutory definition of a children's advocacy center as provided in this chapter and shall operate consistent with administrative regulations promulgated by the Cabinet for Families and Children in accordance with KRS Chapter 13A.

Section 6. KRS 620.040 is amended to read as follows:

(1) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall forthwith notify the cabinet or its designated representative, the local law

enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source. The cabinet shall investigate the matter immediately and within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action which has been taken on the matter. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.

(2) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall forthwith notify the cabinet or its designated representative. The cabinet shall investigate reports of alleged dependency not later than forty-eight (48) hours after receipt of the report but need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of such reports.

(3) If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative may participate in an investigation of noncustodial ***physical*** abuse ***or neglect*** at the request of the local law enforcement agency or the Kentucky State Police. ***The cabinet shall participate in all investigations of reported or suspected sexual abuse of a child.***

(4)[~~(3)~~] School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(5)[~~(4)~~] (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be issued by the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(6)[~~(5)~~] ***To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.***

(7) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include, but is not limited to, family service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, ***children's advocacy center staff,*** mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.

(c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

(d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

(e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.

(f) Multidisciplinary team members, and anyone invited by the multidisciplinary team to participate in a meeting, shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members, and others attending meetings, shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

(i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

Section 7. KRS 620.050 is amended to read as follows:

(1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.

(2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

(4) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:

(a) Persons suspected of causing dependency, neglect, or abuse;

(b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;

(c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

(d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;

(e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;

(f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600***. Members may include staff from a children's advocacy center***; or

(g) Those persons so authorized by court order.

(5) The identity of informants shall not be divulged to anyone without a court order after the court has reviewed in camera the record of the state related to the report or complaint and has found it has reason to believe that the informant knowingly made a false report, excepting law enforcement agencies having a legitimate interest in the case.

(6) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.

(7) When an adult who is the subject of information made confidential by subsection (4) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (4) of this section is presumed voluntarily waived and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.

(8) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of such reports. Such photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking such photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

Approved March 22, 2000

CHAPTER 145

(HB 50)

AN ACT relating to commercial insurance.

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

Section 1. KRS 304.11-020 is amended to read as follows:

(1) Other than KRS 304.11-050, the provisions of KRS 304.11-020 to 304.11-050, shall not apply to any insurance company or underwriter issuing contracts of insurance to industrial insureds, ***government entity insureds, and exempt commercial policyholders,*** nor to any contract of insurance issued to any one (1) or more industrial insureds.

(2) For the purpose of this section***:***~~[,]~~

(a) An "industrial insured" is:

1.~~[(a)]~~ An insured who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; and

2.~~[(b)]~~ An insured whose aggregate annual premiums for insurance on all risks total at least $25,000; and

3.~~[(c)]~~ An insured having at least twenty-five (25) full-time employees***; and***

4. All entities that have qualified as industrial insureds as of July 1, 1999.

(b) A "government entity insured" is an insured:

1. That is a government entity, municipal corporation, or public agency located in a city or county having a population of less than fifty thousand (50,000); and

2. That procures the insurance of any risk or risks, other than life and annuity contracts, by use of the services of a full-time employee acting as an insurance manager or buyer, or by the use of the services of a regularly and continuously retained qualified insurance consultant; and

3. Whose aggregate annual premiums for insurance on all risks total at least one hundred thousand dollars ($100,000), exclusive of life, health , medical, or annuity premiums; and

4. That has at least fifty (50) full-time employees; and

5. That satisfies the criteria the commissioner promulgates by administrative regulation.

(c) 1. An "exempt commercial policyholder" means an insured that employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, pursuant to Subtitle 9 of this chapter and:

a. Is a city, county, or urban-county with a population of at least fifty thousand (50,000) persons, or the Commonwealth, or a not-for-profit organization or a public entity with an annual budget of at least twenty-five million dollars ($25,000,000) or assets of at least twenty-five million dollars ($25,000,000) in the preceding fiscal year; or

b. Certifies that it meets all four (4) of the following criteria:

i. Possesses a net worth of more than twenty-five million dollars ($25,000,000) at the time the policy of insurance is issued;

ii. Generated net revenue or sales of more than fifty million dollars ($50,000,000) in the preceding fiscal year;

iii. Employs more than one hundred (100) employees per individual company or two hundred (200) employees per holding company aggregate at the time the policy of insurance is issued; and

iv. Paid annual aggregate insurance premiums of more than five hundred thousand dollars ($500,000) in the preceding fiscal year.

2. As used in this subsection, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager shall be:

a. A full-time employee of an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder; or

b. A person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.

(d) The requirements of this section shall not apply to a policy of insurance sold to an exempt commercial policyholder.

(e) Policies issued to an exempt commercial policyholder shall contain a disclaimer in language similar to the following: "The rate provided for in this policy is exempt from the filing and approval requirements of this section."

(f) The exemption of commercial policyholders under this section shall not apply to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this chapter that pertain to workers' compensation insurance, and KRS 304.12-230.

(3) Policies issued to industrial insureds, government entity insureds, and exempt commercial policyholders are exempt from the rate and policy form requirements of this chapter.

(4) All industrial insureds, government entity insureds, and exempt commercial policyholders shall reapply to the commissioner for their respective insured status every three (3) years, on a form the commissioner shall promulgate by administrative regulation.

(5)[~~(2)~~] KRS 304.11-020 to 304.11-050, inclusive, shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts directly from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions, nor to any policy or contract which it issues; but this exemption shall be conditioned upon any such company complying with the following requirements:

(a) Payment of an annual registration fee;

(b) Filing a copy of any policy or contract issued to Kentucky residents with the commissioner;

(c) Filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the commissioner; and

(d) Providing, in such form as may be acceptable for the appointment of the Secretary of State as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kentucky citizen and process so served against such company shall have the same force and validity as if served upon the company.

Section 2. KRS 304.11-050 is amended to read as follows:

(1) Effective with all premiums collected during the calendar year 1968, except premiums on lawfully procured surplus lines insurance, every unauthorized insurer shall pay to the secretary of revenue before March 1, next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed, a premium tax of two percent (2%) of gross premiums charged for such insurance on subjects resident, located, or to be performed

in this state. The insurance whether procured through negotiation or an application, in whole or in part occurring or made within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured or continued in this state. The term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of twenty-five percent (25%) and by the amount of an additional penalty computed at the rate of one percent (1%) per month or any part thereof from the date the payment was due to the date paid.

(2) If the policy covers risks or exposures only partly in the state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in the state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except those premiums as are properly allocated or apportioned and reported as taxable premiums to any other state or states.

(3) Proration of premium taxes due from ***those insureds specified in Section 1 of this Act***~~[an industrial insured]~~ under a contract procured from an unauthorized insurer having property in states other than Kentucky, shall be determined by administrative regulations promulgated by the secretary of revenue using the following criteria where applicable:

(a) Percentage of physical assets in Kentucky;

(b) Percentage of employee payroll in Kentucky;

(c) Percentage of sales in Kentucky; and

(d) Percentage of taxable income reportable in Kentucky.

(4) The secretary of revenue, or the Attorney General upon request of the secretary of revenue, shall proceed in the courts of this state or any other state or in any federal court or agency to recover tax not paid within the time prescribed in this section.

Section 3. KRS 304.3-230 is amended to read as follows:

(1) Upon issuance of a certificate of authority to do business in this state, the following shall be deemed to have appointed the Secretary of State as their attorney to receive service of lawful process issued against them in this state:

(a) Foreign or alien insurers;

(b) Domestic reciprocal insurers;

(c) Domestic Lloyd's insurers;

(d) Qualified self-insurers.

(2) Such appointment shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state or elsewhere a contract that would give rise to a cause of action in this state, made by the insurer, or liabilities or duties arising therefrom.

(3) Service of lawful process against unauthorized insurers, except in contracts issued by insurers or underwriters to ***those insureds specified***~~[industrial insureds as defined]~~ in KRS 304.11-020, shall be made upon the Secretary of State, as provided in KRS 304.11-040.

(4) Service of lawful process against authorized domestic insurers shall be had pursuant to KRS 271B.5-040.

(5) If the Secretary of State is by law the lawful attorney for service of process, the clerk of the court in which action is brought shall issue a summons against the defendant named in the complaint and shall serve by certified mail, return receipt requested, two (2) true copies of the summons with two (2) attested copies of plaintiff's complaint to the Secretary of State. The Secretary of State shall immediately mail a copy of the summons and complaint to the defendant; if an authorized insurer, to the person designated pursuant to subsection (7) of KRS 304.3-150, and if an unauthorized insurer to the last known principal place of business. The letter shall be posted by prepaid certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Kentucky Rules of Civil Procedure.

(6) The Secretary of State shall keep a record of the date and hour of receipt of such lawful process, as well as the date it is forwarded to the defendant.

(7) For the purpose of this section, "lawful process" shall include only the summons which initiates and commences a cause of action, and such other initial notices, rules, or orders which would be required by the Kentucky Rules of Civil Procedure to be by personal service.

(8) The sheriff serving the summons upon the Secretary of State shall pay to him at the time of service a fee in the amount set forth in KRS 454.210, which shall be taxed as costs in the action.

Approved March 23, 2000

CHAPTER 146

(HB 123)

AN ACT relating to the designation of the official rock of Kentucky.

WHEREAS, the colorful rock, Kentucky agate, bears the name of this great Commonwealth; and

WHEREAS, this beautiful Kentucky resource, characterized by delicate bands of blue, red, orange, black, yellow, or gray shades, is often displayed at local rock shows and used as an ornamental material and in semiprecious jewelry; and

WHEREAS, designation of a state rock will promote interest in geology, the hobby of mineral collecting, and the lapidary arts;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

Kentucky agate is named and designated as the official rock of Kentucky.

Approved March 23, 2000

CHAPTER 147

(HB 139)

AN ACT relating to veterans.

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

Section 1. KRS 36.300 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

(1) There is created the Department of Veterans' Affairs, which shall be attached to the Office of the Governor for administrative purposes. Notwithstanding KRS 12.028, the department's status as a separate organizational unit attached to the Office of the Governor shall not be changed except by action of the General Assembly. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The Office of the Commissioner is created within the department.

(2) The Department of Veterans' Affairs shall include the Advisory Board for Veterans' Affairs established by ***Section 2 of this Act***~~[KRS 36.310]~~.

(3) The Department of Veterans' Affairs shall be responsible for providing services to veterans in accordance with ***Section 3 of this Act***~~[KRS 36.330]~~ and ***Section 5 of this Act***~~[36.350]~~ to ***Section 8 of this Act***~~[36.370]~~.

Section 2. KRS 36.310 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

(1) There is created a board to be known as the Advisory Board for Veterans' Affairs which shall be attached to the Department of Veterans' Affairs. The board shall be composed of five (5) members appointed by the Governor. Two (2) of said members shall serve for a period of three (3) years, two (2) for a period of two (2) years and one (1) for a period of one (1) year and all shall serve until their successors are appointed, and with all appointments after the original appointments being for three (3) years. It is further provided that said appointments shall be veterans with service during time of war or hostilities wherein American troops were engaged in conflict with an armed enemy. Insofar as practicable, the Governor, in making appointments to the board, shall give due consideration to a fair representation on the board of nationally recognized veterans' organizations active in Kentucky, based on size of the membership of such organizations in this state. The state headquarters of each said major veterans' organization may, from time to time, submit a list of not more than three (3) names to the Governor from which list original appointments may be made and vacancies filled in his discretion.

(2) Members of the board shall meet at least once every two (2) months at the Department of Veterans' Affairs, and at such other times as the chairman may designate, and the members shall decide as to the specific meeting date.

(3) Members of the board shall be paid for the actual expenses incurred upon attendance of meetings of the board subject to the Finance and Administration Cabinet regulations.

(4) At its first meeting the members of the board shall select a chairman, vice chairman and secretary from among the members.

(5) The board shall advise the Governor and the commissioner of the Department of Veterans' Affairs on the administration of veterans' services programs.

(6) The board shall advise the General Assembly on matters relating to veterans' affairs.

Section 3. KRS 36.330 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

(1) The Department of Veterans' Affairs shall collect all necessary data and information regarding facilities and services available to veterans, their families, and dependents, and shall cooperate with all information or service agencies throughout the state in informing such persons regarding the existence or availability of all educational, training, and retraining facilities; health, medical, rehabilitation, and housing services and facilities; employment and reemployment services; provisions of federal, state, and local laws affording rights, privileges, and benefits to said persons, their families, and dependents, and all other matters of similar related or appropriate nature. It shall likewise be the duty of the department to assist veterans and their families and dependents in the presentation, proof, and establishment of all claims, privileges, rights, and other benefits which they may have under federal, state, or local laws, and to cooperate with all national, state, and local government and private agencies securing services or any benefits to veterans, their families, and dependents.

(2) The commissioner of the Department of Veterans' Affairs shall prepare and submit to the Governor and each member of the board an annual report with reference to claims presented on behalf of veterans and to otherwise report the activities and accomplishments of the department.

(3) The Department of Veterans' Affairs shall be authorized to apply for and accept gifts, grants, and other contributions from the federal government, or from any other governmental unit which funds shall be administered by the department through use of trust and agency accounts.

(4) Veterans as used in ***Section 2 of this Act***~~[KRS 36.310]~~ to ***Section 3 of this Act***~~[36.330]~~ include any individual who served on active duty during peace or war in the Armed Forces of the United States, and who has received an honorable discharge from such service.

(5) The Department of Veterans' Affairs shall maintain full, adequate, and complete copies of all records pertaining to claims of veterans who file said claims for benefits through the department.

(6) The commissioner of the Department of Veterans' Affairs may purchase liability insurance for the protection of employees of the Department of Veterans' Affairs to protect them from liability for acts, omissions, and claims arising in the course and scope of their employment or service to the department.

Section 4. KRS 36.340 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

(1) The Department of Veterans' Affairs shall establish and maintain state veterans' cemeteries in the Commonwealth for the purpose of providing for the interment of Kentucky veterans

of the United States Armed Forces and for their next of kin, as determined by the department.

(2) The Kentucky state veterans' cemeteries shall be under the administrative authority and control of the Department of Veterans' Affairs. The Department of Veterans' Affairs may promulgate administrative regulations necessary to operate the cemeteries in compliance with applicable state and federal statutes and regulations.

(3) The Department of Veterans' Affairs is authorized to seek federal and private funding for the construction, renovation, and operation of Kentucky state veterans' cemeteries.

Section 5. KRS 36.350 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

The General Assembly has determined the establishment of state veterans' nursing homes to be in the best interests of the veterans of the Commonwealth and necessary to the well-being of our elderly and disabled veterans. Therefore, it is the purpose of ***Section 6 of this Act***~~[KRS 36.355]~~ to authorize the establishment of state veterans' nursing homes, to promote their construction or renovation, and to assign administrative responsibility for their planning and operation.

Section 6. KRS 36.355 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

(1) There shall be established and maintained in the Commonwealth of Kentucky state veterans' nursing homes to provide long-term care to veterans who are residents of Kentucky.

(2) The Kentucky state veterans' nursing homes shall be attached to the Finance and Administration Cabinet. The Finance and Administration Cabinet may promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.

(3) The Department of Veterans' Affairs may seek federal and private funding for the construction or renovation, and operation of Kentucky state veterans' nursing homes.

Section 7. KRS 36.360 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

For the purpose of financing the costs of the construction or renovation of Kentucky state veterans' nursing homes and all proper costs necessary or incidental thereto, the Department of Veterans' Affairs is hereby authorized to apply to the State Property and Buildings Commission for the issuance of revenue bonds and to enter into any leases or other financing agreements in respect of the Kentucky state veterans' nursing homes necessary or desirable to provide revenues to amortize and secure the revenue bonds.

Section 8. KRS 36.370 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

(1) Revenue bonds issued under the provisions of ***Section 7 of this Act***~~[KRS 36.360]~~ and this section shall state that they are issued pursuant to ***Section 7 of this Act***~~[KRS 36.360]~~ and this section and to the provisions of KRS Chapters 56 and 58, as applicable. Revenue bonds issued under the provisions of ***Section 7 of this Act***~~[KRS 36.360]~~ and this section and the interest thereon shall be exempt from all taxation by the Commonwealth and its political subdivisions. Revenue bonds issued under the provisions of ***Section 7 of this Act***~~[KRS 36.360]~~ and this section shall have and are hereby declared to have all the incidents of negotiable instruments.

(2) The State Property and Buildings Commission, in each resolution authorizing the issuance of revenue bonds under the provisions of ***Section 7 of this Act***~~[KRS 36.360]~~ and this section, shall determine the following:

(a) The maturity date or dates of the revenue bonds;

(b) The manner in which interest shall be paid thereon;

(c) The terms of redemption applicable thereto; and

(d) Such other particulars of the revenue bonds not contrary to law or inconsistent with ***Section 7 of this Act***~~[KRS 36.360]~~ and this section.

(3) Notwithstanding the provisions of KRS Chapters 56 and 58, revenue bonds issued under the provisions of ***Section 7 of this Act***~~[KRS 36.360]~~ and this section may be sold by the State Property and Buildings Commission, and the interest rates to be borne by such bonds shall be determined, in such manner as the State Property and Buildings Commission shall decide, including, without limitation, sale by private negotiation.

(4) No consent of any department, division, commission, board, bureau, or agency of the Commonwealth other than the proceedings, conditions and other things which are specifically required by ***Section 7 of this Act***~~[KRS 36.360]~~ and this section and KRS Chapters 56 and 58, shall be required for the issuance of revenue bonds under the provisions of ***Section 7 of this Act***~~[KRS 36.360]~~ and this section.

Section 9. The following KRS section is repealed:

194.225 Transfer of veterans' affairs functions to Center for Veterans' Affairs.

Approved March 23, 2000

CHAPTER 148

(HB 105)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1247, dated September 15, 1998, which amends Executive Order 98-1050, dated August 6, 1998 relating to the Public Protection and Regulation Cabinet, Office of the Petroleum Storage Tank Environmental Assurance Fund, which: creates the Division of Legal Services to be headed by a General Counsel appointed by the Secretary and approved by the Governor pursuant to KRS 12.050 and KRS 12.210; creates the Division of Administrative Operations to be headed by a Division Director appointed by the Secretary pursuant to KRS 12.050; and, creates the Division of Technical Operations to be headed by a Division Director appointed by the Secretary pursuant to KRS 12.050.

Approved March 23, 2000

CHAPTER 149

(HB 158)

AN ACT relating to property taxes.

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

Section 1. KRS 132.810 is amended to read as follows:

(1) To qualify under the homestead exemption provision of the Constitution, each person claiming the exemption shall file an application with the property valuation administrator of the county in which the applicant resides, on forms prescribed by the Revenue Cabinet. The assessed value of property on which homestead exemption is claimed shall not be increased because of valuation expressed on the application form filed with the property valuation administrator, and whenever it becomes known that the valuation of property subject to the homestead tax exemption has been increased because of valuation expressed on the application form, adjustment shall be made the following year so that the total tax paid by the taxpayer is the same as if the increase had not been made.

(2) (a) Every person filing an application for exemption under the homestead exemption provision must be sixty-five (65) years of age or older during the year for which application is made or must have been classified as totally disabled under a program authorized or administered by an agency of the United States government or by ***any***~~[the Railroad]~~ retirement system ***either within or without the Commonwealth of Kentucky*** on January 1 of the year in which application is made.

(b) Every person filing an application for exemption under the homestead exemption provision must own and maintain the property for which the exemption is sought as his personal residence.

(c) Every person filing an application for exemption under the disability provision of the homestead exemption must have received disability payments pursuant to the disability and must maintain the disability classification ***for the entirety of the particular taxation period***~~[through December 31 of the year in which application is made]~~.

(d) Every person filing for the homestead exemption who is totally disabled and is less than sixty-five (65) years of age must apply for the homestead exemption on an annual basis.

(e) Only one (1) exemption per residential unit shall be allowed even though the resident may be sixty-five (65) years of age and also totally disabled, and regardless of the number of residents sixty-five (65) years of age or older occupying the unit, but the sixty-five hundred dollars ($6,500) exemption shall be construed to mean sixty-five hundred dollars ($6,500) in terms of the purchasing power of the dollar in 1972. Every two (2) years thereafter, if the cost of living index of the United States Department of Labor has changed as much as one percent (1%), the maximum exemption shall be adjusted accordingly.

(f) The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee

or a leasehold initially in excess of ninety-eight (98) years. The exemption shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property.

(g) A mobile home, recreational vehicle, when classified as real property as provided for in KRS 132.751, or a manufactured house shall qualify as a residential unit for purposes of the homestead exemption provision.

(h) When title to property which is exempted, either in whole or in part, under the homestead exemption is transferred, the owner, administrator, executor, trustee, guardian, conservator, curator, or agent shall report such transfer to the property valuation administrator.

(3) Notwithstanding any statutory provisions to the contrary, the provisions of this section shall apply to the assessment and taxation of property under the homestead exemption provision for state, county, city, or special district purposes.

(4) The provisions of this section shall become effective with the 1982 taxable year and persons eligible for a homestead exemption under this section, who have not previously filed under the age provision of the homestead exemption, shall file applications by December 31 of the taxation period.

(a) The homestead exemption for disabled persons shall terminate whenever those persons no longer meet the total disability classification~~[or]~~ at the end of the taxation period for which the homestead exemption has been granted. ***In no case shall the exemption be prorated for persons who maintained the total disability classification at the end of the taxation period.***

(b) Any totally disabled person granted the homestead exemption under the disability provision shall report any change in disability classification to the property valuation administrator in the county in which the homestead exemption is authorized.

(c) Any person making application and qualifying for the homestead exemption before payment of his property tax bills for the year in question shall be entitled to a full or partial exoneration, as the case may be, of the property tax due to reflect the taxable assessment after allowance for the homestead exemption.

(d) Any person making application and qualifying for the homestead exemption after property tax bills have been paid shall be entitled to a refund of the property taxes applicable to the value of the homestead exemption.

(5) In this section, "taxation period" means the period from January 1 through December 31 of the year in which application is made, unless the person maintaining the classification dies before December 31, in which case "taxation period" means the period from January 1 to the date of death.

Section 2. This Act shall apply for tax assessments made on or after January 1, 2001.

Approved March 23, 2000

CHAPTER 150

(HB 412)

AN ACT relating to sanitation districts.

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

Section 1. KRS 220.140 is amended to read as follows:

Within twenty (20) days after the commissioner certifies to the county clerk of each county in which the district is located that the district is incorporated, there shall be appointed a board of directors for the district, consisting of three (3) members, which shall control and manage the affairs of the district. If the district lies wholly within a single county, the county judge/executive of that county shall appoint all of the directors. If the district lies within two (2) counties, the county judge/executive of the county in which the greater portion of the population of the district resides may appoint two (2) directors and the county judge/executive of the other county shall appoint the third. If the district lies within more than two (2) counties, the county judges/executive of all the counties shall jointly select the directors, but each one so appointed must reside in a different county. Not less than two (2) of the directors shall be freeholders, and not more than two (2) of them shall belong to or be affiliated with the same political party. If the district is coextensive with the boundaries of two (2) or more counties, four (4) directors shall be appointed by the county judge/executive of the most populous county ***and***[~~,~~] two (2) shall be appointed by the county judge/executive of[~~ the next most populous county, and one (1) director shall be appointed by the county judge/executive of~~] each remaining county. All appointments by county judges/executive shall be subject to the approval of the respective fiscal courts. In a district which is coextensive with the boundaries of two (2) or more counties, not less than two-thirds (2/3) of the directors shall be freeholders. No director shall be in any way associated or connected with the ownership, operation or control of any privately owned public utility operating within the district. The terms of office of the first board of directors shall be two (2), three (3) and four (4) years, respectively, from the date of their appointment, the length of the term of office of each member to be determined by lot at their first meeting, but the individual holding such office shall do so at the pleasure of the county judge/executive by whom he is appointed, and he may be removed without cause, with the approval of the respective fiscal court, by the county judge/executive by whom he was appointed and his unexpired term filled by another appointee of such county judge/executive. After the expiration of the respective terms of office of the first board, each director shall be appointed for a term of four (4) years, subject to the will of the county judge/executive making the appointment. Vacancies resulting from any cause other than expiration of term shall be filled only for the unexpired term. The county judge/executive of the county whose director has completed his term of office or whose office has otherwise been vacated shall fill the vacant office, except that when the district lies within more than three (3) counties, if each county is not represented, vacancies resulting from expiration of term shall be filled in rotation by the county judges/executive of those counties not represented by a director at the time a vacancy occurs. The directors shall at all times be residents of the district, and the office of any director who moves his residence outside the district shall automatically be vacated.

Approved March 23, 2000

CHAPTER 151

(HB 545)

AN ACT relating to inheritance tax.

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

Section 1. KRS 140.160 is amended to read as follows:

(1) The Revenue Cabinet shall have full supervision of the collection of all taxes due under the provisions of this chapter, including the power to institute suit in this and other states. It may employ attorneys and other persons necessary to carry out the full intent and purpose of this chapter. The cabinet shall furnish, upon application, blank forms covering information as may be necessary to determine the amount of tax due the state on the transfer of all property subject to tax.

(2) The cabinet may cause personal representatives or beneficiaries to file all statements required by this chapter with the clerks of the proper courts and with the cabinet, and may require them to furnish any additional information deemed necessary to support the computation of the amount of tax that should be paid by the estate.~~[The personal representative shall in every case, when he files his inventory in the District Court, file a duplicate thereof with the cabinet.]~~ The personal representative***, or the beneficiaries in the absence of a personal representative,*** shall compute the taxes imposed by this chapter on the tax return provided by the cabinet ***when:***

(a) 1. A United States estate tax return is required to be filed under federal law and applicable regulations; and

2. The estate includes property over which Kentucky has jurisdiction for purposes of the taxes imposed by this chapter; or

(b) Any assets from the estate subject to the taxes imposed by this chapter pass to a beneficiary taxable under KRS 140.070.

The tax return***, when required,*** shall be filed with the cabinet within eighteen (18) months after the death of the decedent or at the time payment of the tax is made pursuant to KRS 140.210.

(3) Except as herein provided, no action to enforce the collection of the tax imposed by this chapter shall be commenced more than ten (10) years after the cause of action first accrued. In case the settlement of an estate is delayed because of litigation or other unavoidable cause, the delay shall suspend the limitation, prescribed by this subsection, until the cause of delay is removed. In the case of a fraudulent return or any other fraudulent representation affecting the amount of or the liability for the tax imposed by this chapter notwithstanding any provision of limitation provided elsewhere, the tax due by reason thereof may at any time be assessed and collected by the methods set out in this chapter, including action in a court of competent jurisdiction.

Section 2. KRS 140.190 is amended to read as follows:

(1) All taxes imposed by this chapter shall be computed and paid on the fair cash value of the property transferred at the rates provided. All personal representatives, trustees and

beneficiaries shall be personally liable for the taxes until they are paid, but only to the extent that ***property from the estate***~~[same]~~ come into their hands, and in no case shall the personal representative or trustee be liable for a greater sum than passes through his administration.

(2) The heir, devisee or other donee shall be personally liable for the tax on real property, as well as the personal representative or trustee, and if the personal representative or trustee pays the tax he may, unless the tax is made an expense of administration by the will or other instrument, recover the tax from the heir, devisee or other donee of the real property.

~~[(3) The taxes shall be and remain a lien upon the property transferred and upon all property acquired by the personal representative or trustee, until the taxes are paid or a bond given as provided in KRS 140.210. The lien may be enforced as other liens on similar property are enforced. The lien shall not affect any personal property after it has passed to a bona fide purchaser for value, but the owner of securities may not have them transferred to him by the issuing corporation until the permit required by this chapter has been filed. The lien upon any real property may be discharged by the payment of all taxes due and to become due.~~

~~(4) When a conveyance made by a decedent in his lifetime is subject to the tax, and the property thus conveyed is personal property without the state or is removed from the state before the tax is paid, the tax shall become a lien upon all property of the decedent; the personal representative shall collect the taxes due on account of the conveyance, and may be authorized to sell any property subject to the lien for the payment thereof, as in other cases.]~~

Section 3. KRS 132.420 is amended to read as follows:

~~[(1)]~~The property valuation administrator shall, subject to the direction, instruction and supervision of the Revenue Cabinet, make the assessment of all property in his county except as otherwise provided, prepare property assessment records, and have~~[such]~~ other powers and duties relating to assessment as may be prescribed by law or by the cabinet.

~~[(2) The cabinet may require the property valuation administrator to be present when safe deposit boxes or similar receptacles are opened under the provisions of KRS 140.250.]~~

Section 4. KRS 289.391 is amended to read as follows:

(1) When a savings account is opened in any association or federal savings and loan association, in the names of two (2) or more persons, whether minor or adult, in ***a***~~[such]~~ form that the moneys in the account are payable to either or the survivor or survivors, then ***the***~~[such]~~ account and all additions~~[thereto]~~ shall be the property of ***the***~~[such]~~ persons as joint tenants. The moneys in ***the***~~[such]~~ account may be paid to or on the order of any one (1) of ***the***~~[such]~~ persons during their lifetimes, or to or on the order of any one (1) of the survivors of them after the death of any one (1) or more of them. The opening of the account in ***this***~~[such]~~ form shall, in the absence of fraud or undue influence, be conclusive evidence in any action or proceeding to which either the association or the surviving party or parties is a party, of the intention of all of the parties to the account to vest title to ***the***~~[such]~~ account and the additions ***to the account in the***~~[hereto in such]~~ survivor or survivors. By written instructions given to the institution by all the parties to the account, the signatures of more than one (1) of ***the***~~[such]~~ persons during their lifetimes or of more than one (1) of the survivors after the death of any one (1) of them may be required on any check, receipt, or withdrawal order, in which case the institution shall pay the moneys in the amount only in accordance with ***the***~~[such]~~ instructions, but no~~[such]~~ instructions shall limit the right of the survivor or survivors to receive the moneys in the account.

(2) Payment of all or any of the moneys in ***the***~~[such]~~ account as provided in subsection (1) shall discharge the institution from liability with respect to the moneys~~[so]~~ paid, prior to receipt by the institution of a written notice from any one (1) of them directing the institution not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of ***the***~~[such]~~ notice an institution may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties.~~[Subject to the provisions of KRS 140.250, subsection (3),]~~ No liability shall attach to an institution paying any survivor in accordance with the terms of the account or the instructions. After receipt of ***a***~~[such]~~ notice an institution may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties.

Section 5. KRS 395.605 is amended to read as follows:

(1) Upon the sworn application of any fiduciary, that the fiduciary is the sole beneficiary of any estate, the court may dispense with the requirements of this chapter regarding settlement of fiduciaries'~~[,]~~ accounts and may dispense with the requirements of a surety for the fiduciary and shall accept from the fiduciary an informal settlement. The informal settlement shall be made, under oath, by the fiduciary and shall state that the estate was solvent; that all legal claims and debts have been paid, or if not paid, the manner in which ***the***~~[said]~~ claims and debts have been provided for; that ***the requirements of the***~~[all]~~ inheritance, estate or similar death ***statutes***~~[taxes]~~ have been ***met and the tax*** paid***, if due and payable***~~[and a duplicate or photocopy of such tax releases shall be attached, if available]~~; that all court costs have been paid; the name of the attorney(s), if any, representing the fiduciary, and the amount of the attorney's fee, and that the beneficiary has received his share. An informal settlement may be filed at any time after expiration of six (6) months from the fiduciary's appointment. Upon the filing of the informal settlement, the court may enter an order discharging the fiduciary, and his surety, if any. When a settlement is effected in the informal manner, no notice to any person shall be required nor shall the court be compelled to inquire into detailed items of income or disbursements.

(2) If a proposed settlement of a fiduciary is accompanied by a verified waiver executed by all of the beneficiaries of an estate, and none of the beneficiaries is under a disability, the court shall accept from the fiduciary an informal settlement which meets the requirements of subsection (1) of this section.~~[Provided, however,]~~ No verified waiver need be obtained from a nonresiduary legatee who has received and receipted for his legacy, the canceled check or signed receipt attached to the proposed settlement being sufficient evidence of satisfaction. The court may require the fiduciary to execute bond with or without surety to insure the application of the estate assets to the debts of the decedent.

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

Section 6. KRS 140.990 is amended to read as follows:

(1) Any person charged with a duty in this chapter who fails or refuses to perform that duty shall be fined not less than five dollars ($5) nor more than one hundred dollars ($100).

(2) Any person who violates subsection (3) of KRS 140.170 shall be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500), or imprisoned in the

county jail for sixty (60) days, or both, and in addition the court shall dismiss him from service as an appraiser.

(3) Any person who violates subsection (4) of KRS 140.170 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), or imprisoned in the county jail for not more than twelve (12) months, or both.

~~[(4) Any person who fails to comply with the provisions of KRS 140.250 shall be liable to a penalty of not more than twenty thousand dollars ($20,000), in addition to the liability imposed by subsection (5) of KRS 140.250.]~~

Section 7. The following KRS sections are repealed:

140.064 Exemption of $7,500 received by surviving spouse or surviving children from testator's estate.

140.151 Payment of taxes on farms or other closely held businesses.

140.152 Applicability of KRS 140.070, 140.080 and 140.151.

140.240 Advance payment of tax.

140.250 Regulation of property in safe deposit boxes or held in trust or bailment.

140.260 Payment of proceeds of insurance policy or annuity contract.

140.265 Payment of proceeds of profit sharing, stock bonus, thrift or pension plan.

Approved March 23, 2000

CHAPTER 152

(HB 562)

AN ACT repealing various safety provisions.

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

Section 1. The following KRS sections are repealed:

228.010 Construction of chapter.

228.020 Application to department to engage in business required.

228.030 Fee to engage in business.

228.040 Inspection before issuance of permit or use of structures and equipment.

228.050 Commissioner may refuse, suspend or revoke permit.

228.060 Renewal of permits.

228.070 Permits to be exhibited -- Not assignable.

228.080 Location, structure and use of buildings.

228.090 Heating.

228.100 Pipes to be protected.

228.110 Lighting and electrical equipment.

228.120 Doors and windows.

228.130 Cleaning floors.
228.140 Ventilation.
228.150 Structural requirements of drying rooms.
228.160 Fire extinguishing apparatus.
228.170 Heating and spark-emitting devices prohibited, where.
228.180 Sewer connections -- Floor construction.
228.190 Requirements for dry cleaning, washing, extracting and redistilling equipment.
228.200 Liquids returned to storage tanks at close of operation -- Tanks to be marked.
228.210 Volatile substances, how carried.
228.220 Storage tanks for volatile substances.
228.230 Instilling or redistilling to be in fireproof room.
228.240 Storage tanks to be buried underground.
228.250 Storage tank vent pipes.
228.260 Storage tank filling pipe.
228.270 Pipes to connect tanks at top -- Valve to be kept closed.
228.280 Chapter does not apply to structures in use in 1922 unless subsequently altered.
228.290 Business considered abandoned, when.
228.300 Enforcement of chapter.
228.990 Penalties.

Approved March 23, 2000

CHAPTER 153

(HB 565)

AN ACT relating to liquefied petroleum gas.

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

Section 1. KRS 234.120 is amended to read as follows:

(1) Subject to the exceptions provided in subsection (2), no person shall engage in any of the businesses set out in this subsection without first having provided proof to the commissioner of ability to respond in damages for personal injury and property damages in the amount prescribed, and having obtained from the commissioner the required license or licenses and paid the prescribed fee therefor:

(a) Selling or delivering to the ultimate consumer or user of liquefied petroleum gas; selling liquefied petroleum gas regulating equipment; repairing, installing, or connecting of containers, liquefied petroleum gas appliances, or liquefied petroleum gas utilization equipment; or filling of D.O.T. liquefied petroleum gas containers for

ultimate consumer or wholesale dealer. In-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain a liquefied petroleum gas storage facility with an eighteen thousand (18,000) gallon minimum capacity within the boundaries of Kentucky. Out-of-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain an eighteen thousand (18,000) gallon minimum capacity liquefied petroleum gas storage facility within fifty (50) miles of the Kentucky border. ***Until January 1, 2002,*** the fee for this license shall be one hundred dollars ($100). ***Beginning on January 1, 2002, the fee for this license shall be two hundred dollars ($200), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be one million dollars ($1,000,000).

(b) Selling or delivering liquefied petroleum gas in prefilled or filled-on-site containers of one hundred (100) pound liquefied petroleum gas capacity or less; selling of liquefied petroleum gas regulating equipment; assembly, repairing, installing, or connecting of liquefied petroleum gas containers, liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. ***Until January 1, 2002,*** the fee for this license shall be fifty dollars ($50). ***Beginning on January 1, 2002, the fee for this license shall be one hundred dollars ($100), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be five hundred thousand dollars ($500,000).

(c) Selling or filling of D.O.T. liquefied petroleum gas containers of forty-five (45) pounds or less capacity, or selling liquefied petroleum gas at a specific site for use as a motor vehicle fuel. ***Until January 1, 2002,*** the fee for this license shall be fifty dollars ($50). ***Beginning on January 1, 2002, the fee for this license shall be one hundred dollars ($100), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be five hundred thousand dollars ($500,000).

(d) Storing, for resale, liquefied petroleum gas in D.O.T. containers of forty-five (45) pounds or less capacity, or selling D.O.T. containers, storage cabinets, racks, docks, for storage of forty-five (45) pound capacity or less. ***Until January 1, 2001,*** the fee for this license shall be twenty-five dollars ($25). ***Beginning on January 1, 2001, the fee for this license shall be fifty dollars ($50), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be one hundred thousand dollars ($100,000).

(e) Assembling, repairing, installing, or connecting of liquefied petroleum gas containers, or regulating equipment, or liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. ***Until January 1, 2001,*** the fee for this license shall be twenty-five dollars ($25). ***Beginning on January 1, 2001, the fee for this license shall be fifty dollars ($50), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be five hundred thousand dollars ($500,000).

(2)[~~No person shall be required to obtain a license in order to engage in the following activities concerning liquefied petroleum gas:~~

~~(a) Storage, by the ultimate consumer, for consumption only;~~

~~(b) Transportation, by the ultimate consumer, in quantities of ten (10) gallons or less;~~

~~(c) Handling in quantities of less than one (1) gallon United States water capacity, where the gas is an integral part of a device for its utilization;~~

~~(d) Use as a fuel, while in the fuel tank of a motor vehicle.~~

~~(3)]~~ Any person engaged in any business for which a license is required under the provisions of subsection (1) and who engages in the business at more than one (1) office or place of business in this state shall obtain a separate license for each such office or place of business and shall pay therefor the required license fee; except that for the purposes of issuance of licenses under subsection (1) all facilities for the storage only of liquefied petroleum gas for resale within a radius of twenty (20) miles of an office or place of business shall be considered a part of the office or place of business and shall not require separate licensure.

(3)[~~(4)]~~ The commissioner shall further have the authority to promulgate and enforce reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of subsection (1), prior to the issuance of a license. The commissioner shall also have authority to suspend or revoke any license issued under this section for willful or gross negligence or for violation of any applicable administrative regulations promulgated under KRS 227.300, but any licensee whose license is suspended or revoked shall be afforded the opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B.

Section 2. KRS 234.130 is amended to read as follows:

(1) The licenses required under KRS 234.120 shall be issued on a ***two (2)*** calendar year basis and shall be procured from the commissioner prior to the time of beginning business. All licenses and renewals thereof shall expire on December 31 of ***the second***[~~each]~~ year.

(2)[~~ Any person applying for a license after July 1 of any year shall be required to pay therefor only one-half (1/2) of the applicable fee for that calendar year.~~

~~(3)]~~ Every person licensed under the provisions of KRS 234.100 to 234.160 who desires to continue in business shall, during January of ***the appropriate***[~~each]~~ year, procure from the commissioner a renewal license for which he shall pay a fee equal to the original license fee.[~~ Failure to procure a renewal license prior to January 31 of the year for which it is issued shall result in the imposition of a penalty equal to twenty percent (20%) of the renewal fee which shall be paid to the commissioner in addition to the renewal fee.]~~

Approved March 23, 2000

CHAPTER 154

(HB 584)

AN ACT relating to the transient room tax.

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

Section 1. KRS 91A.392 is amended to read as follows:

(1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.390 and the one percent (1%) transient room tax authorized by KRS 153.440, the fiscal court in a county containing a city of the first ***or second*** class***, except those counties that are included in a***

multicounty tourist and convention commission under KRS 91A.350, may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.

(2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS 91A.390(5) to finance in part the expansion ***or construction or operation of a governmental or nonprofit convention center or fine arts center useful to the promotion of tourism***~~[of a government-owned facility]~~ located in the central business district of the city of the first ***or second*** class located in the county.

(3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the fiscal court shall take action to repeal the ordinance which levied the tax.

Section 2. KRS 91A.390 is amended to read as follows:

(1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action, shall enact an ordinance for the collection and the enforcement of the tax measure enacted pursuant to this section.

(2) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business and shall include athletic stadiums. The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.

(3) An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and

administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under KRS 67A.845.

(4) ***Local governing bodies which have formed multicounty tourist and convention commissions as provided by KRS 91A.350(3) may impose an additional tax, not to exceed one percent (1%) of the room rents. This additional tax, if approved by each governing body, shall be collected and administered in the same manner as the regular tax, with the exception that this additional tax shall be used for the purpose of funding regional efforts relating to the promotion of tourist and convention business and convention centers. In no event shall any revenues collected as provided for under KRS 91A.350(3) be utilized for the construction, renovation, maintenance, or additions to any convention center that is located outside the boundaries of the Commonwealth of Kentucky.***

(5) The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.

(6)[~~(5)~~] The fiscal court or legislative body of a city establishing a commission pursuant to subsection (1) or (2) of KRS 91A.350 and, in its own name, a commission established pursuant to subsection (1) of KRS 91A.350 is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.

(7)[~~(6)~~] A commission established pursuant to subsection (3) of KRS 91A.350 is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

Approved March 23, 2000

CHAPTER 155

(HB 556)

AN ACT relating to property taxes.

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

Section 1. KRS 134.500 is amended to read as follows:

(1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the certificate of delinquency is issued. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed

for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.

(3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.

(4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

(5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter

into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

(8) The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.

Approved March 23, 2000

CHAPTER 156

(HB 610)

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.

7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   - (a) Department of State Police.
   - (b) Department of Criminal Justice Training.
   - (c) Department of Corrections.
   - (d) Department of Juvenile Justice.
   - (e) Office of the Secretary.
   - (f) Offices of the Deputy Secretaries.
   - (g) Office of General Counsel.
   - (h) Division of Kentucky State Medical Examiners Office.
   - (i) Parole Board.
   - (j) Kentucky State Corrections Commission.
   - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
   - (a) Department of Education.
     - (1) Kentucky Board of Education.
     - (2) Education Professional Standards Board.
   - (b) Department for Libraries and Archives.
   - (c) Kentucky Arts Council.
   - (d) Kentucky Educational Television.
   - (e) Kentucky Historical Society.
   - (f) Kentucky Teachers' Retirement System Board of Trustees.
   - (g) Kentucky Center for the Arts.
   - (h) Kentucky Craft Marketing Program.
   - (i) Kentucky Commission on the Deaf and Hard of Hearing.
   - (j) Governor's Scholars Program.
   - (k) Governor's School for the Arts.
   - (l) Operations and Development Office.
   - (m) Kentucky Heritage Council.
   - (n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g)[~~Governor's Council on Vocational Education.~~

~~(h)~~] The State Board for Proprietary Education.

(h)[~~(i)~~] The Foundation for Adult Education.

(i)[~~(j)~~] ***Office of Training and Reemployment***[~~The Kentucky Job Training Coordinating Council~~].

(j)[~~(k)~~] Office of General Counsel.

(k)[~~(l)~~] Office of Communication Services.

(l)[~~(m)~~] Office of Development and Industry Relations.

(m)[~~(n)~~] Office of Workforce Analysis and Research.

(n)[~~(o)~~] Office for Administrative Services.

(o)[~~(p)~~] Office for Policy and Budget.

(p)[~~(q)~~] Office of Personnel Services.

(q)[~~(r)~~] Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 2. KRS 151B.020 is amended to read as follows:

(1) The Cabinet for Workforce Development is hereby created, which shall constitute a cabinet of the state government within the meaning of KRS Chapter 12. The cabinet shall consist of a secretary and those administrative bodies and employees as provided by law.

(2) The cabinet, subject to the provisions of KRS Chapter 12, shall be composed of the major organizational units listed below, and other departments, divisions, and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet:

(a) The Department for Adult Education and Literacy, which is created by KRS 151B.023;

(b) The Department for Technical Education, which is created by KRS 151B.025;

(c) The Department of Vocational Rehabilitation, which is created by KRS 151B.185;

(d) The Department for the Blind, established by KRS 163.470;

(e) The Department for Employment Services, which is created by KRS 151B.280;

(f) The State Board for Adult and Technical Education, which is created by KRS 151B.095;

(g)[~~The Governor's Council on Vocational Education, established by KRS 163.086;~~

~~(h)~~] The State Board for Proprietary Education, established by KRS 165A.340;

(h)[~~(i)~~] The Foundation for Adult Education, established by KRS 151B.130;

[~~(j) The Kentucky Job Training Coordinating Council, established by KRS 151B.220;~~]

(i)[~~(k)~~] The Unemployment Insurance Commission established by KRS 341.110;

(j)[~~(l)~~] The Office of Training and Reemployment created in KRS 151B.260; and

(k)[~~(m)~~] The Office of School-to-Work, established by KRS 151B.250.

(3) The executive officer of the cabinet shall be the secretary of the Cabinet for Workforce Development. The secretary shall be appointed by the Governor pursuant to KRS 12.040 and shall serve at the pleasure of the Governor. The secretary shall have general supervision and direction over all activities and functions of the cabinet and its employees and shall be responsible for carrying out the programs and policies of the cabinet. The secretary shall be the chief executive officer of the cabinet and shall have authority to enter into contracts, subject to the approval of the secretary of the Finance and Administration Cabinet, when the contracts are deemed necessary to implement and carry out the programs of the cabinet. The Office of the Secretary of the Cabinet for Workforce Development shall consist of the Offices of General Counsel, Communication Services, Development and Industry Relations, Workforce Analysis and Research, the Office for Policy and Budget, the Office of Personnel Services, and the Office for Administrative Services. The Office for Administrative Services shall contain the Divisions of Fiscal Services, Computer Services, and Facilities Management. Each division shall be headed by a director appointed by the secretary of the Cabinet for Workforce Development pursuant to KRS 12.050.

(4) The secretary of the Cabinet for Workforce Development and his designated representatives, in the discharge of the duties of the secretary, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.

(5) The secretary of the Cabinet for Workforce Development may delegate any duties of his office to employees of the cabinet as he deems necessary and appropriate, unless otherwise prohibited by statute.

(6) The secretary of the Cabinet for Workforce Development shall promulgate, administer, and enforce administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate

with other state and federal agencies for the proper administration of the cabinet and its programs.

Section 3. KRS 151B.215 is amended to read as follows:

(1) The Kentucky Occupational Information Coordinating Committee (KOICC) is hereby created and shall be attached to the Office for Workforce Analysis and Research within the Office of the Secretary of the Cabinet for Workforce Development.

(2) The committee shall coordinate the development, gathering, aggregation, analysis, dissemination, and application of occupational, labor market, educational training, and career information for the purpose of planning and administering occupational, career, employment training, and economic development efforts and for its use in decision making by counselors, students, the unemployed, and others. The committee shall facilitate the integration of occupational, labor market, and educational training opportunities information into the program planning process. The committee shall use this information for the enhancement of economic development endeavors and the Kentucky Career Information System.

(3) The committee shall do all things necessary to comply with the Adult and Education Act, 20 U.S.C. secs. 1201 et seq.; the Carl D. Perkins Vocational Education Act, 29 U.S.C. secs. 2301 et seq.; the Job Training Partnership Act, 29 U.S.C. secs. 1501 et seq.; and other related public laws which mandate the establishment of state occupational information coordinating committees, state occupational information systems, and state career information systems, including the filing of required reports and annual plans.

(4) The objectives of the committee shall include, but shall not be limited to, the following:

(a) To coordinate and evaluate information which will be used to develop a comprehensive statewide policy relating to all job training, skills development, and related education programs funded or administered by any agency of the Commonwealth. This statewide policy shall be published and distributed by the committee;

(b) To promote communication, cooperation, and coordination between producers and users of data and information relating to education and training, employment, and economic development;

(c) To work toward providing one (1) commonly-accepted data and information base, based on standardized terminologies and estimating procedures, which can be utilized by all related organizations in meeting the program planning and counseling needs of users;

(d) To develop, implement, and operate an occupational information system for use by planners and administrators of educational training programs and economic development efforts;

(e) To develop, implement, and operate a Kentucky Career Information System for use by counselors, students, the unemployed, and others in the career decision making process;

(f) To provide information and training to user groups on new programs and resources which are available for utilization in the enhancement of common endeavors;

(g) To prepare, publish, and distribute, with or without charge as the committee may determine, technical studies, reports, bulletins, and other materials as it deems appropriate; and

(h) To collect, analyze, and disseminate to interested individuals, in cooperation with and through any agencies of federal, state, and municipal government, information concerning areas of present and projected employment needs, programs of skills training and education consistent therewith, special occupational licensure requirements, wage data by occupation, and any other relevant information.

(5) The Kentucky Occupational Information Coordinating Committee (KOICC) shall be composed of the following:

(a) The secretary of the Cabinet for Workforce Development, who shall serve as chairman;

(b) The commissioner of the Department for Employment Services, Cabinet for Workforce Development, who shall serve as vice chairman;

(c) The executive director of the Bluegrass State Skills Corporation;

(d) The ***commissioner of the Department for Technical Education***[~~executive director of the Governor's Council on Vocational Education~~];

(e) The commissioner of the Department of Vocational Rehabilitation;

(f) The commissioner of the Department for Adult Education and Literacy;

(g) The commissioner of the Department for the Blind;

(h) The two (2) chancellors of the Kentucky Community and Technical College System;

(i) A representative from the Kentucky Council on Postsecondary Education;

(j) A representative from the Kentucky Chamber of Commerce; and

(k) Five (5) additional representatives from the private sector representing employers, employees, and interested parties who shall be appointed by and serve at the pleasure of the Governor.

(6) Committee members shall receive no compensation, with the exception of those members serving by virtue of public office, but members shall be reimbursed for their expenses in attending meetings and other authorized activities as provided by regulation.

(7) The committee shall meet as often as necessary, but at least quarterly in the months of January, April, July, and October, to effectuate its purposes. Meetings shall be called by the chairman and notice of meetings shall be either in writing or other acceptable means of communications. For the purpose of conducting business, a majority of the committee shall constitute a quorum.

(8) The committee shall be attached to the Cabinet for Workforce Development.

(9) The committee may create subcommittees as needed to carry out the purposes of the full committee.

Section 4. KRS 165A.340 is amended to read as follows:

(1) There is hereby established a State Board for Proprietary Education which shall be attached to the Cabinet for Workforce Development and shall consist of ***eleven (11)***~~[twelve (12)]~~ voting members to be appointed by the Governor as follows:

(a) Three (3) members appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools;

(b) Two (2) members representative of technical schools appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools; ***and***

(c) Six (6) members representative of the public at large~~[; and~~

~~(d) One (1) ex officio member with voting powers, representative of the Governor's Council on Vocational Education]~~.

(2) Upon expiration of each of the respective terms of the members first appointed, the term of each successor shall be four (4) years or until his successor shall be appointed and qualified. At the time of the original appointments, the terms of board members will be staggered so that, as nearly as mathematically possible, they fall into three (3) classes. The first class will have two (2) year terms; the second class will have three (3) year terms; and the third class will have four (4) year terms.

(3) Members of the board shall annually elect one (1) of their number as chairman and the board may employ and fix the compensation of the director and employ and fix the compensation of all personnel required by it for the administration of the provisions of this chapter. The board may make all rules and regulations, including the establishment of fees and other charges consistent with the provisions of this chapter, as may be necessary to carry out the provisions and purposes of this chapter.

(4) The board shall hold meetings at least four (4) times a year and as frequently as it deems necessary at the times and places as the board may designate and the majority of the members shall constitute a quorum.

(5) The board may sue and be sued in its own name.

(6) The members of the board shall receive one hundred dollars ($100) per day for each meeting attended and may be paid their travel and other expenses while employed upon the business of the board.

(7) The board shall administer the provisions of law pertaining to the conduct, operation, maintenance, and establishment of proprietary education institutions, and the activities of agents thereof when acting as such.

(8) The board shall have the power to subpoena witnesses and school records as it deems necessary.

Section 5. The following KRS sections are repealed:

151B.220 Kentucky Job Training Coordinating Council.

163.086 Governor's Council on Vocational Education.

Approved March 23, 2000

CHAPTER 157

(HB 621)

AN ACT relating to financial institutions.

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

Section 1. KRS 288.440 is amended to read as follows:

(1) Each applicant at the time of making application shall pay two hundred fifty dollars ($250) to the commissioner as a fee for investigating the application for the initial location in Kentucky, or a fee of one hundred fifty dollars ($150) for additional locations, and the additional sum of ***four hundred dollars ($400)***~~[three hundred seventy-five dollars ($375)]~~ as an annual license fee for each location for the period terminating on the last day of the current calendar year. If the application is filed after June 30 in any year, the payment shall be ***two hundred dollars ($200)***~~[one hundred eighty-seven dollars ($187)]~~ as a license fee in addition to the fee for investigation.

(2) If any person regulated by the department desires to purchase an existing licensed location or locations, the person shall submit an application to the commissioner containing the information as the commissioner may prescribe. The fee for this application shall be one hundred dollars ($100) per location not to exceed one thousand dollars ($1,000).

Section 2. KRS 288.450 is amended to read as follows:

(1) The commissioner shall, after investigation, issue to the applicant a license to make loans in accordance with this chapter, if the commissioner:

(a) Approves the form of the application;

(b) Finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation,~~[are such as to]~~ command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this chapter; and

(c) Finds that the applicant has complied with KRS 288.440.

(2) If the commissioner does not so find, he ***or she*** shall not issue a license and shall notify the applicant of the denial and return the sum paid by the applicant as a license fee, retaining the ***two hundred*** fifty dollars ***($250)***~~[($50)]~~ investigation fee to cover the cost of investigating the application.

(3) The commissioner shall approve or deny every application for license within sixty (60) days from the filing thereof with the fees unless the time is extended by a written agreement between the applicant and the commissioner. If the commissioner denies a license, the applicant may appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(4) The official record of the hearing shall be filed in the office of the commissioner as public records, open to public inspection.

Section 3. KRS 288.460 is amended to read as follows:

(1) Every license shall state the address of the office at which the business is to be conducted, the name of the licensee, and if the licensee is a partnership or association, ***and*** the names of the members thereof~~[, and if a corporation, the date and place of its incorporation]~~.

(2) The license shall be kept displayed in the office of the licensee and shall not be transferable or assignable. Not more than one ***(1)*** place of business shall be maintained under the same license but the commissioner may issue more than one ***(1)*** license to the same licensee upon compliance with all the provisions of this chapter for each license; provided, however, nothing herein shall be deemed to require a license for any place of business devoted to accounting, record-keeping or administrative purposes.

(3) Whenever a licensee desires to change his ***or her*** place of business to another location within the same county ***the***~~[such]~~ licensee shall give written notice to the commissioner, who, if he ***or she*** finds that the interests of the community will be served thereby, shall indorse on the license a transfer to the new place of business, with the date of transfer, which indorsement shall be authority for the operation of ***the***~~[such]~~ business at the new location. No change in the place of business of a licensee to a location outside of the original county shall be permitted under the same license.

Section 4. KRS 288.533 is amended to read as follows:

Notwithstanding the provisions of KRS 288.530(10) or of any other law, in any extension of credit ***in accordance with***~~[pursuant to]~~ KRS Chapter 288, the licensee may charge and collect the following:

(1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest; and

(2) A bad check charge of fifteen dollars ($15), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower; and

(3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee;~~[and]~~

(4) A charge for credit investigations of one dollar ($1) for each fifty dollars ($50) or fraction thereof of the principal amount of the loan. This charge shall be permitted only on the first two thousand dollars ($2,000) of the principal amount of the loan. No charge shall be collected unless a loan has been made as a result of the investigation***; and***

(5) An alternative to the default charge described in KRS 288.530(4), not to exceed five percent (5%) of each scheduled installment, or ten dollars ($10), whichever is greater. Only one (1) charge may be collected for each scheduled installment.

Section 5. KRS 288.590 is amended to read as follows:

Each licensee shall annually on or before ***January 30***~~[April 15]~~, file with the commissioner a report for the preceding calendar year. ***The***~~[Such]~~ report shall give information with respect to the financial condition of ***the***~~[such]~~ licensee; balance sheets at the beginning and end of the accounting period; a statement of income and expenses for said period; a reconciliation of surplus

or net earnings with the balance sheets; a schedule of assets used and useful in the consumer loan business; an analysis of charges, and types of security on loans of fifteen thousand dollars ($15,000) or less; an analysis of delinquent accounts; analysis of suits, repossessions and sales of chattels and~~[such]~~ other relevant information as the commissioner may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted in the state. In the event any person or affiliated group of corporations ***holds***~~[hold]~~ more than one (1) license in the state, he***, she,*** or they may file a composite annual report in lieu of separate reports for each licensed office. ***The***~~[Such]~~ report shall be made under oath in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of ***the***~~[such]~~ reports.

Section 6. KRS 288.991 is amended to read as follows:

(1) Any person who shall engage in the business regulated by this chapter without first securing a license therefor shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars ($500) nor more than ***five***~~[one]~~ thousand dollars ***($5,000)***~~[($1,000)]~~. Any~~[such]~~ loan contract made in violation of this chapter shall be void and the lender shall have no right to collect any principal, charges or recompense whatsoever.

(2) Any ***person***~~[licensee]~~ who ***willfully violates any rule or order of the commissioner authorized under this chapter, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.***~~[, after a cease and desist order shall have been issued by the commissioner, shall violate any provision of this chapter shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) in addition to the penalty prescribed in KRS 288.530, if applicable, provided, however,]~~ This section shall not be deemed to limit the power of the commissioner to revoke any license as provided in KRS 288.490.

Section 7. KRS 290.055 is amended to read as follows:

(1) A credit union may change its principal place of business within this state upon written authorization by the commissioner. If the commissioner has not notified a credit union of his ***or her*** action on an application to change the place of business within fifteen (15) calendar days of the date the application was received by the commissioner, the credit union may proceed with the change in its place of business.

(2) A credit union may maintain service facilities, including automated ***teller machines***~~[terminals]~~, at locations other than its principal office upon written authorization by the commissioner ***or as permitted by administrative regulation***. The maintenance of ***these***~~[such]~~ facilities must be reasonably necessary to furnish service to its members.

(3) A credit union may join with one (1) or more credit unions in the operation of a service facility to meet member needs, including an automated ***teller machine***~~[terminal]~~, upon written authorization by the commissioner ***or as permitted by administrative regulation***.

Section 8. KRS 290.525 is amended to read as follows:

(1) A credit union may make loans to its officers, directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that:

(a) The loan complies with all lawful requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) Any loan or aggregate of loans to any~~[such]~~ official which exceeds ***twenty-five***~~[ten]~~ thousand dollars ***($25,000)***~~[($10,000)]~~ plus pledged shares ***shall***~~[must]~~ be approved by the board of directors.

(2) A credit union may permit officers, directors, employees, loan officers, credit manager, and members of its supervisory and credit committees to act as comakers, guarantors or endorsers of loans to other members, except that when any such loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor or endorser exceeds ten thousand dollars ($10,000), approval of the board of directors is required.

Section 9. KRS 290.585 is amended to read as follows:

Funds not used in loans to members may be invested:

(1) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency thereof or in any trust or trusts established for investing directly or collectively in the same;

(2) In obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress, or any political subdivision thereof;

(3) In certificates of deposit or passbook-type accounts issued by a state or national bank, mutual savings bank, or savings and loan association;

(4) (a) In loans, not to exceed twenty-five percent (25%) of capital at the lending credit union, to; or

(b) In shares or deposits, not to exceed ***twenty***~~[ten]~~ percent ***(20%)***~~[(10%)]~~ of the capital of the investing credit union, of other credit unions, central credit unions, corporate credit unions, or a central liquidity facility established under state or federal law;

(5) In shares, stocks, loans or other obligations of any organization, corporation, or association, provided the membership or ownership, as the case may be, of ***the***~~[such]~~ organization, corporation, or association is primarily confined or restricted to credit unions, or organizations of credit unions, and provided further the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations;

(6) In shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding ten percent (10%) of the shares, deposits, and surplus of the credit union;

(7) In stocks and bonds of corporations organized in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the several territories organized by Congress to an aggregate maximum of five percent (5%) of members' shares in stocks and an aggregate maximum of five percent (5%) of members' shares in bonds, provided that~~[such]~~ investments shall be limited to stocks or bonds which appear on a list approved by the commissioner and published quarterly or annually, ***the***~~[such]~~ list to include not less than thirty (30) corporations.

Section 10. KRS 291.460 is amended to read as follows:

An industrial loan company organized under KRS 291.420 to 291.600 may:

(1) Lend money and receive interest therefor at a rate of seven dollars ($7) per one hundred dollars ($100) per annum of the principal amount of the loan not exceeding seven thousand five hundred dollars ($7,500) and require and receive uniform weekly or monthly installment payments. The amount of interest computed as provided in KRS 291.420 to 291.600 may be charged or received in advance or may be added to the principal amount of the loan. ***The***~~[Such]~~ loans shall be repayable in substantially equal installments over a period not exceeding five (5) years and thirty-two (32) days, and the principal amount of the loan, (excluding charges) shall not exceed seven thousand five hundred dollars ($7,500).

(2) Sell or negotiate bonds, notes and certificates of investment for the payment of money at any time, either fixed or uncertain, and receive payments therefor in installments or otherwise; provided, that nothing herein contained shall be construed to create any liability on demand. No certificate holder making loans under KRS 291.420 to 291.600 shall directly or indirectly advertise for or accept deposits, demand or otherwise, except an industrial loan company organized under KRS 291.420 to 291.600 may advertise the sale of certificates of investment as authorized under KRS 291.420 to 291.600. Certificates of investment and any advertisement for the sale of certificates of investment shall clearly state in bold type on the certificate or in the advertisement that: "THIS CERTIFICATE OF INVESTMENT IS NOT INSURED BY ANY STATE OR FEDERAL GOVERNMENT AGENCY."

(3) Charge for a loan made ***in accordance with***~~[pursuant to]~~ this section one dollar ($1) for each fifty dollars ($50) or fraction thereof loaned for expenses, including any examination or investigation of the character and circumstances of the borrower, comaker or surety, and the drawing and taking acknowledgment of necessary papers or other expenses incurred in making the loan. ***This***~~[Such]~~ charge shall be permitted only on the first two thousand dollars ($2,000) loaned. No charge shall be collected unless a loan has been made as a result of ***an***~~[such]~~ examination or investigation.

(4) An industrial loan company organized under KRS 291.420 to 291.600 in addition to its powers heretofore granted shall be authorized to charge interest on loans or extensions of credit in the same manner and at the same rate as is permitted by KRS 287.215 for banks or trust companies or combined banks and trust companies, and provided further that the principal amount of ***the***~~[such]~~ loan or extension of credit exclusive of interest or other charges shall not exceed ten thousand dollars ($10,000).

(5) In addition to the powers granted in this section, an industrial loan company organized under this chapter may offer revolving credit plans in ***a***~~[such]~~ manner and amount and at the same rate as permitted by KRS 287.710 to 287.770 for banks and trust companies or combined banks and trust companies. ***This revolving credit plan may be accessed by a credit card, check, or other device as the plan provides.*** All revolving credit plans offered by industrial loan companies under this section shall be secured by either a first or second mortgage on residential property.

In connection with the revolving credit plans, an industrial loan company may charge and collect from a borrower:

(a) A bad check charge of fifteen dollars ($15) for the return or dishonor of a check or other instrument tendered as payment; and

(b) An over-the-limit fee of twenty dollars ($20) whenever a borrower exceeds the credit limit established under the plan.

Section 11. KRS 291.530 is amended to read as follows:

(1) Every corporation organized under the provisions of KRS 291.410 to 291.600 shall report to and be subject to examination, supervision and control by the Department of Financial Institutions.

(2) KRS 291.410 to 291.600 shall be enforced by the commissioner, who may, after notice to holders of certificates and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct of the business authorized under KRS 291.410 to 291.600.

(3) On or before January 30 of each year, every industrial loan company shall file with the commissioner a report for the preceding calendar year. The report shall give information with respect to the financial condition of the industrial loan company, and other relevant information as the commissioner may reasonably require.

Section 12. KRS 292.310 is amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, except as otherwise provided in this chapter.

(a) "Agent" does not include an individual who represents:

1. An issuer in:

a. Effecting a transaction in a security exempted by subsections (1), (2), (3), (10), or (11) of KRS 292.400, or subsections (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);

b. Effecting transactions exempted by KRS 292.410 unless otherwise required;

c. Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;

d. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

e. Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon

the amount of purchases or sales of the issuer's own securities effected for the issuer; or

2. A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.

(b) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection;

(2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) An agent, issuer, bank, savings institution, or trust company;

(b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or

(c) A person who has no place of business in this state:

1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

2. If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;

(3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;

(4) "Commissioner" means the commissioner of the Department of Financial Institutions or any individual employee of the Department of Financial Institutions expressly designated by order of the commissioner to act in the commissioner's place;

(5) "Covered advisor" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;

(6) "Covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;

(7) "Department" means the Department of Financial Institutions of the Commonwealth of Kentucky;

(8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;

(9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(10) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who,

for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) A bank, savings institution, or trust company;

(b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;

(d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);

(f) A person who has no place of business in this state if:

1. His only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

2. During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;

(g) An investment adviser representative or a person excluded from the definition of investment adviser representative;

(h) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisors Act of 1940;

(i) A covered adviser; or

(j) Such other persons not within the intent of this subsection as the commissioner may by rule or order designate;

(11) "Investment adviser representative" means:

(a) With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

1. Makes any recommendations or otherwise renders advice regarding securities;

2. Manages accounts or portfolios of clients;

3. Determines which recommendation or advice regarding securities should be given;

4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or

5. Supervises employees who perform any of the functions described in this paragraph; and

(b) With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 ***promulgated in accordance to the Investment Advisors Act of 1940***[~~of the Securities Exchange Act of 1934~~].

(12) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;

(13) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

(14) "Person" means an individual, a limited liability company, a corporation, a partnership, a registered limited liability partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(15) "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;

(16) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(17) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;

(18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe

to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;

(19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico; and

(20) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

Section 13. KRS 292.320 is amended to read as follows:

(1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud the other person; or

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after

admission, will be only a minority of the members and will have only a minority interest in the business.

(5) Subsection (3) (a) of this section shall not apply to a contract with any person or class of persons that the commissioner by rule or regulation or by order upon application determines does not need the protections of subsection (3)(a) of this section. The commissioner may grant a conditional or unconditional exemption based on factors which include the person's or persons' financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, or other factors as the commissioner determines are consistent with this section.

Section 14. KRS 292.330 is amended to read as follows:

(1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless he is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) He is so registered under this chapter; or

(b) He is registered as a broker-dealer under this chapter.

(2) It is unlawful for any covered adviser to transact business in this state unless:

(a) The person has made a notice filing with the commissioner consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the commissioner by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;

(b) The person is registered as a broker-dealer under this chapter;

(c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or

(d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j).

It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the commissioner unless the investment adviser representative is registered under this chapter.

(3) A broker-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the commissioner or the commissioner's designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (11).

(a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose registration as an agent is denied, suspended, or revoked under subsection (13))

without the filing of applications for registration as agents or the payment of fees for registration as agents.

(b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.

(c) The registration application shall contain whatever information the commissioner requires concerning such matters as:

1. The applicant's form and place of organization;

2. The applicant's proposed method of doing business;

3. The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;

4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

5. The applicant's financial condition and history.

(4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:

(a) The commissioner may specify an earlier effective date and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.

(b) The commissioner may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.

(c) The thirtieth day effective day is tolled if, before 5 p.m. EST of the thirtieth day, the commissioner notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.

(5) The commissioner may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.

(6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.

(7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to $25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds $100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.

(8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the commissioner may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding $250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.

(9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the commissioner by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The commissioner may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.

(a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the commissioner or the commissioner's designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the commissioner or the commissioner's designee.

(b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the commissioner or the commissioner's designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the commissioner or the commissioner's designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the commissioner or the commissioner's designee.

(10) Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the commissioner or the commissioner's

designee prior to the expiration thereof an application containing the information the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative filed with the commissioner or the commissioner's designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A notice filing by a covered adviser may be renewed by filing with the commissioner or the commissioner's designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the commissioner may require by rule or order. A registered broker-dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.

(11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars ($120) for a broker-dealer, one hundred dollars ($100) for an investment adviser, fifty dollars ($50) for an agent, fifty dollars ($50) for an investment adviser representative, and fifty dollars ($50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.

(b) The fee for notice filings shall be ***one***~~[two]~~ hundred dollars ***($100)***~~[($200)]~~ for a covered adviser.

(12) (a) Every registered broker-dealer***, firm employing issuer agents,*** and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule prescribes. All records required shall be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the commissioner, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker-dealer is registered with the United States Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker-dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.

(b) Every registered broker-dealer and investment adviser shall file such reports as the commissioner by rule prescribes. If a broker-dealer is registered with the United States Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.

(c) If the information contained in any document filed with the commissioner or the commissioner's designee is or becomes inaccurate or incomplete in any material respect, the broker-dealer or investment adviser, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only

copies of those documents required to be filed with the Securities and Exchange Commission.

(d) The commissioner may make periodic examinations, within or without this state, of each broker-dealer***, firm employing issuer agents,*** and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker-dealer***, firm employing issuer agents,*** or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer***, firm employing issuer agents,*** or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the commissioner by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

(e) The commissioner may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.

(f) The commissioner may prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.

(g) The commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the commissioner be provided power to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The commissioner may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The commissioner may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.

(13) (a) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, agent, investment adviser, or investment adviser representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

1. Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying

effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

2. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;

3. Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;

4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

5. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;

6. Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:

   a. An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;

   b. An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;

   c. A United States Postal Service fraud order;

   d. A cease and desist or other administrative order entered after notice and opportunity for hearing by the commissioner, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or

   e. An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;

7. Has engaged in dishonest or unethical practices in the securities business;

8. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

9. Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the

commissioner may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:

a. Has failed reasonably to supervise his agents if he is a broker-dealer or his employees or investment adviser representatives if he is an investment adviser; or

b. Has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

10. Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days; or

(b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:

1. The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;

2. The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;

3. The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

4. The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

5. The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;

6. The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.

(c) The commissioner may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the commissioner that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the commissioner; the withdrawal or termination is effective upon receipt by the commissioner of the notice.

(f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or

registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.

(14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the commissioner expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The commissioner may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the commissioner deems necessary and appropriate in the public interest or for the protection of investors and the commissioner may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration.

Section 15. 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, he may in his discretion bring any or all of the following remedies:

(1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, 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 16. KRS 291.990 is amended to read as follows:

~~[(1) Any person who violates subsection (3) of KRS 291.020 shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).~~

~~(2)]~~Any corporation or person which willfully violates any provision of KRS 291.410 to 291.600 is guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

Section 17. KRS 287.720 is amended to read as follows:

(1) A revolving credit plan, and all extensions of credit thereunder, may take such form and contain such provisions, not inconsistent with KRS 287.710 to 287.770 or otherwise prohibited by law, as the bank may from time to time establish and the debtor may accept, and each extension of credit made by the bank pursuant to such plan, evidenced in any manner provided in such plan, shall be evidence of a loan, which may be prepaid by the debtor under agreed conditions in whole or in part at any time, made by the bank to the debtor in the amount advanced by the bank.

(2) Before opening any account under a revolving credit plan, the bank shall deliver or mail to the debtor a statement of the provisions of the plan containing, to the extent applicable, such information as may be required to be disclosed pursuant to~~[KRS 360.210 to 360.265 and]~~ Title I of the Federal Consumer Credit Protection Act of 1968 (Public Law 90-321) and any amendments, additions or replacements thereto in effect after June 16, 1972, and containing a statement that the debtor may pay the unpaid balance of his account in whole or in part at any time. If two or more persons, all of whom have the same residence are authorized to obtain extensions of credit under the plan, the statement of provisions of the plan shall be delivered or mailed to one (1) of such persons as may be designated in the plan, and the billing statements required by KRS 287.730 shall be rendered to such person.

(3) A statement of the provisions of a revolving credit plan in effect prior to June 16, 1972, delivered or mailed to a debtor prior to such effective date shall constitute, and be deemed to be, compliance with the provisions of subsection (2) of this section, if such revolving credit plan complies with the provisions of KRS 287.710 to 287.770 and such statement disclosed the information required by said subsection (2).

Section 18. KRS 287.730 is amended to read as follows:

(1) For each billing cycle at the end of which there is an outstanding balance in the debtor's account or with respect to which a charge permitted by KRS 287.710 to 287.770 is imposed, the bank shall render a statement to the debtor containing, to the extent applicable, such information as may be required to be included therein pursuant to~~[KRS 360.210 to 360.265 and]~~ Title I of the Federal Consumer Credit Protection Act of 1968 (Public Law 90-321) and any amendments, additions or replacements thereto in effect after June 16, 1972, and a legend to the effect that the debtor may at any time pay the aggregate balance owing by him or any part thereof.

(2) In the event of an extension of credit by a bank hereunder that is affected by the use of a credit card for the purchase of goods or services and that results in payment by the bank directly to a third party, the finance charge as authorized by KRS 287.740 shall not be imposed upon the debtor on such extension if payment in full of the entire outstanding unpaid balances owing on the debtor's account is received at the place designated by the bank by the date of the statement for the next billing cycle.

Section 19. The following KRS sections are repealed:

291.010 Definitions for KRS 291.020 to 291.110.
291.012 Administrative hearing request.
291.020 Deposit, statement and license required.
291.030 Issuance of license -- Renewal -- Fee.
291.040 Annual statement of business.
291.050 Reserve fund.
291.060 Use of interest on securities deposited -- Exchange of.
291.070 Amount of loans -- Security.
291.080 Investment of capital and reserve.
291.090 Examination -- Effect of deficient assets.
291.100 Requirements for foreign companies -- License.
291.110 Deposits of foreign companies -- Retaliatory laws.
291.115 Liability of stockholders.
360.210 Policy and purpose of law.
360.212 Compliance with KRS 360.210 to 360.265 by compliance with federal law.
360.215 Definitions.
360.220 Closed-end transactions, information required.
360.225 Revolving credit transactions, information required.
360.230 Other credit transactions, information required.
360.235 Information as to finance charges, how given.
360.240 Applicability of law -- Transactions excluded.
360.245 Lending institutions regulated by other laws subject to disclosure provisions.
360.250 Rules and regulations, scope.
360.255 False advertising or representations as to credit transactions prohibited.
360.260 Regulations governing information as to how credit charges determined, powers of commissioner.
360.265 Willful failure to give information bars collection of financing charge.
360.991 Penalties.

Approved March 23, 2000

CHAPTER 158

(HB 656)

AN ACT relating to the levy of a transient room tax by urban-county governments.

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

Section 1. KRS 153.450 is amended to read as follows:

(1) In addition to the four percent (4%) transient room tax authorized by KRS 91A.390 an urban-county government may levy an additional transient room tax not to exceed ***two percent (2%)***~~[one percent (1%)]~~ of the rent for every occupancy of a suite, room***,*** or rooms, charged by all persons, companies, corporations or other like or similar persons, groups***,*** or organizations doing business as motor courts, motels, hotels, inns***,*** or like or similar accommodations' businesses.

(2) All additional moneys collected from the tax authorized by subsection (1) of this section shall be applied toward the retirement of bonds used to finance ***a nonprofit corporation which is created for the funding, construction, and management of a convention center in an urban-county, and to defray the operating costs of the nonprofit corporation***~~[the Lexington Center Corporation]~~.

~~[(3) After the retirement of the bonds provided for in subsection (1) of this section the additional transient room tax levied by that subsection shall be null and void.]~~

Approved March 23, 2000

CHAPTER 159

(HB 604)

AN ACT changing the classification of the City of Jeffersontown, in Jefferson County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Jeffersontown, in Jefferson County, is such as to justify its being classified as a city of the second class;

NOW, THEREFORE,

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

Section 1. The City of Jeffersontown, in Jefferson County, is transferred from the fourth to the second class of cities.

Approved March 27, 2000

CHAPTER 160

(HB 10)

AN ACT relating to the usage of tobacco by minors.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

(1) No person under the age of eighteen (18) shall possess or use tobacco products.

(2) Any tobacco product found in the possession of a person under the age of eighteen (18) and in plain view of the law enforcement officer shall be confiscated by the law enforcement officer making the charge.

(3) This section shall not apply to persons exempted as provided by KRS 438.311 and 438.330.

Approved March 28, 2000

CHAPTER 161

(HB 76)

AN ACT relating to alternative teacher certification.

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

Section 1. KRS 161.048 is amended to read as follows:

(1) The General Assembly hereby finds that:

(a) 1. There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools;

2. There are distinguished scholars who wish to become teachers in Kentucky's public schools, but who did not pursue a teacher preparation program;

3. There are persons who need to be recruited to teach in Kentucky schools to meet the diverse cultural and educational needs of students; and

4. There should be alternative procedures to the traditional teacher preparation programs that qualify persons as teachers.

(b) There are hereby established alternative certification program options as described in subsections ***(2)***~~[(3)]~~ through ***(6)***~~[(5)]~~ of this section.

(c) It is the intent of the General Assembly that the Educational Professional Standards Board inform scholars, persons with exceptional work experience, and persons with diverse backgrounds who have potential as teachers of these options and assist local boards of education in implementing these options and recruitment of individuals who can enhance the education system in Kentucky.

(d) The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the alternative certification options described in this section.

(2) Option 1: Certification of a person with exceptional work experience. An individual who has exceptional work experience and has been offered employment at the secondary level in a local school district shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the individual and the employing school district under the following conditions:

(a) The application contains documentation of all education and work experience;

(b) The candidate has documented ten (10) years of exceptional work experience in the area in which certification is being sought;

(c) The candidate possesses a bachelor's degree, with a grade point average of two and five-tenths (2.5) on a four (4) point scale from a nationally or regionally accredited postsecondary institution; and

(d) The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship, the candidate shall receive a regular provisional certificate.

An individual employed under this alternative shall be certified for one (1) year only, and may be approved for subsequent one (1) year renewals upon request of the local board of education and approval of the Education Professional Standards Board. A teacher who successfully completes three (3) contract years under the provisions of this section shall be awarded a regular provisional certificate, and subject to certificate renewal requirements the same as any other teacher with a regular provisional certificate.

(3) Option 2: Certification through a local district training program. A local district or group of districts may seek approval for a training program. The state-approved local district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification for a teacher at any grade level. The training program may be offered for all teaching certificates approved by Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local district alternative training program, the candidate shall:

(a) Possess a bachelor's degree with a grade point average of two and five tenths (2.5) on a four (4) point scale or, upon approval by the Education Professional Standards Board, at least a grade point average of two (2) on a four (4) point scale if the candidate has exceptional life experience related to teaching and has completed the bachelor's degree at least five (5) years prior to submitting an application to the program.

(b) Pass written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the Education Professional Standards Board. To be eligible to take a subject field test, the applicant shall have completed a thirty (30) hour major in the subject field or five (5) years of experience in the subject field as approved by the Education Professional Standards Board.

(c) Have been offered employment in a school district which has a training program approved by the Education Professional Standards Board.

(d) Upon meeting the participation requirements as established in this subsection, the candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. The regular provisional certificate shall be issued upon satisfactory completion of the program and the teacher testing internship program pursuant to KRS 161.030.

(e) The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs.

(4) Option 3: Certification of a professional from a postsecondary institution: A candidate who possesses the following qualifications may receive alternative certification for teaching at the secondary level:

(a) A master's degree or doctoral degree in the academic subject area for which certification is sought;

(b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic subject area for which certification is sought in a regionally or nationally accredited institution of higher education; and

(c) Successful completion of the teacher internship requirement imposed under KRS 161.030.

(5) Option 4: Certification of an adjunct instructor. A person who has expertise in areas such as art, music, foreign language, drama, science, and other specialty areas may be employed as an adjunct instructor in a part-time position by a local board of education under KRS 161.046.

(6) ***Option 5: Certification of a veteran of the Armed Forces. The Education Professional Standards Board shall issue a statement of eligibility, valid for five (5) years, to a veteran for teaching at the elementary, secondary, and secondary vocational education levels with the following qualifications:***

(a) Discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release;

(b) At least a bachelor's degree in the subject matter area or closely related area for which certification is sought, issued by a regionally or nationally accredited institution of higher education;

(c) A grade point average of two and five-tenths (2.5) on a four (4) point scale for a bachelor's degree or an advanced degree; and

(d) A passing score on the written exit assessment examination designated by the Education Professional Standards Board for content knowledge.

Upon an offer of employment by a school district, the eligible veteran shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the veteran and the employing school district. During this year, the veteran shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. Upon successful completion of the internship program, the veteran shall receive a regular professional certificate.

(7) A teacher certified under subsections (2) to ***(6)***[~~(5)~~] of this section shall be placed on the local district salary schedule for the rank corresponding to the degree held by the teacher.

(8) Veterans who were discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release, and who have at least four (4) years of occupational experience in the area in which they seek certification as a vocational industrial education teacher, shall apply for certification under and meet the requirements of the administrative regulations promulgated by the Education Professional Standards Board.

(9)[~~(7)~~] Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive certification for teaching programs for exceptional students:

(a) An out-of-state license to teach exceptional students;

(b) A bachelor's or master's degree in the certification area or closely related area for which certification is sought; and

(c) Successful completion of the teacher internship requirement required under KRS 161.030.

Approved March 28, 2000

CHAPTER 162

(HB 157)

AN ACT relating to character education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

As used in KRS Chapters 156 and 158, unless the context requires otherwise, "character education" means instructional strategies and curricula that:

(1) Instill and promote core values and qualities of good character in students including altruism, citizenship, courtesy, honesty, human worth, justice, knowledge, respect, responsibility, and self-discipline;

(2) Reflect the values of parents, teachers, and local communities; and

(3) Improve the ability of students to make moral and ethical decisions in their lives.

Section 2. KRS 158.645 is amended to read as follows:

The General Assembly recognizes that public education involves shared responsibilities. State government, local communities, parents, students, and school employees must work together to create an efficient public school system. Parents and students must assist schools with efforts to assure student attendance, preparation for school, and involvement in learning. The cooperation of all involved is necessary to assure that desired outcomes are achieved. It is the intent of the General Assembly to create a system of public education which shall allow and assist all students to acquire the following capacities:

(1) Communication skills necessary to function in a complex and changing civilization;

(2) Knowledge to make economic, social, and political choices;

(3) ***Core values and qualities of good character to make moral and ethical decisions throughout his or her life;***

(4) Understanding of governmental processes as they affect the community, the state, and the nation;

(5)[~~(4)~~] Sufficient self-knowledge and knowledge of his mental and physical wellness;

(6)[~~(5)~~] Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;

(7)[~~(6)~~] Sufficient preparation to choose and pursue his life's work intelligently; and

(8)[~~(7)~~] Skills to enable him to compete favorably with students in other states.

Section 3. KRS 158.6451 is amended to read as follows:

(1) The General Assembly finds, declares, and establishes that:

(a) Schools shall expect a high level of achievement of all students.

(b) Schools shall develop their students' ability to:

1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;

2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;

3. Become[~~ a~~] self-sufficient ***individuals***[~~individual~~] ***of good character exhibiting the qualities of altruism, citizenship, courtesy, honesty, human worth, justice, knowledge, respect, responsibility, and self-discipline***;

4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;

5. Think and solve problems in school situations and in a variety of situations they will encounter in life; and

6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources.

(c) Schools shall increase their students' rate of school attendance.

(d) Schools shall reduce their students' dropout and retention rates.

(e) Schools shall reduce physical and mental health barriers to learning.

(f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.

(2) The Kentucky Board of Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites,[~~ and~~] alternative ways of using school time***, and strategies to incorporate character education throughout the curriculum***.

Section 4. KRS 156.095 is amended to read as follows:

(1) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.

(2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include planning and evaluation assistance or coordination activities.

(a) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by Kentucky Board of Education through promulgation of administrative regulations.

(b) The local district professional development coordinator shall participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information.

(3) The Kentucky Department of Education shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs may include, but not be limited to, focus on the following areas:

(a) Curriculum content and methods of instruction for each content area;

(b) School-based decision making;

(c) Performance-based student assessment;

(d) Nongraded primary programs;

(e) Research-based instructional practices;

(f) Instructional uses of technology;

(g) Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;

(h) Instruction of phonics;~~[and]~~

(i) Educational leadership***; and***

(j) Strategies to incorporate character education throughout the curriculum.

(4) The department shall utilize its regional service centers, in addition to collaboration with postsecondary education institutions, education cooperative and consortia, and professional education organizations, to provide local district personnel with access to high quality programming. The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.

(5) The department shall assist districts with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.

(a) Professional development strategies may include, but are not limited to, participation in teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.

(b) In planning the use of the four (4) days for professional development under KRS 158.070, priority shall be given to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. Up to one (1) day may be used to provide training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.

(c) State funds allocated for professional development may be used to support professional development initiatives that are consistent with local plans, throughout the year for all staff, including classified and certified staff and parents on school councils or committees.

(6) The Department of Education shall contract with an outside agency to complete an analysis of the current status of the statewide professional development program. The analysis shall include a comparison of models of professional development used in high-performing and award-winning schools. The analysis shall include specific recommendations regarding:

(a) The effective advancement of a supply and demand system for vendors and consumers of professional development; and

(b) The development and dissemination through the Internet and other appropriate means of consumer information concerning specific professional development opportunities.

A written report shall be provided to the Department of Education by October 30, 1998. The Department of Education shall publicly report its actions within six (6) months of the release of the recommendations and subsequently issue annual reports on the status of the statewide professional development program.

(7) During the 1998-1999 and 1999-2000 school years, the Department of Education shall conduct an intensive statewide professional development program to address the characteristics and instructional needs of exceptional students and students at risk of school failure. The professional development shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with exceptional students and students at risk of school failure. The professional development for instructional personnel shall be designed to provide and enhance skills of personnel to:

(a) Improve the academic achievement of exceptional students and students at risk of school failure;

(b) Significantly reduce the dropout rate of all students; and

(c) Prepare all students for a successful transition to adult life.

Section 5. KRS 158.060 is amended to read as follows:

(1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools. School shall be closed on the day of a regular election. The legal holiday designated by the Kentucky Board of Education to be observed may include the first Tuesday after the first Monday in November of each year and shall be counted as a school day.

(2) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's instructional day, or the time teachers are required to remain at school after the students are dismissed.

(3) Except for children with disabilities and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the commissioner of education and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.

(4) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

(5) Character education programs and activities shall be considered valuable and legitimate components of the actual school work constituting a school day under subsection (3) of this section.

Section 6. KRS 158.445 is amended to read as follows:

(1) Each local school shall begin an assessment of school safety and student discipline during the 1998-1999 school year including a review of the following:

(a) Reports of school incidents relating to disruptive behaviors;

(b) The school's behavior and discipline codes for clarity and appropriate notice to students and parents;

(c) The school's hierarchy of responses to discipline problems and actual disciplinary outcomes;

(d) Training needs for instructional staff in classroom management, student learning styles, and other specialized training to enhance teachers' capacity to engage students and minimize disruptive behavior;

(e) The array of school services to students at risk of academic failure, dropping out, or truancy;

(f) The engagement of parents at the earliest stages of problem behavior;

(g) Training needs for students in ***the development of core values and qualities of good character,*** anger reduction, conflict resolution, peer mediation, and other necessary skills;

(h) Training needs of parents;

(i) Existing school council policies relating to student discipline and student information;

(j) The school's physical environment;

(k) The school's student supervision plan;

(l) Existing components of the school improvement plan or consolidated plan that focus on school safety and at-risk students, and the effectiveness of the components; and

(m) Other data deemed relevant by the school council or school administration.

A school that does not complete an assessment process shall not be eligible for funds under the state school safety grant program in 1999-2000 and subsequent years.

(2) By May 15, 1999, each local school district shall complete a district-level assessment of district-level data, resources, policies and procedures, and district-wide needs as identified from the individual school assessment process. The district shall engage local community agencies including law enforcement and the courts in the assessment process.

(3) As a result of the district assessment and analysis of data, resources, and needs, each board of education shall adopt a plan for immediate and long-term strategies to address school safety and discipline. The development of the plan shall involve at least one (1) representative from each school in the district as well as representatives from the community as a whole, including representatives from the local juvenile delinquency prevention council if a council exists in that community. The process of planning shall be determined locally depending to a large extent on the size and characteristics of the district.

(4) The district plan under subsection (3) of this section shall be the basis for any request for funds under the state school safety grant program for 1999-2000 and subsequent years. The district plan shall include the local code of acceptable behavior and discipline as required under KRS 158.148 and a description of instructional placement options for threatening or violent students.

Approved March 28, 2000

CHAPTER 163

(HB 180)

AN ACT relating to postsecondary education prepaid tuition and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

(1) "Academic year" means the time period specified by each participating institution;

(2) "Board" means the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund;

(3) "Fund" means the prepaid tuition payment fund created in Section 2 of this Act and known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund";

(4) "Office" means the Tuition Account Program Office in the Office of the State Treasurer that is responsible for administering the prepaid tuition accounts;

(5) "Participating institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, all of which are required to participate, and any Kentucky private college or university that is accredited by a national or regional accrediting agency, recognized by the United States Department of Education, that voluntarily requests to participate and is accepted for participation in the program by the board of directors created in Section 3 of this Act;

(6) "Prepaid tuition" means the amount of tuition estimated by the board for the standard tuition plans and for each participating institution for the academic year specified in the prepaid tuition contract;

(7) "Prepaid tuition academic year conversion" means the difference between the amount of prepaid tuition required in the original prepaid tuition contract and the amount of prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year;

(8) "Prepaid tuition academic year conversion shortfall" means the amount by which the prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year exceeds the amount of prepaid tuition required in the original prepaid tuition contract;

(9) "Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;

(10) "Prepaid tuition contract" means the contract entered into by the board and the purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any participating institution as provided in Sections 1 to 7 of this Act;

(11) "Prepaid tuition conversion" means the difference between the prepaid tuition of a standard plan and the prepaid tuition at a participating institution or the difference

between the prepaid tuition at one participating institution and the prepaid tuition at another participating institution;

(12) "Prepaid tuition conversion shortfall" means the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition of a standard plan or the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition at another participating institution;

(13) "Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;

(14) "Qualified beneficiary" means any resident of Kentucky at the time a purchaser enters into a prepaid tuition contract on behalf of the resident or any nonresident who intends to attend a participating institution in Kentucky;

(15) "Standard tuition plan" means the average of the estimated tuition for the:

(a) Commonwealth's community colleges;

(b) Technical colleges;

(c) Four (4) year universities; or

(d) Private colleges or universities;

(16) "Tuition" means the actual charges and all mandatory fees required as a condition of full-time enrollment in an undergraduate program for an academic year for a qualified beneficiary to attend a participating institution. Tuition for a private college or university is calculated on the current year tuition rate, increased by the same percentage that the University of Kentucky tuition is increased on a per year basis;

(17) "Tuition credit" means the discounted net present value of a unit equal to one twenty-fourth (1/24) of the prepaid tuition; and

(18) "Tuition shortfall" means the amount by which tuition exceeds the prepaid tuition adjusted in proportion to the number of tuition credits purchased.

SECTION 2. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created an instrumentality of the Commonwealth to be known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund", to be governed by a board of directors and administered by the Tuition Account Program Office in the Office of the State Treasurer. The fund shall consist of payments received from prepaid tuition contracts under Sections 1 to 7 of this Act. Income earned from the investment of the fund shall remain in the fund and be credited to it. The fund shall not constitute an investment company as defined in KRS 291.010.

(2) The purposes of the fund are:

(a) To provide affordable access to participating institutions for the qualified beneficiaries; and

(b) To provide students and their parents economic protection against rising tuition costs.

(3) The office and the facilities of the State Treasurer shall be used and employed in the administration of the fund including, but not limited to, the keeping of records, the employment of staff to assist in the administration of the fund, the management of accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments. The office of the Treasurer and the board of the Kentucky Higher Education Assistance Authority, shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.

(4) Assets of the fund shall constitute public funds of the Commonwealth and may be invested in any instrument, obligation, security, or property that constitutes legal investments for the investment of public funds in the Commonwealth that are deemed most appropriate by the board and may be pooled for investment purposes with any other investment of the Commonwealth that is eligible for asset pooling.

(5) The fund, through the State Treasurer, may receive and deposit into the fund gifts made by any individual or agency as deemed acceptable by the board.

(6) There is created a separate account within the State Treasurer's office to be known as the prepaid postsecondary tuition administrative account for the purposes of implementing and maintaining the Commonwealth postsecondary education prepaid tuition trust fund. Funds may be transferred from the property abandoned under KRS Chapter 393 to the administrative account and shall be repaid to the abandoned property fund no later than three (3) years after the transfer. The board may establish administrative fees for handling prepaid tuition contracts and deposit the money in this account.

(7) Four (4) years after the effective date of this Act, the administration of the fund shall be transferred from the Office of the State Treasurer to the Kentucky Higher Education Assistance Authority unless the General Assembly shall decide that the administration of the fund shall remain in the Office of the State Treasurer.

SECTION 3. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

(1) The fund shall be governed by an eleven (11) member board of directors. The board shall have five (5) ex officio voting members including the State Treasurer, the president of the Council on Postsecondary Education or designee, the secretary of the Finance Cabinet or designee, the secretary of the Revenue Cabinet or designee, the chair of the Association of Kentucky Independent Colleges and Universities or designee, three (3) members appointed by the State Treasurer, and three (3) members appointed by the Governor. The executive director of the Higher Education Assistance Authority or designee shall serve as a nonvoting member. The gubernatorial and State Treasurer appointees shall have experience in finance, accounting, or investment management.

(2) Of the members to be appointed initially by the State Treasurer, one (1) shall be appointed for a three (3) year term, and two (2) shall be appointed for a four (4) year term; of the members to be appointed by the Governor, two (2) shall be appointed for a two (2) year term and one (1) for a three (3) year term. Thereafter, all appointments shall be for terms of four (4) years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be appointed to serve for more than two (2) successive four (4) year terms. No person holding a full-time office or position of employment with the state, any county or city, or any educational institution shall be eligible for gubernatorial appointment to the board.

(3) Members of the board shall receive no compensation but shall be reimbursed expenses incurred in the performance of their duties at the same per diem and travel rate as is paid the employees of the state.

(4) The State Treasurer shall be the chair and presiding officer of the board. The State Treasurer may appoint other officers as the board may deem advisable or necessary. A majority of the members of the board shall constitute a quorum for the transaction of the business of the fund.

(5) The initial board appointments shall be made by October 1, 2000.

SECTION 4. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

The board shall:

(1) Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of Sections 1 to 7 of this Act;

(2) Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

(3) Invest moneys in the fund in any instruments, obligations, securities, or property as permitted by law and deemed appropriate by the board;

(4) Procure insurance to protect against any loss in connection with the fund's property, assets, or activities and to indemnify board members from personal loss or accountability from liability arising from any action or inaction as a board member;

(5) Make arrangements with participating institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts, including, but not limited to, payment from the fund of the tuition cost on behalf of a qualified beneficiary to attend a participating institution in which the beneficiary is admitted and enrolled;

(6) Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including but not limited to, the termination, withdrawal, or transfer of payments under a prepaid tuition contract; tuition shortfalls; number of participants; time limitations for prepaid tuition contracts and the use of tuition benefits; tuition conversions; payment schedules; payroll deductions; penalties for failure of purchasers to adhere to contracts; and transfer of prepaid tuition credits towards private education in the Commonwealth or for out-of-state institutions;

(7) Obtain appropriate actuarial assistance to establish, maintain, and certify a fund sufficient to defray the obligation of the fund, annually evaluate or cause to be evaluated, the actuarial soundness of the fund, and determine prior to each academic year the amount of prepaid tuition for each standard tuition plan and for each participating institution for specific academic years, the corresponding required amount of tuition credits, the amount of prepaid tuition conversion, and the amount of prepaid tuition academic year conversion;

(8) Make an annual report each year to the Legislative Research Commission showing the fund's condition; and

(9) Market and promote participation in the fund.

SECTION 5. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

(1) The prepaid tuition contract entered into by the purchaser and the board shall constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a qualified beneficiary upon acceptance and enrollment at a participating institution in proportion to the number of tuition credits purchased. The fund shall pay this amount to the participating institution on behalf of the qualified beneficiary.

(2) The fund shall pay the amount of any tuition shortfall to the participating institution on behalf of the qualified beneficiary.

(3) The purchaser or qualified beneficiary shall pay to the participating institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.

(4) A qualified beneficiary attending a participating institution may apply tuition credits to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.

(5) The board and participating institutions may agree that tuition credits remaining in a prepaid tuition account after tuition is paid may be converted into other educational expense credits under administrative regulations promulgated by the board in compliance with Section 529 of the Internal Revenue Code. The board may permit the use of tuition credits for part-time undergraduate enrollment or graduate programs at participating institutions, after an appropriate conversion. Any prepaid tuition remaining in a prepaid tuition account, for reasons other than termination of the account as provided for in Section 7 of this Act, shall be refunded to the purchaser or the purchaser's designee.

(6) The value of the prepaid tuition credits shall not be used in calculating personal asset contribution for determining eligibility and need for student loan programs, student grant programs or other student aid programs administered by any agency of the Commonwealth, except as otherwise may be provided by federal law.

SECTION 6. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

(1) Purchasers buying tuition credits for a qualified beneficiary shall enter into prepaid tuition contracts with the board. These contracts shall be in a form as shall be determined by the office. The contract shall provide for the purchase of tuition credits for prepaid tuition for the qualified beneficiary from one (1) to four (4) specific academic years.

(2) Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:

(a) The qualified beneficiary;

(b) The academic year or years for which tuition credits are purchased;

(c) A standard plan designation to a participating institution designation;

(d) A standard plan designation to another standard plan designation; or

(e) One (1) participating institution designation to another participating institution designation. The value of the tuition credit shall be adjusted under requirements of administrative regulations promulgated by the board.

(3) A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary and shall be exempt from all state and local taxes including, but not limited to, the intangible personal property tax levied under KRS 132.020, the individual income tax levied under KRS 141.020 and the inheritance tax levied under KRS Chapter 140.

(4) Nothing in Sections 1 to 7 of this Act or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to a participating institution, be allowed to continue to attend a participating institution after having been admitted, or be graduated from a participating institution.

(5) Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract payments may be made in lump sum installments.

(6) The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract. In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.

(7) The prepaid tuition contract shall provide that the purchaser and the qualified beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account. Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary. No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.

(8) A prepaid tuition contract does not constitute a security as defined in KRS 292.310 or an annuity as defined in KRS 304.5-030.

SECTION 7. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

(1) Upon termination of a prepaid tuition contract, the office shall pay from the fund to the purchaser or the purchaser's designee:

(a) The value of the tuition credits if the contract is terminated for any of the following:

1. The death of the qualified beneficiary;

2. The disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the beneficiary at a participating institution impossible or unreasonably burdensome;

(b) The purchase price of the tuition credits if the contract is terminated for any of the following:

1. Failure of the qualified beneficiary who, in the opinion of the office, has made a good faith attempt to gain admission to a participating or nonparticipating institution within the time limits imposed by the board; or

2. The movement of a family of a qualified beneficiary from Kentucky to another state with a savings plan.

(2) Upon termination of a prepaid tuition account as a result of a decision by the qualified beneficiary to attend a nonparticipating institution, the office at the direction of the

beneficiary and upon presentation of proof of the beneficiary's acceptance by and enrollment in the nonparticipating institution, shall pay from the fund to the institution the value of the tuition credits as determined by the board of directors for the postsecondary education prepaid tuition program. If the cost of tuition exceeds the value of the tuition credits, it shall be the responsibility of the beneficiary to pay the difference. If the value of the tuition credits exceeds the cost of tuition, the beneficiary shall be given a refund equal to the difference.

(3) At the option of the purchaser or the purchaser's designee, the purchase price of any unused tuition credits may be carried forward to another academic year or refunded by the office from the fund.

(4) Upon termination of a tuition account as a result of a decision by the qualified beneficiary not to attend a participating or nonparticipating institution, within time limits determined by the board, the purchaser or purchaser's designee shall receive the purchase price of the tuition credits.

(5) The office may impose a fee upon termination of the account for administrative costs and deduct the fee from the amount otherwise payable under this section.

(6) If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser or the purchaser's designee shall receive a refund from the fund by the office consisting of the amount of the prepaid tuition for the number of tuition credits purchased for that academic year.

(7) If the purchaser wishes to transfer funds from the prepaid tuition account to the Kentucky Higher Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund and the board of the Kentucky Higher Education Assistance Authority.

SECTION 8. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The Tuition Account Program Office is hereby established within the Office of the State Treasurer for the purpose of implementing and administering the prepaid tuition account program established in Sections 1 to 7 of this Act. The program shall provide for the purchase of tuition credits for a beneficiary to attend a participating postsecondary institution.

SECTION 9. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:

Seventy-five percent (75%) of the balance of the abandoned property funds shall be available for support of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. Transfers from the abandoned property fund to the trust fund are authorized in order to meet any unfunded liability as determined by the board.

Section 10. KRS 164A.350 is amended to read as follows:

For all purposes of Kentucky law, the following shall be applicable:

(1) The participant shall retain ownership of all contributions made under any participation agreement up to the date of utilization for payment of higher education costs for the beneficiary, and all interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;

(2) Any participant may cancel a participation agreement. In the event the participation agreement is terminated, the participant shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and a reversionary right to receive interest on all the contributions at the rate of interest at which the contributions were invested, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection ***(8)***[~~(7)~~] of this section;

(3) ***Any participant may cancel a participation agreement and shall be permitted to transfer funds to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund established in Section 2 of this Act, and in compliance with administrative regulations promulgated by the board for the savings plan trust.***

(4) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section;

(5)[~~(4)~~] The institution of higher education shall obtain ownership of the contributions made for the higher education costs paid to the institution at the time each payment is made to the institution;

(6)[~~(5)~~] Any amounts which may be paid pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section, shall be owned by the trust;

(7)[~~(6)~~] A participant may transfer ownership rights to another eligible participant, including, but not limited to, a gift of the ownership rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;

(8)[~~(7)~~] Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board shall charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:

(a) The death, permanent disability, or mental incapacity of the beneficiary; or

(b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and

(9)[~~(8)~~] Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary.

No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

Section 11. KRS 164.746 is amended to read as follows:

(1) The authority shall be governed, all of its powers shall be exercised, and its duties and functions shall be performed by a board of directors. The board shall consist of seven (7) voting members who shall be appointed by the Governor. In addition, the president of the Council on Postsecondary Education***, the State Treasurer,*** and the secretary of the Department of Finance shall serve as nonvoting ex-officio members. The term of office of appointed members shall be four (4) years. Each member shall serve for the term for which he is appointed and until his successor is appointed.

(2) Appointments to fill vacancies on the board shall be made in the same manner as regular appointments. The person appointed shall hold the position for the unexpired portion of the term only.

(3) The board shall elect from its voting membership a chairman and chairman-elect who shall each serve for a term of one (1) year. At the conclusion of the chairman's term of office, the chairman-elect shall become chairman for the succeeding year and the board shall elect from its voting membership a new chairman-elect.

(4) Board members shall receive compensation for their services, in the amount of sixty-five dollars ($65) per day, and may be reimbursed for actual and necessary expenses incurred in the performance of their duties under KRS 164.740 to 164.785.

(5) The board shall provide for the holding of regular meetings and special meetings.

(a) A majority of the voting members shall constitute a quorum for the transaction of any business, special meetings shall be called by the chairman in accordance with KRS 61.823, and either the chairman or the chairman-elect shall be present for the transaction of any business.

(b) In lieu of personal attendance by members of the board of directors at the same location, the board of directors may conduct meetings by teleconference or other available technological means suitable for conducting its business. Meetings of the board shall be open and accessible to the public in accordance with KRS 61.805 to 61.850, and any alternate method of conducting a meeting in lieu of personal attendance shall ensure public access.

(6) The board shall adopt bylaws and policies governing its internal affairs and the conduct of its business, and shall adopt administrative regulations pursuant to KRS Chapter 13A, not inconsistent with law, in connection with the administration of the authority's programs and the performance of its functions and duties.

(7) The board may:

(a) Appoint such officers and employees as necessary and may fix their compensation, and shall prescribe their duties notwithstanding personnel limits established by KRS 18A.010 or the biennial budget and its related documents; and

(b) Adopt the provisions of KRS 45A.345 to 45A.460, pursuant to KRS 45A.343.

(8) The Office of the Treasurer and the board of the Kentucky Higher Education Assistance Authority shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.

Section 12. Initial purchase of prepaid tuition credits through the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall commence no sooner than the academic year 2001-2002.

Section 13. During the 2000-2002 biennium, the prepaid postsecondary tuition administrative account is authorized to borrow a maximum of $1,000,000 from the abandoned property account.

Approved March 28, 2000

CHAPTER 164

(HB 204)

AN ACT relating to child protection.

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

Section 1. KRS 620.040 is amended to read as follows:

(1) ***(a)*** Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall ***immediately***~~[forthwith]~~ notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.

(c) The cabinet shall***,***~~[investigate the matter immediately and]~~ within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action ***that***~~[which]~~ has been taken on the ***investigation***~~[matter]~~.

(d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall ***immediately***~~[forthwith]~~ notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.

(2) ***(a)*** Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall ***immediately***~~[forthwith]~~ notify the cabinet or its designated representative.

(b) ***Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.***

(c) The cabinet~~[shall investigate reports of alleged dependency not later than forty-eight (48) hours after receipt of the report but]~~ need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of~~[such]~~ reports ***made under this subsection***.

(3) If the cabinet or its designated representative receives a report of abuse by ***a person*** other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall ***immediately***~~[forthwith]~~ notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative ***shall***~~[may]~~ participate in an investigation of noncustodial abuse at the request of the local law enforcement agency or the Kentucky State Police.

(4)~~[(3)]~~ School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(5)~~[(4)]~~ (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be ***requested from, and may be*** issued by***,*** the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he ***or she*** shall provide written notice to the parent or other person

stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(6)[~~(5)~~] (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include, but ***shall***[~~is~~] not ***be*** limited to, family service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.

(c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

(d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

(e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.

(f) Multidisciplinary team members[~~,~~] and anyone invited by the multidisciplinary team to participate in a meeting[~~,~~] shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members[~~,~~] and others attending meetings[~~,~~] shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

Section 2. KRS 620.050 is amended to read as follows:

(1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.

(2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation ***or assessment of family needs***, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

(4) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation ***or assessment*** made pursuant to this chapter, shall not be divulged to anyone except:

(a) Persons suspected of causing dependency, neglect, or abuse;

(b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;

(c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

(d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;

(e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;

(f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600; or

(g) Those persons so authorized by court order.

(5) ***Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:***

(a) To law enforcement officials that have a legitimate interest in the case;

(b) To the agency designated by the cabinet to investigate or assess the report;

(c) To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600; or

(d) Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report~~[The identity of informants shall not be divulged to anyone without a court order after the court has reviewed in camera the record of the state related to the report or complaint and has found it has reason to believe that the informant knowingly made a false report, excepting law enforcement agencies having a legitimate interest in the case]~~.

(6) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.

(7) When an adult who is the subject of information made confidential by subsection (4) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (4) of this section is presumed voluntarily waived**,** and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.

(8) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of ***these***~~[such]~~ reports. ***These***~~[Such]~~ photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking~~[such]~~ photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

Approved March 28, 2000

CHAPTER 165

(HB 294)

AN ACT relating to charitable gaming.

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

Section 1. KRS 238.535 is amended to read as follows:

(1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the division. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:

(a) Bingo in which the gross receipts do not exceed a total of fifteen thousand dollars ($15,000) per year;

(b) A raffle or raffles for which the gross receipts do not exceed fifteen thousand dollars ($15,000) per year; and

(c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed fifteen thousand dollars ($15,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed fifteen thousand dollars ($15,000).

(2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the division in writing, on a form issued by the division, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter, except:

(a) Payment of the fee imposed under the provisions of KRS 238.570; and

(b) The reporting requirements imposed under the provisions of KRS 238.550(2), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.

(3) If an organization exceeds the limit imposed by any subsection of this section it shall:

(a) Report the amount to the division; and

(b) Apply for a retroactive charitable gaming license.

(4) Upon receipt of a report and application for a retroactive charitable gaming license, the division shall investigate to determine if the organization is otherwise qualified to hold the license.

(5) If the division determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.

(6) If the division determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.

(7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.

(8) In order to qualify for licensure, a charitable organization shall:

(a) 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or

2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;

(b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;

(c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the division, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "accomplishing its charitable purposes" means relief of poverty, advancement of education, protection of health,

relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3); and

(d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the division; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. ***However, a charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing in a Kentucky county other than that in which the organization's office or place of business is located if the organization notifies the division in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification may be transmitted in any commercially reasonable means, authorized by the division, including fascismile and electronic mail. The notification shall set out the place and the county in which the drawing will take place. Approval by the division shall be received prior to the conduct of the raffle drawing at the new location.*** Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fund raising event.

(9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:

(a) The name and address of the charitable organization;

(b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;

(c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;

(d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;

(e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;

(f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;

(g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

(h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;

(i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

(j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;

(k) An agreement that the charitable organization's records may be released by the federal Internal Revenue Service to the division; and

(l) Any other information the division deems appropriate.

(10) The division may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.

(11) The division shall charge a fee for each license issued and renewed, not to exceed three hundred dollars ($300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

Section 2. KRS 238.540 is amended to read as follows:

(1) ***Except as provided in subsection (8)(d) of Section 1 of this Act,*** charitable gaming shall be conducted by a licensed charitable organization at only one (1) location and at the date and time which shall be stated on the license. A license holder shall notify the division at least thirty (30) days in advance of its intent to change its location, date, or time and approval by the division shall be received by the licensee prior to the conduct of charitable gaming at a new location.

(2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.

(3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the division, law enforcement officials, and other interested officials.

(4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity.

Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. Any effort or attempt to disguise any other type of compensation shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.

(5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.

(6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.

(7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.

(8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number.

Approved March 28, 2000

CHAPTER 166

(HB 348)

AN ACT relating to manufactured homes.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

(1) When a manufactured home is or is to be permanently affixed to real estate, the owner may execute and file an Affidavit of Conversion to Real Estate with the county clerk of the county in which the real estate is located. The affidavit shall attest to the fact that the home has been or will be permanently affixed to the real estate and be accompanied by a surrender of the Kentucky certificate of title. The county clerk shall file the Affidavit of Conversion to Real Estate in the miscellaneous record book.

(2) A county clerk shall not accept a surrender of a Kentucky certificate of title which displays an unreleased lien unless it is accompanied by a release of the lien. When the county clerk files the Affidavit of Conversion to Real Estate, the county clerk shall furnish a copy to the property valuation administrator for inclusion in the real property tax rolls of the county. A filing of an Affidavit of Conversion to Real Estate and a surrender of a Kentucky certificate of title shall be deemed a conversion of the property as an improvement to the real estate upon which it is located.

Section 2. KRS 132.720 is amended to read as follows:

As used in KRS 132.260 and 132.751, unless the context otherwise requires:

(1) ***"Manufactured home" has the same meaning as in KRS 186.650.***

(2) "Mobile home," "recreational vehicle," "mobile home park," and "recreational vehicle park" have the same meanings as in KRS 219.320.

(3)~~[(2)]~~ "Unit" means any single mobile home***, manufactured home,*** or recreational vehicle.

(4)~~[(3)]~~ "Permanent, fixed foundation" means a foundation permanent in nature which is so constructed as to be fixed upon the surface of the land.

Section 3. KRS 132.751 is amended to read as follows:

(1) Mobile homes ***or manufactured homes*** not held for resale by a dealer shall be classified as real property for the purpose of the levy and assessment of ad valorem taxes, regardless of whether or not the wheels or mobile parts have been removed and whether or not the unit rests on a permanent, fixed foundation.

(2) Recreational vehicles shall be classified as real property if the wheels or mobile parts have been removed and the unit rests on a permanent, fixed foundation.

Approved March 28, 2000

CHAPTER 167

(HB 663)

AN ACT relating to small and farm wineries.

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

Section 1. KRS 243.155 is amended to read as follows:

(1) A small winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses, except that each off-premises retail site shall be separately licensed:

(a) Manufacture wines and bottle wines produced by that small winery in an amount not to exceed fifty thousand (50,000) gallons in one (1) year;

(b) Serve on the premises or at off-premise retail sites complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day, if the small winery or off-premise retail site is located in wet territory;

(c) Sell by the drink or by the package on premises, at off-premise retail sites, and at fairs, festivals, and other similar types of events, wine produced on the premises of the small winery or produced by a licensed farm winery, at retail to consumers if all sales sites are located in wet territory;

(d) Sell and transport wine produced on the premises of the small winery to wholesale license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders;~~[and]~~

(e) Consume on the premises wine produced by the small winery or a licensed farm winery and purchased by the drink or by the package at the licensed premises, if the small winery is located in wet territory***; and***

(f) Ship to a customer wine produced by a small winery or a farm winery if:

1. The wine is purchased by the customer in person at the small winery;

2. The wine is shipped by licensed common carrier; and

3. The amount of wine shipped is limited to two (2) cases per customer.

(2) In accordance with administrative regulations promulgated by the board, the holder of a small winery license or farm winery license, upon affidavit filed with the board that grapes, grape juice, other fruits, other fruit juices, or honey produced in Kentucky are not obtainable, may apply for a permit to import these products. The burden of proof shall be upon the applicant to show that the grapes, grape juice, other fruits, other fruit juices, or honey are not available from any other source within the Commonwealth of Kentucky.

(3) If a licensed small winery is located in a dry territory, KRS 242.230 to 242.430 shall apply**,** ***unless a local option election is held in accordance with the provisions of this subsection. A limited sale precinct election may be held in a precinct containing a licensed small winery in a dry territory. The election shall be held in the same manner as prescribed by KRS 242.010 to 242.040 and 242.060 to 242.120. The proposition to be voted on shall state, "Are you in favor of the sale of wine at the (name of the licensed small winery or wineries)?" If the proposition is approved, a small winery within the precinct may sell wine in accordance with subsection (1) of this section***.

(4) Other provisions of this chapter and KRS Chapter 244 notwithstanding, a small winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology, and tourism.

(5) This section shall not exempt the holder of a small winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from the administrative regulations of the board, nor from regulation by the board at all premises licensed by the small winery, except as expressly stated in this section.

Section 2. KRS 243.156 is amended to read as follows:

(1) A farm winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses:

(a) Manufacture wines and bottle wines at a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, in an amount not to exceed twenty-five thousand (25,000) gallons in one (1) year;

(b) Serve on the premises or at an off-premise retail site complimentary samples of wine produced by it in amounts not to exceed four (4) ounces per patron per day, if the farm winery or off-premise retail site is located in wet territory;

(c) Sell wine produced on the premises of the farm winery or produced by a licensed small winery by the drink or by the package at retail to consumers, if the farm winery

or off-premise retail site is located in wet territory and the wine produced by the small winery is made with Kentucky products;

(d) Sell and transport wine produced on the premises of the farm winery to wholesale liquor license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders;

(e) Serve complimentary samples or sell wine produced on the premises of the farm winery at another farm winery or small winery sales site, if the other farm winery or small winery sales site is located in wet territory;

(f) Consume on the premises wine produced by the farm winery or a small winery and purchased by the drink or by the package at the licensed premises, if the farm winery is located in wet territory;~~[and]~~

(g) Sell by the drink or by the package wine produced by the farm winery or a licensed small winery at a fair, festival, or other similar type of event, if the event is held in a wet territory***; and***

(h) Ship to a customer wine produced by a farm winery or a small winery if:

1. The wine is purchased by the customer in person at the farm winery;

2. The wine is shipped by licensed common carrier; and

3. The amount of wine shipped is limited to two (2) cases per customer.

(2) A licensed farm winery may establish one (1) off-premise retail sales outlet, if it is located in wet territory.

(3) All of the fresh fruits, fruit juices, or honey used to manufacture wine at a farm winery shall be grown or produced in the Commonwealth of Kentucky.

(4) If a licensed farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply***, unless a local option election is held in accordance with the provisions of this subsection. A limited sale precinct election may be held in a precinct containing a licensed farm winery in a dry territory. The election shall be held in the same manner as prescribed by KRS 242.010 to 242.040 and 242.060 to 242.120. The proposition to be voted on shall state, "Are you in favor of the sale of wine at the (name of the licensed farm winery or wineries)?" If the proposition is approved, a farm winery within the precinct may sell wine in accordance with subsection (1) of this section***.

(5) Other provisions of this chapter and KRS Chapter 244 notwithstanding, a farm winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology, and tourism.

(6) This section shall not exempt the holder of a farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from administrative regulations of the board, except as expressly stated in this section.

Section 3. KRS 243.884 is amended to read as follows:

(1) For the privilege of making "wholesale sales" or "sales at wholesale" of beer, wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and distilled spirits at

the rate of nine percent (9%) and upon all distributors of beer at the rate of nine percent (9%) of the gross receipts of any such wholesaler or distributor derived from "sales at wholesale" or "wholesale sales" made within the Commonwealth except as provided in subsection (2) of this section. Wholesalers of distilled spirits and wine and distributors of malt beverages shall pay and report the tax levied by this section on or before the 20th day of the calendar month next succeeding the month in which possession or title of the distilled spirits, wine or malt beverages is transferred from the wholesaler or distributor to retailers or consumers in this state, in accordance with rules and regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth.

(2) Gross receipts from sales at wholesale or wholesale sales shall not include the following sales:

(a) Sales made between wholesalers or between distributors;

(b) Sales made by a small winery or farm winery or wholesaler of wine produced by a small winery or farm winery, if the grapes, grape juice, other fruits, other fruit juices, or honey from which the wine is made are produced in Kentucky;

(c) Until June 30, ***2004***~~[1999]~~, sales from a small winery or wholesaler of wine produced by a small winery, if the grapes, grape juice, other fruits, other fruit juices, or honey from which the wine is made are not produced in Kentucky.

Section 4. KRS 100.111 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Administrative official" means any department, employee, or advisory, elected or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and if delegated, any provision of any housing or building regulation or any other land use control regulation;

(2) "Agricultural use" means the use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public***, and shall also include, regardless of the size of the tract of land used, small wineries licensed under Section 1 of this Act, and farm wineries licensed under the provisions of Section 2 of this Act***;

(3) "Board" means the board of adjustment unless the context indicates otherwise;

(4) "Citizen member" means any member of the planning commission or board of adjustment who is not an elected or appointed official or employee of the city or county;

(5) "Commission" means planning commission;

(6) "Conditional use" means a use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation;

(7) "Conditional use permit" means legal authorization to undertake a conditional use, issued by the administrative official pursuant to authorization by the board of adjustment, consisting of two (2) parts:

(a) A statement of the factual determination by the board of adjustment which justifies the issuance of the permit; and

(b) A statement of the specific conditions which must be met in order for the use to be permitted;

(8) "Development plan" means written and graphic material for the provision of a development, including any or all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions, and all other conditions agreed to by the applicant;

(9) "Fiscal court" means the chief body of the county with legislative power, whether it is the fiscal court, county commissioners, or otherwise;

(10) "Housing or building regulation" means the Kentucky Building Code, the Kentucky Plumbing Code and any other building or structural code promulgated by the Commonwealth or by its political subdivisions;

(11) "Legislative body" means the chief body of the city with legislative power, whether it is the board of aldermen, the general council, the common council, the city council, the board of commissioners, or otherwise; at times it also implies the county's fiscal court;

(12) "Mayor" means the chief elected official of the city whether the official designation of his office is mayor or otherwise;

(13) "Nonconforming use or structure" means an activity or a building, sign, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located;

(14) "Planning operations" means the formulating of plans for the physical development and social and economic well-being of a planning unit, and the formulating of proposals for means of implementing the plans;

(15) "Planning unit" means any city or county, or any combination of cities, counties, or parts of counties engaged in planning operations;

(16) "Plat" means the map of a subdivision;

(17) "Political subdivision" means any city or county;

(18) "Several" means two (2) or more;

(19) "Public facility" means any use of land whether publicly or privately owned for transportation, utilities, or communications, or for the benefit of the general public, including, but not limited to, libraries, streets, schools, fire or police stations, county buildings, municipal buildings, recreational centers including parks, and cemeteries;

(20) "Street" means any vehicular way;

(21) "Structure" means anything constructed or made, the use of which requires permanent location in or on the ground or attachment to something having a permanent location in or on the ground, including buildings and signs;

(22) "Subdivision" means the division of a parcel of land into three (3) or more lots or parcels except in a county containing a city of the first, second or third class or in an urban-county government where a subdivision means the division of a parcel of land into two (2) or more lots or parcels; for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural use and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than one (1) acre occurring within twelve (12) months following a division of the same land shall be deemed a subdivision within the meaning of this section;

(23) "Unit" means planning unit; and

(24) "Variance" means a departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

Approved March 28, 2000

CHAPTER 168

(HB 722)

AN ACT relating to fish and wildlife.

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

Section 1. KRS 150.395 is amended to read as follows:

(1) No person or group of persons may deliberately cast the rays of a spotlight or other artificial light~~[, with the intent to poach,]~~ into any field, pasture, woodlands, or forest, whether public or private, where wildlife or domestic livestock may reasonably be expected to be located***, or into any inhabited building***. This section shall not apply to the rays of headlights of vehicles engaged in a normal course of travel; to employees or agents of the department while on official business; to peace officers in the line of duty; to those engaged in legitimate agricultural activities; or to anyone involved in activities legitimate to his business, occupation, or circumstances including lawful hunting ***and fishing*** activities, or any landowner, his immediate family, or any paid employee while working on his land at that time.

(2) Any person who violates the provisions of this section shall be fined ***one hundred fifty dollars ($150), which shall be prepayable***~~[not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000)]~~.

Approved March 28, 2000

CHAPTER 169

(SB 65)

AN ACT relating to controlled substances.

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

Section 1. KRS 218A.1412 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the first degree when he knowingly and unlawfully traffics in: a controlled substance,~~[except a substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or,]~~ that is classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide;~~[or]~~ phencyclidine***; or a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers***.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class C felony.

(b) For a second or subsequent offense be guilty of a Class B felony.

Section 2. The following KRS section is repealed:

218A.1435 Trafficking in methamphetamine -- Penalties.

Approved March 28, 2000

CHAPTER 170

(SB 100)

AN ACT relating to adult day health care programs.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall, on or before August 1, 2000, promulgate administrative regulations addressing the scope of services for licensed adult day health care programs.

(2) The cabinet shall, on or prior to December 1, 2000, study and promulgate administrative regulations regarding the way case management for adult day health care patients is administered.

Approved March 28, 2000

CHAPTER 171

(SB 272)

AN ACT relating to cremation.

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

Section 1. KRS 367.97524 is amended to read as follows:

(1) ***A***[~~No~~] crematory authority shall ***not*** conduct any cremations, nor accept a body for cremation, unless it has a cremation authorization form signed by the authorizing agent clearly stating the disposition to be made of the cremated remains.

(2) Cremated remains shall be disposed of by placing them in a grave, crypt, or niche; by scattering them in a scattering area; or in any manner on the private property of a consenting owner. The crematory authority may deliver, either in person or by registered mail, the cremated remains to the designated individual specified on the cremation authorization form. Upon receipt of the cremated remains, the individual receiving them may keep or transport them in any manner in this Commonwealth without a permit. After delivery, the crematory authority shall be discharged from any legal obligation or liability concerning the cremated remains relative to disposition.

(3) A crematory authority or a licensed funeral director arranging a cremation shall not be held liable for good faith reliance on representations made by the authorizing agent regarding the authority to cremate.

Section 2. KRS 367.97527 is amended to read as follows:

(1) A person, or anyone who has legal authority to act on behalf of that person, may authorize his ***or her*** own cremation and the final disposition of his ***or her*** cremated remains, by executing, as the authorizing agent, a preneed cremation authorization form. The original preneed cremation authorization form shall be retained by the entity with which the arrangements are made. A copy of the preneed cremation authorization form shall be provided to the person signing the preneed arrangements. The person prearranging his own cremation shall have the right to transfer or cancel this authorization at any time prior to death, by notifying the entity with which the preneed cremation authorization form is filed by certified mail.

(2) In the event that no different or inconsistent instructions are provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated in the preneed agreement.

(3) In the event that there is a conflict between the decedent' s prearrangement and the demands of the next class of authorizing agent in the order set forth in KRS 367.97501(1) regarding cremation, the crematory shall not accept for cremation those human remains without an order deciding the issues entered by the District Court of the county of the decedent's residence ***or the county where the funeral home or the crematory authority is located***. This order may be issued by the court after a petition for resolution has been initiated by any natural person listed in KRS 367.97501(1) or the crematory authority. Unless extraordinary circumstances exist, the court shall give due deference to the desires of the deceased as expressed in the prearrangement.

(4) Neither the crematory authority nor a licensed funeral director arranging a cremation shall be held liable for the crematory authority's or the funeral director's good faith reliance on representations made by the authorizing agent regarding the authority or decision to cremate.

Approved March 28, 2000

CHAPTER 172

(SB 300)

AN ACT relating to fertilizer and pesticide use and application.

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

Section 1. KRS 217B.040 is amended to read as follows:

For the purposes of this chapter, unless the context requires otherwise:

(1) "Pest" means:

(a) Any insect, snail, slug, rodent, nematode, fungus, weed; ***or***~~[and]~~

(b) Any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department declares to be a pest;

(2) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; ***or***~~[and]~~

(c) Any substance or mixture of substances intended to be used as a spray adjuvant***, once they have been mixed with an EPA registered product***;

(3) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission;

(4) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues;

(5) "Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants**,** but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;

(6) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, as for example beetles, bugs, bees, wasps, and flies, and includes other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example spiders, mites, ticks, centipedes, and wood lice, and also nematodes and other worms, and any other invertebrates which are destructive, constitute a liability, and may be classed as pests;

(7) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;

(8) "Fertilizer" means any substance containing one (1) or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by administrative regulation;

(9) "Weed" means any plant which grows where not wanted;

(10) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and may also be called nemas or eelworms;

(11) "Snails or slugs" include all harmful mollusks;

(12) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;

(13) "Equipment" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land, but shall not include any pressurized hand-sized household device used to apply any pesticide;

(14) "Restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA, or by administrative regulation of the department;

(15)~~["Engage in business" means any application of pesticide by any person upon lands of another;~~

~~(16)]~~ "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices, and contrivances and machinery appurtenant ***to***~~[thereto]~~ or situated ***on them***~~[thereon]~~, fixed or mobile, including any used for transportation;

(16)~~[(17)]~~ "Pesticide applicator" means any ***individual employed or supervised by a pesticide operator to apply pesticides. The term does not include trainees***~~[person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands of another]~~;

(17)~~[(18)]~~ "Pesticide operator" means any ***individual who owns or manages a pesticide application business that is engaged in the business of applying pesticides upon the lands of another***~~[person employed by a pesticide applicator who operates equipment for the application of pesticides or applies pesticides manually. This term does not include employees who work only under direct "on-the-job" supervision of a licensed pesticide applicator or licensed pesticide operator]~~;

(18)~~[(19)]~~ "Pest control consultant" means any person who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests;

(19)~~[(20)]~~ ***"Noncommercial applicator***"~~[Public operator"]~~ means any ***individual employed***~~[person in charge of any equipment used]~~ by ***golf courses,*** municipal corporations, public utilities, or other governmental agencies ***making applications of pesticides to lands owned, occupied, or managed by his or her employer***~~[applying pesticides]~~;

(20)[~~(21)~~] "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests; including, but not limited to mammals, birds, and aquatic life;

(21)[~~(22)~~] "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive, and, having received, deliver or offer to deliver any pesticides in this state excepting internal distribution within a company or organization;

(22)[~~(23)~~] "EPA" means the United States Environmental Protection Agency;

(23)[~~(24)~~] "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or to any of its containers or wrappers;

~~[(25) "Restricted use pesticide dealer" means any person who distributes restricted use pesticides except manufacturers of restricted use pesticides who distribute their products solely to "restricted use pesticide dealers";]~~

(24)[~~(26)~~] "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect ***of it***[~~thereof~~], and which is in a package or container separate from that of the other pesticide with which it is to be used;[~~ and~~]

(25)[~~(27)~~] "Commissioner" means the Commissioner of the Department of Agriculture***;***

(26) "Dealer" means any person that engages in the storage of bulk fertilizer or a restricted use pesticide for the purpose of redistribution or direct resale, or engages in the business of applying any pesticide to the lands of another. A "dealer" shall not include a manufacturer of a restricted use pesticide or a fertilizer who distributes his or her product solely to a dealer;

(27) "Trainee" means an individual who has been employed by a dealer and is working under the direct on-the-job supervision of a licensed operator or applicator;

(28) "Direct on-the-job supervision" means having a licensed operator or licensed applicator physically on site and directly supervising or training an individual in the application of a pesticide;

(29) "Branch office" means any location of a dealer other than its designated principal place of business location, but does not include on-premises and off-premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;

(30) "Applicant" means a person applying for a license or registration under this chapter;

(31) "Pesticide sales agent" means an individual who sells or distributes restricted use pesticides or an individual who sells and makes recommendations for the use or application of pesticides to the final user;

(32) "Limited license" means a license that is issued by the department for noncommercial use, and shall be valid only when an individual is making applications of pesticides to lands owned, occupied, or managed by his or her employer; and

(33) "Certified crop advisor" means an individual who has met the requirements of and has been certified by the Kentucky Certified Crop Advisor Board.

Section 2. KRS 217B.050 is amended to read as follows:

(1) The department shall administer and enforce the provisions of this chapter and ***promulgate***[~~issue~~] administrative regulations to carry out the provisions of this chapter and

in the administrative regulations may prescribe methods to be used in the storage of fertilizers and pesticides, and application of pesticides. Where the department finds that the administrative regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations may relate to the time, place, manner, and method of storage and application of the pesticides and storage of fertilizers and pesticides, may restrict or prohibit use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to:

(a) Plants, including forage plants, on adjacent or nearby lands;

(b) Wildlife in the adjoining or nearby areas;

(c) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and

(d) Pollinating insects, animals, or persons.

(2) In ***promulgating***~~[issuing]~~ the administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and of the federal government.

(3) The department may by administrative regulation adopt a list of "restricted use pesticides" for the state or for designated areas within the state if it finds that the characteristics of the pesticides require restricting their use to prevent injury on lands other than the land to which they are applied**,** or to persons, animals, crops, or pests or vegetation other than the pests or vegetation which they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department may adopt the list of "restricted use pesticides" as established by the Environmental Protection Agency or other federal or state agencies.

(4) The department may establish additional classifications of applicator ***or operator*** licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The classifications may include private farmer applicators, commercial establishment applicators, and government employee applicators not specifically mentioned in this chapter. The administrative regulations may specify licensing conditions, procedures**,** and fees not to exceed those fees specified for other licensees under this chapter.

Section 3. KRS 217B.060 is amended to read as follows:

(1) The department may classify licenses to be issued under this chapter. ***The***~~[Such]~~ classifications may include but not be limited to ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each classification shall be subject to separate testing procedures and requirements.~~[No person shall be required to pay an additional license fee if such person desires to be licensed in one (1) or all of the license classifications provided for by the department under the authority of this section.]~~

(2) Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, and license

classification or classifications the applicant is applying for, and shall include the following:

(a) The full name of the person applying for the license;

(b) If the applicant is a receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of the receiver or trustee, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;

(c) The principal business address of the applicant in the state and elsewhere;

(d) The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;

(e) The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and

(f) Any other necessary information prescribed by the department.

(3) The department shall require an applicant for a license to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he or she has applied for. The applicant shall also demonstrate a knowledge of the proper use of and calibration of the various equipment that he or she may have applied for a license to operate, including any pressurized, hand-sized devices. The examination shall require a working knowledge of:

(a) The proper use of the equipment;

(b) The hazards that may be involved in applying pesticides, including:

1. The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;

2. The proper meteorological conditions for the application of pesticides and the precautions to be taken;

3. The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;

4. The effect of the application of pesticides to wildlife in the area, including aquatic life;

5. The identity and classification of pesticides used and the effects of their application in particular circumstances; and

6. The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation;

(c) Calculating the concentration of pesticides to be used in particular circumstances;

(d) Identification of pests to be controlled by common name only and the damages caused by the pests;

(e) Protective clothing and respiratory equipment required during the handling and application of pesticides;

(f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment that the applicant proposes to use; and

(g) Applicable state and federal pesticide laws and regulations.

(4) If the department finds the applicant qualified to apply pesticides in the classifications he or she has applied for, if the applicant files the bond or insurance required under Section 15 of this Act, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he or she is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause, or the financial security required under Section 15 of this Act is not dated to expire at an earlier date, in which case the license shall be dated to expire upon the expiration date of the financial security.

Section 4. KRS 217B.070 is amended to read as follows:

(1) No person shall engage in the business of applying pesticides to the lands of another within this state at any time without a pesticide ***operator's***~~[applicator's]~~ license issued by the department. The department shall require an annual fee of ***twenty-five dollars ($25)***~~[$25]~~ for each pesticide ***operator's***~~[applicator's]~~ license issued~~[and, in addition, an inspection fee of $10 for each aircraft to be licensed and $10 for each piece of ground equipment to be licensed. Should any equipment fail to pass inspection under KRS 217B.160, making it necessary for a second inspection to be made, the department shall require an added inspection fee of $5. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with laws and regulations]~~.

(2) ***No license shall be issued unless the applicant holds a valid certification within this category***~~[Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for, and shall include the following:~~

~~(a) The full name of the person applying for the license;~~

~~(b) If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;~~

~~(c) The principal business address of the applicant in the state and elsewhere;~~

~~(d) The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;~~

~~(e) The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides;~~

~~(f) Any other necessary information prescribed by the department~~].

(3) ***No license shall be issued unless the applicant is registered as a dealer or is employed by a person who is registered as a dealer***[~~The department shall require an applicant for a license to show upon examination that he possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he has applied for, manually or with the various equipment that he may have applied for a license to operate. The examination shall require a working knowledge of:~~

~~(a) The proper use of the equipment.~~

~~(b) The hazards that may be involved in applying pesticides, including:~~

~~1. The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;~~

~~2. The proper meteorological conditions for the application of pesticides and the precautions to be taken therewith;~~

~~3. The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;~~

~~4. The effect of the application of pesticides to wildlife in the area, including aquatic life;~~

~~5. The identity and classification of pesticides used and the effects of their application in particular circumstances;~~

~~6. The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation.~~

~~(c) Calculating the concentration of pesticides to be used in particular circumstances.~~

~~(d) Identification of pests to be controlled by common name only and the damages caused by such pests.~~

~~(e) Protective clothing and respiratory equipment required during the handling and application of pesticides.~~

~~(f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.~~

~~(g) Applicable state and federal pesticide laws and regulations.~~

~~(4) If the department finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under KRS 217B.130, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the department for cause or the financial security required under KRS 217B.130 is not dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security~~].

Section 5. KRS 217B.080 is amended to read as follows:

(1) ***Except as provided in Section 6 of this Act,*** it shall be unlawful for any person to act as an employee of a pesticide ***operator or dealer***[~~applicator~~] and apply pesticides manually***,*** or as the ***applicator***[~~operator~~] directly in charge of any equipment which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained an ***applicator's***[~~operator's~~] license from the department.[~~ Such~~] An ***applicator's***[~~operator's~~] license shall be in addition to any other license or permit required by law for the operation or use of any[~~ such~~] equipment. Any person applying for [~~such~~] an ***applicator's***[~~operator's~~] license shall file an application on a form prescribed by the department on or before January 1 of each year. Application for a license to apply pesticides shall be accompanied by a license fee of ***ten dollars($10)***[~~$10~~]. The provisions of this section shall not apply to any individual who has passed the examination provided for in subsection (3) of ***Section 3 of this Act***[~~KRS 217B.070~~], and is a licensed pesticide ***operator***[~~applicator~~]. If the department finds the applicant qualified to apply pesticides in the classifications he has applied for after examinations as provided for in subsection (3) of ***Section 3 of this Act***[~~KRS 217B.070~~], and if the applicant applying for a license to engage in aerial applications of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide ***applicator***[~~operator~~] license limited to the classifications for which he is qualified which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior ***to that***[~~thereto~~] by the department for cause as provided for in KRS 217B.120.

(2) ***No license shall be issued unless the applicant holds a valid certification within this category.***

(3) ***No license shall be issued unless the applicant is employed or supervised by a person who holds a valid operator's license.***

Section 6. KRS 217B.090 is amended to read as follows:

(1) ***It shall be unlawful for any person to act as a noncommercial applicator without having obtained a noncommercial applicator license from the department. Any person applying for a noncommercial applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. The provisions of this section shall not apply to any individual who is a licensed pesticide operator or applicator. If the department finds the applicant qualified to apply pesticides, the department shall issue a limited license without a fee to a noncommercial applicator, which shall be valid only when the individual is applying pesticides on land owned, occupied, or managed by his or her employer. The noncommercial applicator license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause as provided for in Section 14 of this Act.***[~~Municipal corporations, and public utilities, or any other governmental agency except state agencies shall be subject to the provisions of this chapter and rules adopted thereunder; the public operator in charge of any equipment used by any municipal corporations, public utilities, or any governmental agencies, shall be subject to the provisions of KRS 217B.070(3) and 217B.080, and the department shall issue a limited license without a fee to such public operators which shall be valid only when such public operators are acting as operators on equipment used by such entities. Government research personnel shall be exempt from this licensing requirement~~

~~when applying pesticides to experimental plots. Such agencies, municipal corporations, and public utilities,]~~

(2) ***Employers of noncommercial applicators*** shall be subject to legal recourse by any person damaged by ***the***~~[such]~~ application of any pesticide, and ***the***~~[such]~~ action may be brought in the county where the damage or some part ***of the damage***~~[thereof]~~ occurred.

(3) ***No license shall be issued unless the applicant holds a valid certification within this category.***

(4) ***A limited license cannot be upgraded without retesting.***

Section 7. KRS 217B.100 is amended to read as follows:

(1) No person shall perform services as a pest control consultant without first procuring from the department a license in the classifications he has applied for under KRS 217B.060. Application for a license shall be on a form prescribed by the department and shall include the applicable information stipulated in subsection (2) of ***Section 3 of this Act***~~[KRS 217B.070]~~. The application for a license shall be accompanied by an annual fee of ***fifty dollars ($50)***~~[$50]~~.

(2) Each applicant for a pest control consultant's license shall be required to present to the department satisfactory evidence of training and experience providing a basic background to understand pest control principles. ***The***~~[Such]~~ applicant shall be required to pass satisfactorily a written examination to be prescribed by the department to demonstrate the applicant's specific knowledge under subsection (3) of ***Section 3 of this Act***~~[KRS 217B.070]~~.

(3) ***If an applicant provides a copy of a valid Kentucky Certified Crop Advisor certification to the department, the test and fee for a consultant license may be waived.***

Section 8. KRS 217B.103 is amended to read as follows:

(1) The department may suspend for not longer than ten (10) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any license issued under KRS 217B.100 if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this section:

(a) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(b) Made a pesticide recommendation not in accordance with the label registered ***as provided by***~~[pursuant to]~~ KRS 217.541 to 217.640;

(c) Violated any provision of this chapter or any ***administrative***~~[rule or]~~ regulation ***promulgated***~~[adopted]~~ by the department or of any lawful order of the department;

(d) Failed to pay the original or renewal license fee when due~~[, and continue to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license]~~;

(e) Was guilty of gross negligence, incompetency**,** or misconduct in acting as a ***consultant, or***~~[pesticide dealer;~~

~~(f) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;~~

~~(g) Made false or fraudulent records, invoices, or reports;~~

~~(h)~~] used fraud or misrepresentation in making an application for a license or renewal of a license[~~, or in selling or offering to sell restricted use pesticides~~];

(f)[~~(i)~~] Refused or neglected to comply with any limitations or restrictions on or in a duly issued license;

(g)[~~(j)~~] Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with[~~ such~~] a licensed or unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person; ***or***

(h)[~~(k)~~] Impersonated any state, county, or city inspector or official[~~;~~

~~(l) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations~~].

(2) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license[~~ hereunder~~] until ***the***[~~such~~] time has elapsed from the date of the order revoking ***the***[~~said~~] license as established by the department, not to exceed two (2) years, or if an appeal is taken from ***the***[~~said~~] order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining ***the***[~~said~~] revocation.

Section 9. KRS 217B.105 is amended to read as follows:

(1) No person shall act in the capacity of a[~~ pesticide~~] dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a[~~ restricted use pesticide~~] dealer ***without having registered as a dealer with the department***[~~unless he is licensed annually as provided in this section. A separate license and fee shall be required for each location or outlet from which restricted use pesticides are distributed~~].

(2) Application for a[~~ pesticide~~] dealer ***registration***[~~license~~] shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of ***fifty dollars ($50)***[~~five dollars ($5)~~]. All ***registrations***[~~licenses~~] issued under this section shall expire on December 31 of the year for which they are issued. The ***registration***[~~license~~] for a[~~ pesticide~~] dealer may be renewed annually upon application to the department, accompanied by a fee of ***fifty dollars ($50)***[~~five dollars ($5)~~] for each ***registration***[~~license~~], on or before the first day of January of the calendar year for which the ***registration***[~~license~~] is issued.

(3) ***No person shall be registered as a dealer without proof of financial responsibility as required by Section 15 of this Act.***

(4) A dealer shall register each branch office location.

(5) Application for a branch office registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of twenty-five dollars ($25). All registrations issued under this section shall expire on December 31. The registration for a branch office may be renewed annually upon application to the department, accompanied by a fee of twenty-five dollars ($25) for each registration, on or before the first of January of the calendar year for which the registration is issued. No branch office registration may be issued unless the applicant is registered as a dealer.

(6) The department shall issue to each applicant who satisfies the requirements of this section a ***registration***~~[license]~~ which entitles the applicant to conduct the business described in the application for the calendar year for which the ***registration***~~[license]~~ is issued, unless the ***registration***~~[license]~~ is sooner revoked or suspended.

(7)~~[(4)]~~ The department shall ***promulgate administrative***~~[prescribe]~~ regulations requiring~~[restricted use pesticide]~~ dealers to maintain~~[such]~~ records with respect to their operations as it determines are necessary for the effective enforcement of this chapter. ***The***~~[Such]~~ records shall include, but not be limited to~~[:]~~ brands and amounts of restricted use pesticides sold***, and the***~~[;]~~ buyer's name, address***, use of the pesticide,*** and ***certification***~~[applicator's license]~~ number***.***~~[; provided that, no]~~ Records required under this section shall extend to financial data, sales data,~~[other than amount and]~~ shipment data,~~[pricing data]~~ and personnel data. ***The***~~[Such]~~ records are to be retained for a period of two (2) years from the time of sale. For the purposes of enforcing the provisions of this chapter, any~~[pesticide]~~ dealer shall, upon request of the department, furnish or permit the department at all reasonable times to have access to, and to copy, records as required by this section.

Section 10. KRS 217B.107 is amended to read as follows:

Each~~[pesticide]~~ dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of restricted use pesticides, and in all claims and recommendations for use or application of restricted use pesticides.

SECTION 11. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

(1) The department shall establish a licensure program for pesticide sales agents. The department shall require an applicant for licensure to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides.

(2) Application for a pesticide sales agent license shall be in the form and shall contain information prescribed by the department. Each application shall be accompanied by a fee of five dollars ($5). All licenses issued under this section shall expire on December 31 of the year issued. The license for a pesticide sales agent may be renewed annually upon application to the department, accompanied by a fee of five dollars ($5) for each license, on or before the first day of January of the calendar year for which the license is issued.

(3) The department shall issue to each applicant who meets the requirements of this section a license that entitles the applicant to hold himself or herself out as a pesticide sales agent.

(4) No person shall hold himself or herself out as a pesticide sales agent unless that person is licensed as provided for in this section.

(5) No person shall make recommendations for the use or application of pesticides unless that person is licensed as provided for in this section.

(6) No person shall sell or distribute restricted use pesticides to the final user unless that person is licensed as provided for in this section.

(7) No license shall be issued unless the applicant holds a valid certification within this category.

SECTION 12. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

(1) The department shall establish and administer a program to register trainees.

(2) A dealer shall not employ a trainee to apply pesticides manually or as the applicator directly in charge of any equipment that is licensed or should be licensed under the provisions of this chapter for the application of any pesticide without registering the trainee with the department. It shall be unlawful for any person to act as a trainee without being registered.

(3) Application for a trainee registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of five dollars ($5).

(4) Trainee registration shall be valid for ninety (90) days and shall not be reissued or renewed.

Section 13. KRS 217B.110 is amended to read as follows:

(1) If the application for renewal of any license ***or registration*** provided for in this chapter is not filed prior to March 1 in any year, a penalty of twenty-five percent (25%) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal ***is***~~[license shall be]~~ issued~~[; such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in the business subsequent to the expiration of his license]~~.

(2) Any person holding a current valid license may renew ***the***~~[such]~~ license for the next year without taking another examination unless the department determines that new knowledge related to classifications for which the applicant has applied makes a new examination necessary. However, if the license is not renewed by June 1 of each year***,*** then ***the***~~[such]~~ licensee shall~~[again]~~ be required to take another examination.

(3) No license will be issued or renewed unless certification is valid for the calendar year or the applicant has met training requirements that will allow for a renewal of certification within the calendar year for the license.

Section 14. KRS 217B.120 is amended to read as follows:

The department may ***assess civil penalties as provided by Section 20 of this Act, or may*** suspend, revoke, ***delay issuing,*** or modify the provision of any~~[applicator's, operator's, or consultant's]~~ license ***or registration*** issued under this chapter, if it finds that the applicant or ***holder***~~[licensee]~~ has committed any of the following acts, each of which is declared to be a violation of this chapter:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Made a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.541 to 217.640;

(3) Applied known ineffective or improper materials;

(4) Operated faulty or unsafe equipment;

(5) Operated ***application equipment*** in a~~[faulty,]~~ careless~~[,]~~ or negligent manner;

(6) Refused or, after notice, neglected to comply with the provisions of this chapter, the ***administrative regulations promulgated under this chapter***[~~rules adopted hereunder~~], or of any lawful order of the department;

(7) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;

(8) Made false or fraudulent records, invoices, or reports;

(9) Engaged in the business of the application of a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;

(10) Operated ***unregistered***[~~unlicensed~~] equipment;

(11) Used fraud or misrepresentation in making an application for a license ***or registration*** or renewal of a license ***or registration***;

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or ***registration***[~~permit~~];

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with[~~ such~~] a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;[~~ or~~]

(15) Impersonated any state, county, or city inspector or official***;***

(16) Made a sale to, or distributed a restricted use pesticide to, an uncertified applicator;

(17) Failed to obtain any license or registration required by this chapter;

(18) Failed to obtain or maintain financial responsibility required by this chapter;

(19) Failed to comply with the provisions of Section 19 of this Act;

(20) Failed to provide direct on-the-job supervision of a trainee by a licensed operator or applicator in the application of a pesticide;

(21) Failed to follow notification and information requirements in accordance with Section 22 of this Act, including:

(a) Failure to provide customer written information prior to application;

(b) Failure to place lawn marker;

(c) Failure to meet minimum requirements for lawn marker;

(d) Failure to furnish customer proper information at application; or

(e) Failure to furnish prior notification of application when requested; or

(22) Failed to follow notification and information requirements in accordance with Section 23 of this Act, including:

(a) Failure to place golf course marker immediately after application;

(b) Failure to meet minimum requirements for golf course marker; or

(c) Failure to furnish prior notification of application when requested.

Section 15. KRS 217B.130 is amended to read as follows:

(1) The department shall not issue ***or renew*** a ***dealer registration to a dealer applying pesticides to the lands of others***~~[pesticide applicator license in the category of right-of-way pest control or in any aerial pesticide application category]~~ until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy, or certification ***of the bond or policy***~~[thereof]~~, protecting persons who may suffer legal damages as a result of the applicant.~~[All other categories shall be exempt from the requirement to furnish financial responsibility.]~~

(2) The amount of the surety bond or liability insurance as provided for in this section shall be not less than ***one million dollars ($1,000,000. The***~~[one hundred thousand dollars ($100,000) for public liability and not less than twenty-five thousand dollars ($25,000) for property damage, including loss or damage arising out of the actual use of any pesticide. Such]~~ surety bond or liability insurance shall be maintained at not less than ***that amount***~~[those amounts]~~ at all times during the licensed period. The department shall be notified ten (10) days prior to any reduction at the request of the applicant or cancellation of ***the***~~[such]~~ surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding one thousand dollars ($1,000) for all applicators for the total amount of liability insurance or surety bond required~~[herein]~~. If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, ***the***~~[such]~~ deductible clause shall not be accepted by the department unless ***the***~~[such]~~ applicant furnishes the department with a security bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

(3) Should the surety furnished become unsatisfactory, ***the***~~[said]~~ applicant shall upon notice execute a new bond or insurance and shall he fail to do so, the department shall cancel ***the registration***~~[his license]~~ and it shall be unlawful~~[thereafter]~~ for ***the***~~[such]~~ person to engage in ***the***~~[said]~~ business of applying pesticides until the bond or insurance is brought into compliance with the requirements of subsection (2) of this section and ***the registration***~~[his license]~~ is reinstated by the department.

(4) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though ***the***~~[such]~~ use conforms to the ***administrative***~~[rules and]~~ regulations of the department.

Section 16. KRS 217B.140 is amended to read as follows:

(1) The person claiming damages from pesticide application shall ***file***~~[have filed]~~ with the department a written statement claiming that he has been damaged, on a form prescribed by the department***,*** within sixty (60) days after the date that damages occurred, or prior to the time that twenty-five percent (25%) of a crop damaged ***has***~~[shall have]~~ been harvested. ***The***~~[Such]~~ statement shall contain, but shall not be limited ***to***~~[thereto]~~, the name of the person responsible for the application of ***the***~~[said]~~ pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damages are claimed***,*** and the date on which it is alleged that the damage occurred. The department shall prepare a form to be furnished to persons to be used in ***those***~~[such]~~ cases and ***the***~~[such]~~ form shall contain~~[such]~~ other requirements as the department may deem proper. The department shall, upon receipt of ***the***~~[such]~~ statement, notify the licensee and the owner or lessee of the land or other

person who may be charged with the responsibility, for the damages claimed, and furnish copies of ***the***~~[such]~~ statements as may be requested.

(2) The filing of ***a***~~[such]~~ report or the failure to file~~[such]~~ a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. The failure to file ~~[such]~~ a report shall not be a violation of this chapter.~~[However,]~~ If the person failing to file ***the***~~[such]~~ report is the only one injured from ***the***~~[such]~~ use or application of a pesticide by others, the department may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or ***registration***~~[permit]~~ issued under this chapter until ***the***~~[such]~~ report is filed.

(3) When damage is alleged to have been done, the claimant shall permit the licensee***, registration holder,*** and his representatives, such as bondsman or insure***,*** to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that ***the***~~[such]~~ damage may be examined. Failure of the claimant to permit ***the***~~[such]~~ observation and examination of the damaged lands shall automatically bar the claim against the licensee ***or registration holder***.

Section 17. KRS 217B.170 is amended to read as follows:

(1) The department shall require an annual fee of ten dollars ($10) for each aircraft to be registered and a fee of ten dollars ($10) for each piece of ground equipment to be registered, in the business of applying pesticides to the lands of another within this state. Should any equipment fail to pass inspection under KRS 217B.160, the department shall, pending inquiry and reinspection, suspend or revoke the registration. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with applicable laws and administrative regulations.

(2) All ***registered***~~[licensed]~~ equipment shall be identified by a license plate or decal furnished by the department, ***and***~~[at no cost to the licensee, which plate]~~ shall be affixed in a location and manner upon ***the***~~[such]~~ equipment as prescribed by the department.

Section 18. KRS 217B.180 is amended to read as follows:

(1) The provisions of KRS 217B.020 to 217B.180 relating to licenses ***or registration*** and requirements for their issuance shall not apply to any farmer owner of ground equipment applying nonrestricted use pesticides for himself or his farmer neighbors ***if***~~[; provided, that:~~

~~(a)~~] he applies the pesticides for his farmer neighbors without compensation other than trading of personal services~~[;~~

~~(b) All equipment not engaged in the application of pesticides for hire shall be identified by a license plate or decal furnished by the department at no cost to the owner with an inscription informing persons that such equipment is not to be used in the application of pesticides for hire under KRS 217B.070. It is the responsibility of the owner to inform the department in writing if any changes in status are to be made]~~.

(2) The licensing ***or registration*** provisions of KRS 217B.020 to 217B.180 shall not apply to any person using handpowered equipment, devices, or contrivances to apply nonrestricted use pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve (12) feet high, as an incidental part of his activity of taking care of his household lawn and yard or those of his neighbors, on the condition that ***the***~~[such]~~ person shall not publicly hold himself

out as being in the business of applying pesticides, and shall not accept compensation other than the trading of personal services for ***the***[~~such~~] activity.

(3) KRS 217B.020 to 217B.180 shall not apply to operators presently licensed and regulated under the provisions of KRS 249.250 to 249.340 on June 17, 1978, except that if required by EPA regulations ***the***[~~such~~] persons may be issued, without additional fees or examination, an applicator's license to enable them to purchase and use restricted use pesticides ***in accordance with***[~~pursuant to~~] the requirements of the Federal Environmental Pesticide Control Act of 1972.

(4) The registration provisions of Section 9 of this Act shall not apply to any noncommercial applicator.

(5) The licensing provisions of Section 5 of this Act shall not apply to any trainee.

Section 19. KRS 217B.190 is amended to read as follows:

(1) No person shall discard or store any pesticide or pesticide containers in[~~ such~~] a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, ***or*** pollinating insects***,*** or to pollute any waterway in a way harmful to any wildlife[~~ therein~~].

(2) No person shall use any registered pesticide in a manner not in accordance with its label.

(3) No person shall purchase, use***,*** or supervise the use of, a restricted use pesticide unless ***the***[~~such~~] person ***is certified***[~~be licensed~~] in a classification which permits ***the***[~~such~~] purchase, use***,*** or supervision of use.

(4) No person shall distribute a restricted use pesticide to a person who ***does not have the appropriate certification, registration, or license***[~~is not licensed as a restricted use pesticide dealer or applicator~~] as prescribed in this chapter.

Section 20. KRS 217B.193 is amended to read as follows:

(1) ***If***[~~When~~] any of the requirements of this chapter or administrative regulations promulgated ***under this chapter***[~~pursuant thereto~~] have not been complied with, the Commissioner shall cause a notice of violation to be issued[~~ upon the permit holder~~]. The Commissioner ***may issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990, or the Commissioner may***[~~shall~~] set forth in his notice a reasonable time period, but not more than ninety (90) days, for the abatement of the violation. If any ***licensee or registration***[~~license~~] holder has not abated the violation within the period of time prescribed in the notice of violation, the Commissioner shall issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990. The notice of noncompliance shall be mailed to the ***licensee or registration***[~~license~~] holder by certified mail, return receipt requested, addressed to the[~~ license holder's~~] permanent address as shown on department records. The notice of noncompliance shall specify in what respect the ***licensee or registration***[~~license~~] holder has failed to comply with this chapter or administrative regulations promulgated ***under this chapter***[~~pursuant thereto, and the period of time established for abatement~~]. If the ***licensee or registration***[~~license~~] holder has not complied with the requirements set forth in the notice of noncompliance within the time limit allowed, the license ***or registration*** may be revoked as provided in this chapter.

(2) The Commissioner shall develop a method for calculating the civil penalty for ***a violation, or*** failure to abate a violation**,** within the prescribed time period as authorized by this section, and he shall promulgate a schedule of the civil penalties in an administrative regulation.

Section 21. KRS 217B.220 is amended to read as follows:

The department may issue subpoenas to compel the attendance of witnesses ***or***~~[and/or]~~ production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or ***registration***~~[permit]~~ issued under the provisions of this chapter.

Section 22. KRS 217B.300 is amended to read as follows:

(1) The following definitions apply to this section:

(a) "Application" means the spreading of lawn chemicals in liquid or dry form on a lawn;

(b) "Applicator for hire" means any person who makes an application of lawn chemicals to a lawn for compensation, including applications made by an employee to lawns owned, occupied or managed by his employer;

(c) "Customer" means a person who makes a contract, either written or verbal, with an applicator for hire to apply a pesticide to a lawn;

(d)~~["Fertilizer" means any substance containing nitrogen, phosphorus, potassium or other recognized plant nutrient or compound which is used for its plant nutrient content;~~

~~(e)]~~ "Lawn" means land area covered with turf kept closely mown, except land areas used for agricultural production~~[, golf courses]~~, commercial production of turf, or land situated within three (3) feet of the foundation of a structure when a pesticide is applied to this area as a preventive or control measure for structural pests;

(e)~~[(f)]~~ "Lawn chemicals" means fertilizers, pesticides, or defoliants applied or intended for application to lawns;

(f)~~[(g)]~~ "Structural pest" means a pest which commonly invades or attacks dwellings or structures; and

(g)~~[(h)]~~ "Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.

(2) The following notification requirements shall be met:

(a) An applicator for hire shall provide a customer at the time of entering into a contract,~~[either written or verbal, or a reasonable time thereafter,]~~ with written information concerning lawn chemicals, application procedures, and other general guidelines about the safe use of lawn chemicals***;***~~[.]~~

(b) Immediately following application of lawn chemicals to a lawn, the applicator shall place a lawn marker at a prominent location in the lawn***;***~~[.]~~

(c) The lawn marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length***;***~~[.]~~

(d) Lettering on the lawn marker shall be in a contrasting color and shall read on one side "LAWN CARE APPLICATION - PLEASE STAY OFF GRASS UNTIL DRY" in letters easily readable and not less than three-eighths (3/8) ***inches in height***~~[inch]~~. The

lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator***;***~~[.]~~

(e) The lawn marker shall be removed and discarded by the property owner or resident, or other person authorized by the property owner or resident, the day following application***;***~~[.]~~

(f) For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property***; and***~~[.]~~

(g) For applications to properties other than residential property of three (3) families or less, the applicator shall place lawn markers at primary points of entry to the property to provide notice that lawn chemicals have been applied to the lawn.

(3) At the time of application of lawn chemicals to a lawn, an applicator for hire shall provide the following information to the customer, either homeowner or landlord, for each lawn chemical used***, and shall record and maintain at the business address the following information relating to the application of each lawn chemical***:

(a) The brand name or common name of the pesticide applied;

(b) The pesticide type;

(c) The fertilize rate ***and***~~[or]~~ analysis;

(d) The reason for use;

(e) The concentration of end use product applied to the lawn***,***~~[and]~~ the rate of application***, and the total gallons of end use product applied to the lawn***;

(f) Any special instruction appearing on the label of the lawn chemical product applicable to the customer's use of the lawn following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration;~~[and]~~

(g) The name and the state applicator license or certificate number of the individual actually making the application***;***

(h) Customer name, address, and date of application; and

(i) Total area of lawn treated.

(4) Any customer of an applicator for hire, or a neighbor whose residence is adjoining to a customer of an applicator for hire, may ***request***~~[receive]~~ prior notification twenty-four (24) to forty-eight (48) hours in advance of an application by contacting the applicator for hire and providing his name, address, and telephone number. In this event, the applicator for hire shall provide notification in writing, in person***,*** or by telephone, of the date and approximate time of application. If an applicator for hire is unable to provide prior notification to a customer or neighbor because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

~~[(5) Violations of this section shall be punishable by a civil fine of not more than one hundred dollars ($100) for each violation.]~~

SECTION 23. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

(1) The provisions of Section 22 of this Act relating to notification and information requirements shall not apply to any golf course or its employees.

(2) As used in this section:

(a) "Application" means the spreading of plant-regulating materials in liquid or dry form on a golf course;

(b) "Golf course" means land on which turf and ornamental care, including application of pesticides or fertilizer and storage of pesticides or fertilizer, is done for the purpose of preparing the land for use in the game of golf;

(c) "Plant-regulating materials" means fertilizers, pesticides, or defoliants applied or intended for application to a golf course; and

(d) "Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.

(3) The following shall be required by a golf course relating to records, notification, and information requirements:

(a) Immediately following application of plant-regulating materials on a golf course, the applicator shall place a golf course marker on the number-one (1) and number-ten (10) tees;

(b) The golf course marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;

(c) Lettering on the golf course marker shall be in a contrasting color and shall read on one side "PLANT-REGULATING MATERIALS HAVE BEEN APPLIED. IF DESIRED, YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION" in letters easily readable and not less than three-eighths (3/8) inches in height. The golf course marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;

(d) The golf course marker may be removed by the applicator or other personnel authorized by the golf course management the day following application;

(e) Any person whose residence directly adjoins a golf course may request prior notification of a plant-regulating material application by contacting the golf course superintendent's office and providing his or her name, address, and telephone number. If requested, the golf course shall provide notification in writing, in person, or by telephone. In the event the golf course cannot provide advance notice, the person shall be contacted at the time of application. It the golf course is unable to provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the golf course shall leave a written notice at the residence; and

(f) Material safety data sheets for each plant-regulating material shall be in an area of the superintendent's office where they can be easily read and accessible by patrons of the golf course.

(4) At the time of application of plant-regulating materials to a golf course, an applicator shall record and maintain the following information for each plant-regulating material used:

(a) The brand name or common name of the pesticide applied;

(b) The pesticide type;

(c) The fertilize rate and analysis;

(d) The reason for use;

(e) The concentration of end use product applied to the golf course, the rate of application, and the total gallons of end use product applied to the golf course;

(f) The location of area treated;

(g) Any special instruction appearing on the label of the plant-regulating material applicable to the golf course use following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration; and

(h) The name and the state applicator license or certification number of the individual actually making the application.

(5) This record shall be maintained in the golf course superintendent's office and shall be readily available to review on request. This record shall be retained for three (3) years and be an inspectable item for the department.

Approved March 28, 2000

CHAPTER 173

(SCR 61)

A CONCURRENT RESOLUTION recognizing the Catbird 500 Air Derby as the official Kentucky Air Derby.

WHEREAS, one of the top seven air races in the country is held annually in Kentucky, and we are proud to recognize the Kentucky Bluegrass 99s of the Women's International Pilot Association as the host of the Catbird 500 Air Derby and Safety Seminars, sponsored by United Parcel Service, American Airlines, Chevron, Kentucky Aviation Association, and private individuals; and

WHEREAS, all proceeds raised by the Catbird 500 Air Derby go to charity, and the 1999 Air Derby raised over $1,700 for the Marine Corps Toys for Tots, $100 for the Special Olympics and $100 for the Crusade for Children, and approximately 200 people attended the Safety Seminars and outside exhibits; and

WHEREAS, the Catbird 500 Air Derby is a contest of speed and proficiency; it grew from five racing teams at the onset to fifteen teams in the 1999 race, including teams from twelve states and Canada; the Air Derby's 500 flight miles included seven different airports in Kentucky, beginning and ending at Bowman Field in Louisville; and

WHEREAS, the next annual Catbird 500 Air Derby will be held on October 14, 2000, and it is fitting and proper for this honorable body to recognize this Kentucky Aviation Project;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. The General Assembly is indeed proud and honored to recognize the Catbird 500 Air Derby as the official Kentucky Air Derby, and we wish to the Kentucky Bluegrass 99s of the Women's International Pilot Association success in all future endeavors.

Section 2. When the Senate adjourns this day, it does so in honor of the Catbird 500 Air Derby as the official Kentucky Air Derby.

Section 3. The Clerk of the Senate is hereby directed to transmit a copy of this Resolution to Ms. Sylvia Sue Hall, Chairman, Kentucky Bluegrass 99s, 5001 Carpenter Drive, Crestwood, Kentucky 40014-2157.

Approved March 28, 2000

CHAPTER 174

(HB 4)

AN ACT relating to identity theft.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 514 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of the theft of the identity of another when, without the other's consent, he or she knowingly possesses or uses any identifying information of the other person, such as one's name, Social Security number, birth date, personal identification number or code, which is kept in documents, photo or electrical copies, computer storage, or any other form of document retrieval and storage, and the theft is committed with the intent to represent that he or she is the other person for the purpose of:

(a) Depriving the other person of property;

(b) Obtaining benefits or property to which he or she would otherwise not be entitled;

(c) Making financial or credit transactions using the other person's identity;

(d) Avoiding detection; or

(e) Commercial or political benefit.

(2) Theft of identity is a Class D felony.

(3) This section shall not apply when a person obtains the identity of another to misrepresent his or her age for the purpose of obtaining alcoholic beverages, tobacco, or another privilege denied to minors.

(4) This section does not apply to credit or debit card fraud under KRS 434.550 to 434.730.

(5) Where the offense consists of theft by obtaining or trafficking in the personal identity of another person, the venue of the prosecution may be in either the county where the offense was committed or the county where the other person resides.

(6) A person found guilty of violating any provisions of this section shall forfeit any lawful claim to the identifying information, property, or other realized benefit of the other person as a result of such violation.

SECTION 2. A NEW SECTION OF KRS CHAPTER 514 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of trafficking in stolen identities when without the other's consent, he manufactures, sells, transfers, purchases, or possesses with intent to manufacture, transfer, purchase, or sell the personal identity of another person for any purpose listed in subsection (1) of Section 1 of this Act. The personal identity of an individual includes any identifying information of that person, such as one's name, Social Security number, birth date, personal identification number or code, which is kept in documents, photo or electrical copies, computer storage, or any other form of document retrieval and storage.

(2) Possession of five (5) or more separate identities shall be prima facie evidence that the identities are possessed for the purpose of trafficking.

(3) Trafficking in stolen identities is a Class C felony.

SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) Anyone who is a victim under Section 1 or Section 2 of this Act shall have a cause of action, either where the victim resides or the defendant resides, for compensatory and punitive damages against anyone who violates Section 1 or Section 2 of this Act.

(2) The statute of limitations for cases under the provisions of this section shall be five (5) years from the date of the discovery of the violation of Section 1 or Section 2 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) A person found guilty of violating any provisions of Section 1 or Section 2 of this Act shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of the violation. Financial loss may include any costs incurred by the victim in correcting the credit history of the victim or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.

(2) A person found guilty of violating any provisions of Section 1 or Section 2 of this Act shall pay restitution to the person or entity that suffers the financial loss. In addition to the financial loss detailed in subsection (1) of this section, the person or entity may include a financial institution, insurance company, or bonding association that suffers direct financial loss as a result of the violation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Attorney General shall have concurrent jurisdiction with Commonwealth's attorneys and county attorneys for the prosecution of offenses under and the enforcement of the provisions of Sections 1, 2, 3, and 4 of this Act.

Approved March 28, 2000

CHAPTER 175

(HB 62)

AN ACT changing the classification of the City of Pioneer Village, in Bullitt County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Pioneer Village, in Bullitt County, is such as to justify its being classified as a city of the fourth class;

NOW THEREFORE,

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

Section 1. The City of Pioneer Village, in Bullitt County, is transferred from the fifth to the fourth class of cities.

Approved March 28, 2000

CHAPTER 176

(HB 141)

AN ACT relating to police radios.

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

Section 1. KRS 432.570 is amended to read as follows:

(1) It shall be unlawful for any person except a member of a police department or police force or an official with written authorization from the head of a department which regularly maintains a police radio system authorized or licensed by the Federal Communications Commission, to have in his or her possession, or in an automobile or other vehicle, or to equip or install in or on any automobile or other vehicle, any mobile radio set or apparatus capable of either receiving or transmitting radio or other messages or signals within the wave length or channel now or which may hereafter be allocated by the Federal Communications Commission, or its successor, for the purpose of police radios, or which may in any way intercept or interfere with the transmission of radio messages by any police or other peace officers. It shall be unlawful for any car, automobile, or other vehicle other than one publicly owned and entitled to an official license plate issued by the state issuing a license for the car, to have, or be equipped with the sets or apparatus even though the car is owned by an officer. This section shall not apply to any automobile or vehicle owned or operated by a member of a sheriff's department authorized by the fiscal court to operate a radio communications system that is licensed by the Federal Communications Commission or other federal agency having the authority to license same. Nothing in this section shall preclude a probation and parole officer employed by the Department of Corrections from carrying on his person or in a private vehicle while conducting his official duties an authorized, state-issued portable radio apparatus capable of transmitting or receiving signals.

(2) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars ($50) and not exceeding five hundred dollars ($500), or imprisonment not exceeding twelve (12) months, or both so fined and imprisoned.

(3) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment had or used in violation of the provisions of this section, and, upon conviction of the person having, equipping or using such equipment, it shall be the duty of the trial court to order such equipment or apparatus destroyed, forfeited, or escheated to the Commonwealth of Kentucky, and said property may be ordered destroyed, forfeited, or escheated as above provided without a conviction of the person charged with violating this section.

(4) Nothing contained in this section shall prohibit the possession of a radio by:

(a) An individual who is a retailer or wholesaler and in the ordinary course of his business offers such radios for sale or resale;

(b) A commercial or educational radio or television station, licensed by the Federal Communications Commission, at its place of business; or

(c) An individual who possesses such a radio, provided it is capable of receiving radio transmissions only and is not capable of sending or transmitting radio messages, at his place of residence; licensed commercial auto towing trucks; newspaper reporters and photographers; emergency management agency personnel authorized in writing by the director of the division of emergency management (for state personnel) or chief executive of the city or county (for their respective personnel); a person holding a valid license issued by the Federal Communications Commission in the amateur radio service; peace officers authorized in writing by the head of their law enforcement agency, Commonwealth's attorneys and their assistants, county attorneys and their assistants, except that it shall be unlawful to use such radio to facilitate any criminal activity or to avoid apprehension by law enforcement officers. Violation of this section shall, in addition to any other penalty prescribed by law, result in a forfeiture to the local law enforcement agency of such radio.

(5) ***The provisions of this section shall not apply to a paid or volunteer member of a fire department or a paid or volunteer member of a public ambulance service licensed in Kentucky who has been given permission in writing by the chief of the fire department and the chief of each law enforcement agency whose frequency is to be monitored, or the director of the ambulance service and the chief of each law enforcement agency whose frequency is to be monitored, to possess a radio capable of receiving on a frequency allocated to a police department or law enforcement agency, whether the radio is in a vehicle or not.***

(6) The secretary of the Finance and Administration Cabinet is hereby empowered by issuance of a secretary's order to exempt from the prohibitions and penalties of this section the possession and use of any and all radio communication equipment that he finds is necessary to be owned and used by members of the general public and other nonpolice persons for utilization in the N.O.A.A. weather radio system.

Approved March 28, 2000

CHAPTER 177

(HB 301)

AN ACT relating to fire chiefs and assistant chiefs in cities of the second class.

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

Section 1. KRS 95.500 is amended to read as follows:

(1) The chief of the fire department in cities of the second class or urban-county governments, or an officer acting under his authority, shall be present at all fires and investigate their cause. He may examine witnesses, compel the production of testimony, administer oaths, make arrests, and enter any building for the purpose of examination that, in his opinion, is in danger from fires. He shall report his proceedings to the city legislative body when required.

(2) The chief shall direct and control the operations of the members of the fire department in the discharge of their duties. He shall have access to and use of all cisterns, fireplugs, the waters of the waterworks, and the cisterns of private persons, for the purpose of extinguishing fires. He shall have the right to examine all cisterns, and all plugs and pipes of the waterworks, to see that they are in condition for use in case of fire. He shall have control of all buildings, hose, engines, and other equipment provided for the fire department. He shall perform such other duties as the legislative body shall, by ordinance, prescribe.

(3) The fire department of each~~[second-class]~~ city ***of the second class*** or urban-county government shall be divided into three (3) platoons. Each platoon***, excluding the chief and the assistant chief in fire departments in cities of the second class,*** shall be on duty for twenty-four (24) consecutive hours, after which the platoon serving twenty-four (24) hours shall be allowed to remain off duty for forty-eight (48) consecutive hours, except in cases of dire emergency. The chief of the fire department shall arrange the schedule of working hours to comply with the provisions of this section. The pay, rank, or benefits of the members and officers of the fire department shall not be reduced as a result of this subsection.

(4) In each city of the second class or urban-county government, all employees of the fire department shall be given not less than two (2) weeks leave of absence annually, with full pay.

Approved March 28, 2000

CHAPTER 178

(HB 335)

AN ACT relating to city civil service positions.

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

Section 1. KRS 90.300 is amended to read as follows:

(1) In KRS 90.310 to 90.410, unless the context requires otherwise:

(a) "Administrative or directorial position" means the head of a department of municipal government.

(b) "Appointing authority" means the officer, commission, board or body having the power of appointment or removal in any office, department, commission, board or institution.

(c) "Civil service" means the offices and positions of trust or employment in the service of the city not specifically excluded by KRS 90.310 to 90.410 or by ordinance of the city as provided in KRS 90.310.

(d) "Commission" means the board of civil service commissioners as established under KRS 90.310.

(e) "Dismissal" means the discharge of an employee.

(f) "Employee" means any person employed in the conduct of municipal affairs, but the term shall not include the mayor or city manager, an administrative or directorial position established for cities of the second or third class, except that the legislative body, no later than December 31, 1982, may elect by ordinance to designate persons in administrative or directorial positions as employees, however, any person employed in an administrative or directorial position on July 15, 1982, shall continue to be covered by the provisions of KRS 90.310 to 90.410 for ***the***~~[such]~~ time as he is employed in ***a***~~[such]~~ position notwithstanding the removal of the position from the definition of "employee" and in cities of the second class it shall not include the offices of the board of health, members of the planning and zoning commission, the board of trustees of the public library, members of the housing authority, municipal hospital commission or the trustees, members or corresponding officers of similar boards or commissions of cities of the second class, persons employed on temporary and special projects or to persons whose regular employments with the city are seasonal and are less than nine (9) months in any one (1) year, ***persons in a class of employees designated by ordinance to be non-civil service positions,*** and the city clerk or city assessor of a city of the second class operating under the commission form of government.

(g) "Pension fund" means the moneys derived from the employees and the levy of a special tax, either or both, or any other sum derived from any other source, to be used for the retirement of employees after the prescribed years of service and for the benefit of disabled employees, and surviving spouses and dependent children in the case of death of an employee within the scope of his employment according to the terms of KRS 90.310 to 90.410 and the ordinance of the city.

(2) The provisions of KRS 90.310 to 90.410 are independent of and do not affect the laws governing the police and fire departments, nor their pension funds, in cities of the second and third classes.

Section 2. KRS 90.310 is amended to read as follows:

(1) Any city of the second or third class may elect to operate under KRS 90.310 to 90.410, and, by ordinance, create a civil service commission which shall hold examinations as to the qualifications of applicants for municipal employment within the several departments of the city that are designated by ordinance.~~[In cities of the second class in which a civil service ordinance was adopted before June 19, 1946, the city shall, by ordinance, create civil service classifications for all employees consistent with the actual work to be performed by such employees;]~~ In ***all***~~[other]~~ cities of the second class, and in cities of the third class, the city

may, by ordinance, classify employees and designate the class of employees it desires to include.

(2) The mayor, subject to the approval of the city legislative body, shall appoint at least three (3) but no more than five (5) persons who shall constitute the civil service commission of that city. Each appointee shall be at least thirty (30) years of age and not related by either blood or marriage to the mayor or any member of the city legislative body. The appointees shall originally be appointed one (1) for a term of three (3) years, one (1) for a term of two (2) years and all remaining appointments shall be for a term of one (1) year, and the successors to these appointees shall be appointed in like manner, each for a period of three (3) years and until his successor is appointed and qualified. A vacancy shall be filled for the unexpired term in the same manner as original appointments. At the time of any appointment, if the mayor elects to appoint only three (3) commissioners, not more than two (2) commissioners shall be adherents of the same political party. If the mayor elects to appoint more than three (3) commissioners not more than three (3) commissioners shall be adherents of the same political party. The appointee originally appointed for the term of three (3) years shall be secretary of the commission. Each appointee shall qualify by taking an oath of office as required by law. The salaries of the members of the commission may be fixed by the city legislative body.

(3) If the appointing authority of any city fails to appoint a civil service commission within thirty (30) days after he has the power to so appoint or after a vacancy exists, the mayor pro tem shall make the appointment and the appointee shall hold office until the expiration of the term and until his successor is appointed and qualified.

(4) The civil service commission shall make and enforce rules, not inconsistent with the provisions of KRS 90.310 to 90.410 or the ordinances of the city, for examinations and registrations therefor.

Approved March 28, 2000

CHAPTER 179

(HB 358)

AN ACT relating to animal control.

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

Section 1. KRS 258.095 is amended to read as follows:

As used in KRS 258.095 to 258.365 and KRS 258.990(3) and (4), unless the context requires otherwise:

(1) "Department" means the Department of Agriculture;

(2) "Commissioner" means the Commissioner of Agriculture;

(3) "Committee" means the advisory committee created by KRS 258.115;

(4) "Dog" means any member of the canine family, six (6) months of age or over;

(5) "Owner," when applied to the proprietorship of a dog, includes every person having a right of property in the dog and every person who keeps or harbors the dog, or has it in his care, or permits it to remain on or about premises owned or occupied by him;

(6) "Livestock" includes horses, stallions, colts, geldings, mares, sheep, rams, lambs, bulls, bullocks, steers, heifers, cows, calves, mules, jacks, jennets, burros, goats, kids, swine and confined and domesticated hares and rabbits;

(7) "Poultry" includes all domesticated fowl and all game birds which are legally kept in captivity;

(8) "Kennel" means any establishment where dogs are kept for the purpose of breeding, sale, show or sporting purposes, and which is so constructed that dogs cannot stray therefrom;

(9) "Livestock fund" means the fund created by KRS 258.125 for the purpose of administering its provisions;

(10) "Attack" means a dog's attempt to bite or successful bite of a human being. This definition shall not apply to a dog's attack of a person who has illegally entered or is trespassing on the dog owner's property in violation of KRS 511.060, 511.070, 511.080, or 511.090;

(11) "Vicious dog" means any individual dog declared by a court to be a vicious dog;~~[and]~~

(12) "Animal control officer" means an individual employed by a city, county, urban-county government, or charter county government who enforces the provisions of this chapter and local dog control ordinances***; and***

(13) "Designated license facility" means any person, facility, or business designated by resolution of the fiscal court to collect license fees under Section 3 of this Act.

Section 2. KRS 258.119 is amended to read as follows:

(1) The "Animal Control and Care Fund" is hereby created as a special fund in the State Treasury. The fund may also receive gifts, grants from public and private sources, ***state appropriations,*** and federal funds. Any unalloted or unencumbered balances in this fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.

(2) Moneys ***from the fund*** shall be~~[allocated for distribution from the fund as follows:~~

~~(a) Fifty percent (50%) of the fund balance shall be allocated annually for distribution to eligible counties. Each eligible county shall receive an equal allotment from the fund. To be eligible for an annual allotment, a county shall have an established animal control and care program meeting the requirements provided in subsection (3) of this section, or an approved plan to establish an animal control and care program as provided in subsection (4) of this section; and~~

~~(b) Fifty percent (50%) of the fund balance shall be transferred annually to the Department of Agriculture. This money shall be]~~ used by the Animal Control Advisory Board for board expenses, for the creation and support of statewide programs related to animal control and care, and for training dog wardens and animal control officers. "Statewide programs" includes, but is not limited to, the reimbursement of costs for preexposure rabies vaccinations for all animal control and care workers. ***When determining the distribution of the moneys relating to training, the need of the applicant shall be one of the criteria considered by the board.*** Based on recommendations of the Animal Control Advisory Board, any moneys not expended under this ***subsection***~~[paragraph]~~

may be distributed annually as grants to counties with an established animal control and care program meeting the requirements of subsection (3) of this section or approved plan to establish an animal control and care program under subsection (4) of this section.

(3) As used in this section, "animal control and care program" means a program in which the county:

(a) Employs a dog warden or an animal control officer as required by KRS 258.195, who is a high school graduate and has completed the training requirements set forth by the Animal Control Advisory Board; and

(b) Maintains a dog pound or animal shelter, or contracts with an adjoining county, to provide services that:

1. Segregate male and female animals in runs and holding areas;

2. Provide separate runs or holding areas for ill or injured animals;

3. Provide quarantine for dogs and cats presented to the shelter when quarantine by the owner is not feasible or desirable, the cost of quarantine to be borne by the animal owner at the shelter's regular housing costs and fees. Quarantined dogs and cats shall be held in isolation for observation of symptoms of rabies for a period of ten (10) days from the date the dog or cat bit or scratched a person. If the dog or cat dies or is euthanized while in quarantine, it shall be submitted to the local health department for testing for the presence of the rabies virus. The cost of the testing shall be borne by the animal owner or the local health department may bear the cost at its discretion;

4. Provide holding areas with protection from the weather, including heated quarters during cold weather;

5. Provide runs and cages built of materials which can be readily cleaned and disinfected, including floors made of an impervious material or a minimum of three (3) inches of gravel;

6. Provide access to the public for no less than twenty-four (24) hours in one (1) week, with the hours that the facility is open to the public posted in a visible location;

7. Employ euthanasia methods recommended by the American Veterinary Medical Association; and

8. Provide other minimum standards as developed by the Animal Control Advisory Board and approved by the commissioner.

(4) ~~[To be eligible for moneys distributed under paragraph (a) of subsection (2) of this section, counties shall submit documentation to the Animal Control Advisory Board, on a form prescribed by the Department of Agriculture, of an established animal control and care program or an approved plan to establish an animal control and care program.]~~Counties submitting plans proposing to establish an animal control and care program for approval by the Animal Control Advisory Board shall comply with the requirements of:

(a) Paragraph (a) of subsection (3) of this section within twelve (12) months of the date the documentation is submitted; and

(b) Paragraph (b) of subsection (3) of this section within twenty-four (24) months of the date the documentation is submitted.

(5) To be eligible for any moneys distributed as grants to counties under~~[paragraph (b) of]~~ subsection (2) of this section, counties shall submit an application to the commissioner, on a form prescribed by the Department of Agriculture, by July 15 of each year. Moneys shall be used for construction, equipment, educational supplies, and other uses or programs approved by the advisory board, but shall not be used to increase wages of dog wardens or other personnel. Counties receiving money from the Department of Agriculture shall comply with the terms of the plan or program. If the terms of the plan or program are not complied with, the county shall refund the money to the Department of Agriculture.

(6) The commissioner shall promulgate administrative regulations that relate to the animal control and care fund provisions of this section.

Section 3. KRS 258.135 is amended to read as follows:

(1) On or before July 1, 1954, and on or before July 1 of each year thereafter, the owner of any dog six (6) months old or over shall apply to the dog warden ***or designated license facility*** of the county in which he resides for a license for each dog owned or kept by him. The application shall be accompanied by a license fee of one dollar and fifty cents ($1.50) for each dog, except as provided in KRS 258.500. Any license issued for the year of 1954 before July 1, 1954, shall be effective until July 1, 1955. Dog wardens ***and designated license facilities*** shall be agents of the Commonwealth in the collection of the license fees~~[provided for herein]~~, unless the department determines, with the approval of the Governor, to issue all licenses either directly or through other agents. For services rendered in collecting and paying over the fee, dog wardens ***or designated license facilities*** shall be allowed to retain the sum of twenty-five cents ($0.25) for each license. The balance of the license fee collected shall be paid to the department ***quarterly***~~[on or before the fifteenth day of each next succeeding month]~~ and shall be credited to the livestock fund. If the committee finds it to be in the interest of maximum enforcement of this chapter to permit certain other portions of the license fee to be retained by the respective counties for use in enforcement, the department may allow these portions of the license fee to be so retained by the counties.

(2) Any county may choose to issue additional licenses in conjunction with effective dates of a valid rabies vaccination, provided the dog shall be licensed each fiscal year.

Section 4. KRS 258.185 is amended to read as follows:

Each dog warden shall keep a record of all dog and kennel licenses issued***, including licenses issued by designated license facilities,*** and shall report to the department ***quarterly those***~~[monthly his]~~ license sales on a form prescribed and supplied by the department. ***Designated license facilities shall make quarterly reports to the dog warden in order for the warden to report to the department.*** The record maintained shall be a public record.

Section 5. KRS 258.215 is amended to read as follows:

(1) Peace officers, dog wardens, or animal control officers shall seize and impound any dog which does not bear a proper license tag or other legible identification which is found running at large, but if an officer, dog warden, or animal control officer, after diligent effort to do so, should fail to seize ***the***~~[such a]~~ dog, it shall then become his duty to destroy the dog by any reasonable and humane means. Any~~[such]~~ dog which an officer, dog warden, or

animal control officer seizes shall be impounded for ***a period of five (5) or*** seven (7) days, ***to be determined by the local animal shelter.***~~[and]~~ If ***the dog is*** not claimed by the owner or sold in accordance with other provisions of this chapter, then ***the***~~[such]~~ dog may be destroyed in some humane manner. ***Any animal shelter, public or private, which takes in stray dogs and does not have regular hours for public access, shall post semimonthly either in a local newspaper or the newspaper with the highest circulation in the county, the shelter location, hours of operation, the period that impounded dogs shall be held, and a contact number.***

(2) A hound or other hunting dog which has been released from confinement for hunting purposes shall be deemed to be under reasonable control of its owner or handler while engaged in or returning from hunting, and, if ***a***~~[such]~~ hunting dog becomes temporarily lost from a pack or wanders from actual control or sight of its owner or handler, ***the***~~[such]~~ owner or handler shall not be deemed to be in violation of the provisions of this section as a result of ***the***~~[such]~~ dog's having become temporarily lost or having wandered from immediate control or sight of the owner or handler.

Section 6. The following KRS section is repealed:

258.121 Animal shelter trust fund -- Allocation of moneys.

Section 7. Any moneys remaining in the Animal Shelter Trust Fund on the effective date of this Act shall be transferred to the Animal Control and Care Fund created by Section 2 of this Act.

Approved March 28, 2000

CHAPTER 180

(HB 482)

AN ACT relating to license plates.

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

Section 1. KRS 186.240 is amended to read as follows:

(1) It shall be the duty of the cabinet to carry out the provisions of KRS 186.005 to 186.260, and:

(a) Prepare and furnish to the clerk in each county a sufficient supply of all forms and blanks provided for in KRS 186.005 to 186.260. The forms for receipts shall be designated for the writing of not less than triplicate copies, the originals of which shall be numbered consecutively for each county, the second and third copies bearing the same number as the original. Receipts to be used as duplicates for lost receipts, as provided in KRS 186.180(1), shall be in duplicate only, and shall not be numbered;

(b) Keep a numerical record of all registration numbers issued in the state, for which they may use the second copy of receipts forwarded by the clerk of each county, and also keep a record of motor or vehicle identification numbers required by KRS 186.160; and

(c) Furnish to each clerk, originally each year upon estimate, and thereafter upon requisition at all times, a sufficient supply of plates and other insignia evidencing registration for all classes of vehicles required to be registered. The cabinet shall

prescribe a plate of practical form and size for police identification purposes that shall contain:

1. The registration number;

2. The word "Kentucky;" and

3. The name of the county in which the plate is issued, or in lieu thereof the words "Official," "Transportation," "Executive," or "Farm." Plates for commercial vehicles, shall contain the year the license expires and words or information the Department of Vehicle Regulation may prescribe by administrative regulation, pursuant to KRS Chapter 13A. Numerals indicating a year shall not be placed upon any license plate issued pursuant to KRS 186.060, relating to the licensing of vehicles owned exclusively by the state and KRS 186.061, relating to the licensing of vehicles owned exclusively by a nonprofit volunteer fire department, volunteer fire prevention unit, and volunteer fire protection unit. A state slogan may be placed upon the plate.

(2) License plates issued pursuant to KRS 186.050(1) shall conform to the provisions of subsection (1)(c) of this section except:

(a) The word "Kentucky" shall be centered above the county name in which the plate is issued;

(b) The words "Bluegrass State" shall be centered at the top of the plate above the registration number; and

(c) The name of the county in which the plate is issued shall be centered in the lower portion of the plate below the registration number and shall be printed in letters that are the same size as those used to print the word "Kentucky." Beginning January 1, 1993, the Transportation Cabinet shall provide for the issuance of reflectorized plates for all motor vehicles, and shall collect a fee, in addition to the fee set out in KRS Chapter 186 and KRS 281.860, of fifty cents ($0.50)***. The fifty cents ($0.50) fee to reflectorize license plates shall be used by the cabinet as provided in subsection (3) of this section***;

(3) ***The reflectorized license plate program fund is established in the state road fund and appropriated on a continual basis to the cabinet to administer the moneys as provided in this subsection. The fifty cents ($0.50) fee collected by the cabinet to reflectorize license plates shall be deposited into the program fund and used to issue reflectorized license plates every five (5) years. If at the end of a fiscal year, money remains in the program fund, it shall be retained in the fund and shall not revert to the state road fund. The interest and income earned on money in the program fund shall also be retained in the program fund to carry out the provisions of this subsection. The Transportation Cabinet shall begin issuing the new reflectorized license plate under the provisions of this subsection on January 1, 2003, and shall continue to issue a new reflectorized license plate every five (5) years thereafter***[~~(a) Upon initial application or registration renewal in calendar year 1991, persons registering a motor vehicle according to KRS 186.050(1) or (3)(a) shall receive a "bicentennial" license plate, in lieu of the registration plate described in subsection (2) of this section. Applications shall be accompanied by payment of the regular registration fee;~~

~~(b) The "bicentennial" license plate shall be designed by the Bicentennial Commission and approved by the Transportation Cabinet and shall be issued for calendar year 1991 and shall expire at the end of the applicant's renewal month in 1993 and shall not be renewable thereafter. At the time of renewal in 1992, the clerk shall issue a renewal decal designed by the commission and as approved by the Transportation Cabinet;~~

~~(c) The registration plate under this subsection shall be issued for a period of two (2) years, replacing the regular registration plate, and shall be subject to the registration provisions of KRS Chapter 186, the provisions of this section notwithstanding~~];

(4) ***Except as directed under subsection (3) of this section,*** the Transportation Cabinet shall receive all moneys forwarded by the clerk in each county and turn it over to the State Treasurer for the benefit of the state road fund;

(5) The Transportation Cabinet shall require an accounting by the clerk in each county for any moneys received by him under the provisions of this chapter, after the deduction of his fees under this chapter, and for all receipts, forms, plates, and insignia consigned to him. The Auditor of Public Accounts, pursuant to KRS 43.071, shall annually audit each county clerk concerning his responsibilities for the collection of various fees and taxes associated with motor vehicles. The secretary of the Transportation Cabinet, with the advice, consultation, and approval of the Auditor, shall develop and implement an inventory and accounting system which shall insure that the audits mandated in KRS 43.071 are performed in accordance with generally accepted auditing standards. The Transportation Cabinet shall pay for the audits mandated by KRS 43.071; and

(6) When applied for under KRS 186.160, motor or vehicle numbers assigned shall be distinctive to show that they were designated by the cabinet.

Approved March 28, 2000

CHAPTER 181

(HB 431)

AN ACT changing the classification of the City of Henderson, in Henderson County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Henderson, in Henderson County, is such as to justify its being classified as a city of the second class;

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

Section 1. The City of Henderson, in Henderson County, is transferred from the third to second class of cities.

Approved March 28, 2000

CHAPTER 182

(HB 472)

AN ACT relating to distilled spirits and wine.

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

Section 1. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the administrator of the distilled spirits unit, the fees for which shall be:

(1) Distiller's license, per annum $2,500.00

(2) Rectifier's license, per annum $2,500.00

(3) Blender's license, per annum $2,500.00

(4) Vintner's license, per annum $1,000.00

(5) Small winery license, per annum $100.00

(a) Small winery off-premises retail license, per annum $25.00

(6) Wholesaler's license, per annum $2,000.00

(7) Retail package license, per annum:

(a) In counties containing cities of the first class $800.00

(b) In counties containing cities of the second class $700.00

(c) In counties containing cities of the third class $600.00

(d) In counties containing cities of the fourth class $500.00

(e) In all other counties $400.00

(8) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:

(a) In counties containing cities of the first class $1,000.00

(b) In counties containing cities of the second class $700.00

(c) In counties containing cities of the third class $600.00

(d) In counties containing cities of the fourth class $500.00

(9) Transporter's license, per annum $100.00

(10) Dining car license, per annum $100.00

(11) Special nonbeverage alcohol vendor's license, per annum $50.00

(12) Special industrial alcohol license, per annum $50.00

(13) Special nonindustrial alcohol license, per annum $50.00

(14) Special agent's or solicitor's license, per annum $25.00

(15) Special storage or warehouse license and bottling house storage license, per annum $500.00

(16) Special temporary liquor license, per event $100.00

(17) Special private club license, per annum $300.00

(18) Special Sunday retail drink license, per annum $500.00

(19) Nonresident, special agent or solicitor's license, per annum $100.00

(20) Transport permit, nonresident license, per annum $100.00

(21) Through transporter's license, per annum $100.00

(22) Freight forwarder's license, per annum $100.00

(23) Restaurant wine license, per annum $500.00

(24) Farm winery license, per annum $100.00

(a) Farm winery, off-premises retail outlet license, per annum $25.00

(25) Special temporary wine license, per event $50.00

(26) Caterer's license, per annum $800.00

(27) Souvenir retail liquor license, per annum $500.00

(28) Special temporary distilled spirits and wine auction license, per event $100.00

(29) Airport drink license, per annum $1,000.00

(30) Convention center or convention hotel complex license, per annum $5,000.00

(31) Extended hours, supplemental license, per annum $2,000.00

(32) Horse race track license, per annum $2,000.00

(33) Air or rail system license, per annum $2,000.00

(34) Riverboat license, per annum $1,000.00

(35) Bottling house license, per annum $1,000.00

(36) Hotel in-room license, per annum $200.00

(37) Bonded warehouse license, per annum $1,000.00

(38) Air transporter liquor license, per annum $500.00

(39) ***Sampling license, per annum*.....*$100.00***

(40) Replacement or duplicate license $25.00

(41)[~~(40)~~] Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars ($50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (25), (28), and ***(40)***[~~(39)~~]. The application fee shall be applied to the licensing fee if the application is issued and shall be retained by the department if the license is denied.

Section 2. KRS 244.050 is amended to read as follows:

(1) No retail licensee shall give away any alcoholic beverage in any quantity, or deliver it in any quantity for less than a full monetary consideration, except as provided by KRS 243.155, 243.156,~~[and]~~ 243.157***, and subsection (2) of this section***.

(2) A retailer licensed to sell distilled spirits and wine under subsections (7) or (27) of Section 1 of this Act may, after acquiring a license under subsection (39) of Section 1 of this Act, allow customers to sample distilled spirits and wine under the following conditions:

(a) Sampling shall be permitted only on licensed premises and, for retailers licensed under subsection (27) of Section 1 of this Act, during regular business hours;

(b) A licensee shall not charge for the samples provided to customers;

(c) Sample sizes shall not exceed:

1. One (1) ounce for wine; and

2. One-half (1/2) ounce for distilled spirits; and

(d) A licensee shall limit a customer to:

1. Two (2) distilled spirits samples per day; and

2. Six (6) wine samples per day.

(3) Retailers licensed under subsection (7) of Section 1 of this Act shall:

(a) Notify the Department of Alcoholic Beverage Control at least seven (7) days in advance of conducting a sampling event; and

(b) Limit a sampling event to a period not to exceed four (4) consecutive hours between 12 noon and 8 p.m.

Approved March 28, 2000

CHAPTER 183

(HB 503)

AN ACT relating to real estate appraisers.

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

Section 1. KRS 324A.025 is amended to read as follows:

(1) The board shall elect a chairman each year at the first meeting called after appointment of new members. A majority of the board shall constitute a quorum and may exercise all powers and duties established by the provisions of KRS 324A.020.

(2) The board shall meet at least once each calendar quarter.

(3) Each member of the board shall receive actual and necessary expenses and mileage and shall receive one hundred dollars ($100) per day as compensation for each day spent on duties as a member of the board.~~[The board shall receive administrative and staff support from the Kentucky Real Estate Commission. If the support provision of this subsection or the application thereof is determined not to conform with federal law or the regulations promulgated thereunder, the board shall receive administrative and staff support from the Division of Occupations and Professions in the Finance and Administration Cabinet.]~~

Approved March 28, 2000

CHAPTER 184

(HB 536)

AN ACT relating to remittance of tax.

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

Section 1. KRS 131.155 is amended to read as follows:

(1) As used in this section the term "electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made.

(2) Notwithstanding any statutory provisions to the contrary, the cabinet may require ~~[all taxpayers and]~~ any~~[other]~~ person who is required to collect or remit taxes and fees administered by the cabinet ***or any person who acts on the taxpayer's behalf*** to remit those taxes and fees to the cabinet by electronic fund transfer. The transfer shall be made on or before the date the tax is due ***using the debit method or other means as prescribed by the cabinet by the promulgation of an administrative regulation.***~~[and]~~ The cabinet may permit the filing of the tax return following the date of the tax payment. ***Payment by electronic fund transfer may be required if:***

(a) The average payment per reporting period is ten thousand dollars ($10,000) or more for each tax or fee required to be collected or remitted;

(b) The payment for each tax or fee required to be collected or remitted is made on behalf of one hundred (100) or more taxpayers; or

(c) The aggregate of the funds to be remitted on behalf of others is ten thousand dollars ($10,000) or more for each tax or fee required to be collected or remitted~~[Taxpayers or any other person who is required to collect or remit taxes and fees administered by the cabinet whose average payment per reporting period is less than twenty-five thousand dollars ($25,000) as of August 1, 1998, seventeen thousand five hundred dollars ($17,500) as of July 1, 1999, and ten thousand dollars ($10,000) as of July 1, 2000 and thereafter for each tax or fee required to be collected or remitted shall not be required to remit the payments by electronic fund transfer]~~.

(3) The cabinet shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the cabinet.

(4) The cabinet may waive the requirement that a qualifying taxpayer remit the payment by electronic fund transfer if the taxpayer is unable to remit funds electronically.

(5) Taxpayers and any other persons who are required to collect or remit taxes administered by the cabinet by electronic fund transfer shall be entitled to receive refunds for any overpayment of taxes or fees, on or after July 1, 2001, by electronic fund transfer.

Section 2. This Act takes effect on August 1, 2000.

Approved March 28, 2000

CHAPTER 185

(HCR 6)

A CONCURRENT RESOLUTION requesting the Legislative Research Commission to reestablish the Subcommittee on Veteran's Affairs.

WHEREAS, Kentucky's veterans have many concerns meriting legislative attention; and

WHEREAS, the Subcommittee to Study Problems of Vietnam Veterans in Kentucky requested that the Legislative Research Commission establish a permanent committee on Veteran's affairs; and

WHEREAS, the Legislative Research Commission created the Subcommittee on Veteran's Affairs in 1988; and each interim thereafter; and

WHEREAS, the nearly one hundred state and nationally affiliated veterans organizations representing 355,000 Kentucky Veterans have relied upon the Subcommittee on Veteran's Affairs to inform Legislators of their special concerns and needs; and

WHEREAS, Kentucky owes its veterans a debt of gratitude for service in defense of their country;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Kentucky Legislative Research Commission is requested to reestablish a Subcommittee on Veteran's Affairs to operate during the 2000 - 2001 interim and present recommendations to the Kentucky General Assembly.

Section 2. It is recommended that the subcommittee be appointed by the Legislative Research Commission.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 28, 2000

CHAPTER 186

(HCR 54)

A CONCURRENT RESOLUTION directing a study of limiting bill requests or introductions.

WHEREAS, the Kentucky General Assembly's regular sessions are limited to sixty legislative days every two years; and

WHEREAS, it is crucial to conserve legislative time for substantive policy proposals; and

WHEREAS, at least twenty-one state legislative chambers currently impose limits on members' bill requests or bill introductions; and

WHEREAS, respondents to a National Conference of State Legislatures' survey indicated that introduction limits have generally been successful in reducing the number of bills entering the legislative process; and

WHEREAS, it appears that a bill request or bill introduction deadline might streamline the legislative process and reduce staff, bill processing, and paper costs;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Interim Joint Committee on State Government shall conduct a study of the feasibility and advisability of establishing a limit on the number of bills members of the General Assembly may request or may introduce in a legislative session. The study shall include examination of the experiences of other states with bill request or bill introduction limits. The Committee shall report its findings and recommendations to the Legislative Research Commission prior to the 2001 Organizational Session of the General Assembly.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved March 28, 2000

CHAPTER 187

(HJR 100)

A JOINT RESOLUTION directing the Transportation Cabinet to name United States Route 68 from Lexington to Maysville the "Simon Kenton Highway".

WHEREAS, Simon Kenton, pioneer settler, was born April 3, 1755, in Fauquier County, Virginia, the son of Mark and Mary Miller Kenton; and

WHEREAS, Simon Kenton's early travels led him, in 1775, to establish camp and become the first permanent settler in what is today Mason County, Kentucky; and

WHEREAS, Simon Kenton's heroics were evident when he saved the life of famed Kentucky pioneer Daniel Boone during a raid on Fort Boonesborough in 1777; and

WHEREAS, in 1778, Simon Kenton joined the colonists' revolution against British rule of America and had many adventures in combat; and

WHEREAS, after the war, Simon Kenton established the Kenton's Station settlement on Lawrence Creek in Mason County and defended it from attacks; and

WHEREAS, Simon Kenton's lifelong heroism and adventurous spirit helped tame the land we know today as Kentucky; and

WHEREAS, it is appropriate that Simon Kenton is honored and remembered for his role in the history of our Commonwealth;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name United States Route 68 from Lexington to Maysville the "Simon Kenton Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Simon Kenton Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineers in Lexington, Kentucky and Flemingsburg, Kentucky.

Approved March 28, 2000

CHAPTER 188

(HCR 112)

A CONCURRENT RESOLUTION urging Kentucky's Congressional delegation to pursue the placement of a brigade-size combat team at Fort Knox, Kentucky.

WHEREAS, Fort Knox is the home of the Army’s Armor and Cavalry Center, the United States Army Recruiting Command, and is critical to the defense of our nation; and

WHEREAS, Fort Knox employs more than 11,000 military and civilian workers and contributes nearly $600 million in payroll and contracts to the economy of the Commonwealth; and

WHEREAS, the Army's budget cuts and downsizing initiative have had an adverse economic impact on Fort Knox; and

WHEREAS, as a result, Fort Knox has lost over 5,475 soldiers, 1,000 civilian employees, and $215 million in annual payroll and contracts; and

WHEREAS, the conflict in Bosnia and Kosovo revealed the Army’s inability to move heavy forces to respond to our national interests; and

WHEREAS, the Army plans to transform to a lighter and more lethal force over the next five years in order to operate more effectively in places like the Balkans; and

WHEREAS, the Army plans to immediately reconfigure itself to a more responsive, deployable, and mobile force by creating five brigade-size combat teams; and

WHEREAS, platform demonstrations for the vehicles to equip the lighter brigade-size combat teams were done at Fort Knox because it was ideally suited with terrain mirroring combat conditions where lighter brigades are most expected to fight; and

WHEREAS, the Mounted Urban Combat Training facility and modern ranges at Fort Knox were crucial in the demonstration and testing of our war fighting capabilities but have not received funding from the Army; and

WHEREAS, although the two initial brigade-size combat teams will be stationed at Ft. Lewis, the Army has not made a decision on where to station the additional brigade-sized combat teams; and

WHEREAS, Fort Knox has clearly demonstrated that it possesses the resources and capacity to accommodate a brigade-size combat team; and

WHEREAS, a brigade-size combat team would have a significant positive impact on the economic well-being of our local communities which were adversely affected by the loss of the 194th Armored Brigade;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the General Assembly urges our Congressional Delegation to pursue the placement of a brigade-size combat team at Fort Knox, Kentucky, where the terrain and weather best mirror the locations where forces are likely to be used in the future, and where the Army's premier Mounted Urban Combat Training facility and the Western Kentucky Training Center are immediately available to train soldiers to face combat and peacekeeping missions in urban environments.

Section 2. That the Clerk of the House of Representatives send a copy of this Resolution to each member of Kentucky's Congressional delegation in Washington, D.C.

Approved March 28, 2000

CHAPTER 189

(HB 647)

AN ACT relating to the consolidation of local governments in counties containing cities of the first class.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) The governmental and corporate functions vested in any city of the first class shall, upon approval by the voters of the county at a regular or special election, be consolidated with the governmental and corporate functions of the county containing the city. This single government replaces and supersedes the governments of the pre-existing city of the first class and its county.

(2) A consolidated local government shall have all powers and privileges that cities of the first class and their counties are, or may hereafter be, authorized to exercise under the Constitution and the general laws of the Commonwealth of Kentucky, including but not limited to those powers granted to cities of the first class and their counties under their respective home rule powers. A consolidated local government shall continue to exercise these powers and privileges notwithstanding repeal or amendment of any of the laws upon which the powers and privileges are based unless expressly repealed or amended for consolidated local governments. In addition, a consolidated local government shall have other powers and privileges as the government may be authorized to exercise under the Constitution and general laws of the Commonwealth of Kentucky.

(3) A consolidated local government shall have power and authority to:

(a) Levy and collect taxes upon all property taxable for state purposes within the territorial limits of the consolidated local government not exempt by law from taxation;

(b) License, tax, and regulate privileges, occupations, trades, and professions authorized by law, to be uniform throughout the jurisdiction;

(c) Make appropriations for the support of the consolidated local government and provide for the payment of all debts and expenses of the consolidated local government and the debts and expenses of the county and city of which it is the successor;

(d) Issue or cause to be issued bonds and other debt instruments that counties containing a city of the first class are authorized to issue or enter into all other financial transactions as may be permitted by law;

(e) Purchase, lease, construct, maintain, or otherwise acquire, hold, use, and operate any property, real or personal, for any public purpose, and sell, lease, or otherwise dispose of any property, real or personal, belonging to a consolidated local government;

(f) Exercise the power of eminent domain for any public purpose subject to the limitations and exceptions prescribed by the Constitution and the general laws of the Commonwealth of Kentucky;

(g) Accept federal or state funds and other sources of revenue that are applicable to counties and cities of the first class;

(h) Establish, erect, maintain, and operate facilities for the confinement, detention, and rehabilitation of persons convicted of the violation of the ordinances and laws of a consolidated local government or the Commonwealth of Kentucky;

(i) Pass and enforce by fines and penalties, if necessary, all ordinances, not inconsistent with law, as are expedient in maintaining the peace, good government, health, and welfare of the inhabitants of the county and prevent, abate, and remove nuisances;

(j) Collect and dispose of garbage, junk, and other refuse, and regulate the collection and disposal of garbage, junk, and other refuse by others;

(k) Provide for the redevelopment, renewal, or rehabilitation of blighted, deteriorated, or dilapidated areas;

(l) Enforce zoning regulations;

(m) Enter into contracts and agreements with other governmental entities and with private persons, firms, and corporations;

(n) Adopt procedures for collective bargaining with its employees and for the certification of exclusive bargaining agents for groups of employees in accordance with the Constitution and general laws of the Commonwealth of Kentucky and its ordinances; and

(o) Exercise all other powers and authorities granted to counties and cities of the first class by the general laws of the Commonwealth of Kentucky.

(4) The powers of the consolidated local government shall be construed broadly in favor of the consolidated local government. The specific mention, or failure to mention, of particular powers in this section shall not be construed as limiting in any way the general or specific powers of a consolidated local government.

(5) A consolidated local government shall have power and jurisdiction throughout the total area embraced by the official jurisdictional boundaries of the county.

(6) A consolidated local government shall be known as Greater ....., which shall be the name of the largest city in existence on the date of the adoption of the consolidated government.

SECTION 2. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) The legislative authority of a consolidated local government, except as otherwise specified in Sections 1 to 19 of this Act, shall be vested in a consolidated local government council. The members of the council shall be nominated and elected by district. There shall be only one (1) council member elected from each council district.

(2) There shall be twenty-six (26) council districts. The initial boundaries, population, and numerical designation of the council districts shall be as specified by Section 18 of this Act. The population of the council districts shall be as nearly equal as is reasonably possible. For any newly consolidated local governments whose officials take office in 2003, upon taking office, the legislative council may take action to adjust the boundaries and population of the districts in order to equalize the population of the districts which may have changed as a result of recent census information. Any changes made to alter the boundaries of council districts shall be based on the population of the county as determined by the most recent United States Census or official census estimates as provided by the United States Bureau of the Census.

(3) Following the official publication of each decennial census by the United States Bureau of the Census for the area embraced by a consolidated local government, the council shall adopt an ordinance, if necessary, to redistrict the council districts. A redistricting ordinance shall provide for the distribution of population among the council districts as nearly equal as is reasonably possible. Every council district shall be compact and contiguous and shall respect existing neighborhood, community, and city boundaries whenever possible.

(4) The consolidated local government council members shall serve for a term of four (4) years beginning on the first Monday in January following their election except that the initial election of council members shall be in a manner as to provide for staggered terms for council members. At the initial election of the members of a consolidated local government council, those representing even-numbered districts shall be elected for a two (2) year term. Those representing odd-numbered districts shall be elected for a four (4) year term. Thereafter, all council members shall be elected for four (4) year terms.

(5) The members of a consolidated local government council shall be nominated and elected from the district in which they reside in partisan elections. After the initial terms of office of the first elected council members, council members shall be elected in the same election years as other local government officials as regulated by the regular election laws of the Commonwealth and as provided in subsection (4) of this section.

(6) No person shall be eligible to serve as a member of a consolidated local government council unless he or she is at least twenty-one (21) years old, a qualified voter, and a resident within the territory of the consolidated local government and the district that he or she seeks to represent for at least one (1) year immediately prior to the person's election. A council member shall continue to reside within the district from which he or she was elected throughout the term of office.

(7) The presiding officer of a consolidated local government council shall be a president who shall be chosen annually by a majority vote of the entire council from among its members at the first meeting of the council in January. The council president has the right to introduce any resolution or recommend any ordinance and shall be entitled to vote on all matters.

(8) The consolidated local government council shall upon notice meet within seven (7) days after its members have taken office, and shall thereafter hold at least two (2) regular meetings per month.

(9) A majority of the members of the consolidated local government council shall constitute a quorum, but a smaller number may adjourn from day to day. The consolidated local government council may enforce the attendance of members by rules or ordinances with appropriate fines. The mayor or two-thirds (2/3) of the entire membership of the council may call a special meeting at any time. Meetings shall be held in such places in the county as are provided by ordinance, and the place of meetings shall not be changed except by an ordinance for which two-thirds (2/3) of the members of the consolidated local government council have voted.

(10) The council shall determine its own rules and order of business, and keep and provide a public record of its proceedings. The council shall provide for the publication of all ordinances in a composite code of ordinances.

(11) Council ordinances that prescribe penalties for their violation shall be enforced through the entire area of the consolidated local government unless:

(a) Otherwise provided by statute; or

(b) The legislative body of any city within the consolidated local government area has adopted an ordinance pertaining to the same subject matter that is the same as or more stringent than the standards set forth in the consolidated local government's ordinance.

(12) In the case of a vacancy on the consolidated local government council by reason of death, resignation, or removal, it shall be filled by appointment of the Governor, in accordance with Section 152 of the Constitution, for the unexpired term. Upon notification of the vacancy by the county clerk, the Governor shall appoint a person to fill a vacancy on the consolidated local government council not later than thirty (30) days after the date on which the vacancy occurs.

(13) All legislative powers of a consolidated local government are vested in the consolidated local government council. The term "legislative power" is to be construed broadly and shall include the power to:

(a) Enact ordinances, orders, and resolutions, and override a veto of the mayor by a two-thirds (2/3) majority of the membership of the legislative council;

(b) Review the budgets of and appropriate money to the consolidated local government;

(c) Adopt a budget ordinance;

(d) Levy taxes, subject to the limitations of the Constitution and the laws of the Commonwealth of Kentucky;

(e) Establish standing and temporary committees; and

(f) Make independent audits and investigations concerning the affairs of the consolidated local government.

(14) The consolidated local government council shall be known as the legislative council of Greater ....., which shall be completed by the name of the largest city in existence in the county on the date of the consolidation.

SECTION 3. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) All executive and administrative power of the government shall be vested in the office of the mayor. The term "executive and administrative power" shall be construed broadly. The mayor shall be the chief executive of a consolidated local government formed under the provisions of Sections 1 to 19 of this Act.

(2) The mayor shall be nominated and elected in partisan elections for a term of four (4) years in the same election years as other local government officials as regulated by the regular election laws of the Commonwealth. The mayor shall assume office on the first Monday in January following his or her election. He or she shall serve until a successor qualifies and may serve for no more than three (3) consecutive terms after which time he or she shall be prohibited from running for election or being appointed as mayor for a period of at least four (4) years.

(3) The mayor shall be at least twenty-five (25) years old, a qualified voter, a member of his or her political party, and a resident of the territory encompassing the consolidated local government for a period of at least one (1) year prior to his or her election as mayor. The mayor shall continue to reside within the geographic boundary of the consolidated local government throughout his or her term of office.

(4) Except as otherwise provided in Sections 1 to 19 of this Act, the mayor shall have all the power and authority that the mayor of the city of the first class and the county judge/executive exercised under the Constitution and the general laws of the Commonwealth of Kentucky prior to the consolidation.

(5) The mayor is authorized to supervise, administer, and control all departments and agencies as may be created by Sections 1 to 19 of this Act or created by ordinance. The mayor shall appoint all department and agency directors. The appointees shall serve at the pleasure of the mayor. Specifically, the mayor shall:

(a) Prepare and submit an annual report coinciding with the fiscal year, on the state of the consolidated local government, to be presented at a public meeting of the council;

(b) Submit an annual budget;

(c) Oversee the administration and implementation of the adopted budget ordinance;

(d) Enforce the ordinances of the consolidated local government;

(e) Supervise all officers, agents, employees, cabinets, departments, offices, agencies, functions, and duties of the consolidated local government;

(f) Call special meetings of the consolidated local government council;

(g) Appoint and remove his or her own staff at his or her own pleasure;

(h) Execute written contracts or obligations of the consolidated local government; and

(i) Approve or veto ordinances and resolutions adopted by the consolidated local government council.

(6) In case the office of mayor becomes vacant by reason of death, resignation, or removal, it shall be filled by appointment of the Governor, in accordance with Section 152 of the Constitution, for the unexpired term. The Governor shall appoint a person to fill a vacancy in the office of mayor not later than thirty (30) days after the date on which the vacancy occurs. If a vacancy occurs in the office of mayor, the members of the legislative body of the consolidated local government shall elect one (1) of their members to serve as temporary mayor until the Governor fills the vacancy in the office, notwithstanding the provisions of KRS 61.080(2) to the contrary.

(7) The mayor of a consolidated local government shall be known as the mayor of Greater ....., which shall be completed by the name of the largest city in existence in the county on the date of the consolidation.

SECTION 4. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) Upon public approval at a regular or special election of a consolidation of a city of the first class and their county, all regular employees of the city of the first class and the county shall become employees of the consolidated local government.

(2) All rights, privileges, and protections attributed to all regular employees by a civil service or classified service system established by a city of the first class or a county containing a city of the first class shall continue in effect until changed by statute or ordinance when applicable.

(3) A consolidated local government shall recognize and shall continue to bargain with any bargaining unit consisting of public employees recognized by either the previously existing city or county government.

(4) All labor contracts in existence in a city of the first class or a county containing a city of the first class on the effective date of a local government consolidation shall continue in effect until the expiration of the terms of the contracts at which time new contracts shall be renegotiated between the consolidated local government and affected labor representatives.

SECTION 5. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

A consolidated local government shall be deemed a county and shall be deemed an incorporated city of the first class under the Constitution and the general laws of the Commonwealth of Kentucky for the purpose of applying for or receiving any aid or grant-in-aid from the Commonwealth of Kentucky or the government of the United States.

SECTION 6. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) All cities other than those of the first class located within the territory of the consolidated local government, upon the successful passage of the question to consolidate a city of the first class and its county, shall remain incorporated unless dissolved in accordance with KRS 81.094 and shall continue to exercise all powers and perform the functions permitted by the Constitution and general laws of the Commonwealth of Kentucky applicable to the cities of the class to which they have been assigned.

(2) Upon the adoption of a consolidated local government in a county containing a city of the first class, there shall be no further incorporations of cities within the county.

(3) Upon the adoption of a consolidated local government in a county containing a city of the first class, there shall be no annexations for a period of twelve (12) years by any city remaining in the county. After that time, any proposed annexation by a city in that county shall first receive the approval of the legislative council of the consolidated local government prior to the city proceeding under the provisions of KRS Chapter 81A. The city shall request the approval of the consolidated legislative council by ordinance. The consolidated legislative council's decision shall be made by ordinance and within sixty (60) days of the receipt of the request by the affected city. If an ordinance has not been enacted by the consolidated legislative council within sixty (60) days, the request for a city to proceed with an annexation proposal shall be deemed to be approved by the consolidated legislative council.

(4) The adoption of a consolidated local government in a county containing a city of the first class shall not prevent the merger or dissolution of any existing cities as provided by law or the merger of any remaining cities with the newly consolidated local government.

SECTION 7. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

All taxing districts, fire protection districts, sanitation districts, water districts, and any other special taxing or service districts of any kind existing upon the successful passage of the question to consolidate a city of the first class and its county shall continue in existence unless dissolved in the manner prescribed by law and shall continue to exercise all the powers and functions permitted by the Constitution and the general laws of the Commonwealth of Kentucky.

SECTION 8. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) Upon the successful passage of the question to consolidate a city of the first class and its county, the ordinances, regulations, and orders of the previously existing city of the first class and the county shall initially govern the consolidated local government along with any new ordinances, resolutions, or orders that may be enacted.

(2) Any ordinance, regulation, or order in effect in a city of the first class or its county on the date of the adoption of a consolidated local government shall expire five (5) years from the date the new government takes effect unless amended or reenacted by the new consolidated local government.

(3) The county attorney shall serve as the legal advisor and representative to the consolidated local government.

(4) The county attorney shall review all ordinances, resolutions, and orders in effect in the city of the first class and the county in order to identify conflicting language between the varying ordinances, resolutions, and orders. The county attorney shall present a listing of the conflicts between the ordinances, resolutions, and orders to the legislative body of the consolidated local government at its first meeting.

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

(1) (a) It shall be the policy of the consolidated local government to ensure that opportunities generated directly or indirectly by the consolidated local government are equally available to all citizens without regard to race, color, religion, national origin, marital status, physical handicap, sex, or age.

(b) It shall also be the policy of the consolidated local government to include the minority community in all aspects of governance in the consolidated local government. Minority citizens and business shall be represented in all actions of the consolidated government, including but not limited to government employment, appointments to boards or commissions, contracting, and purchasing.

(2) The percentage of minority citizens who shall be employed by the consolidated local government or appointed to each of its boards and commissions shall be no less than the percentage of minority citizens in the community, or the percentage of minority representatives on the consolidated local government's legislative body, whichever is greater.

(3) The consolidated local government shall adopt ordinances and develop policies to achieve the mandate set forth in this section.

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

(1) The consolidated local government shall have an affirmative action plan that complies with all current federal guidelines and requirements relevant to local governments.

(2) The mayor shall prepare and implement an affirmative action plan.

(3) There shall be established under the direction of the mayor an office that shall be called the "Affirmative Action Office."

(4) The Affirmative Action Office shall aid the mayor in preparing the plan, and shall be responsible for the day-to-day operation and implementation of the affirmative action plan.

(5) An affirmative action plan, in addition to following all federal requirements, shall include good faith efforts to:

(a) Determine the extent to which minorities and women are underutilized in major categories;

(b) Identify and eliminate the specific causes of the underutilization;

(c) Identify and eliminate all employment practices that have an adverse impact on minorities, women, and others protected by applicable law and the relationship of which to job performance has not been clearly established;

(d) Rely exclusively on practices that are based on merits and other valid job related criteria;

(e) Develop, substantial applicant pools of validly qualified minorities and women, special recruitment efforts, and other measures to insure that sufficient numbers of these groups are included to help reduce their underutilization;

(f) Develop, through special recruitment efforts and other measures, applicant pools in which handicapped persons are represented equitably;

(g) Project goals and timetables to include estimates of the representation of minorities and women likely to result from the operation of this affirmative action plan; and

(h) Establish organizational structures and monitoring systems that will ensure effective operation of its goals, and means for modification of the plan as needed.

(6) All contracts, leases, or other agreements for materials, supplies, equipment, or, contractual services other than professional that, in the aggregate, exceed ten thousand dollars ($10,000) in any calendar year shall be awarded in compliance with KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable.

(7) Notwithstanding anything to the contrary in this section, the provisions of this section shall apply to every person, firm, corporation, and association that has been awarded contracts, leases, or other agreements as provided by KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable, that, in the aggregate, exceed ten thousand dollars ($10,000) in any calendar year.

(8) Employment opportunities generated directly or indirectly by the government of the consolidated local government shall be equally available to all citizens without regard to race, color, religion, national origin, marital status, physical handicap, sex, or age. In order to ensure that employment opportunities generated directly or indirectly by the consolidated local government are equally available, contractors and vendors shall be approved as provided by this section prior to the awarding of any contract, lease, or other agreement that requires an expenditure in excess of ten thousand dollars ($10,000) with the consolidated local government.

(9) No person, firm, corporation, or association shall be awarded a contract, lease, or other agreement that requires an expenditure in excess of ten thousand dollars ($10,000) until and unless that person, firm, corporation, or association has been prequalified as

determined by procedures and requirements enacted by ordinance by the consolidated local government.

(10) No officer, employee, or agent of the consolidated local government shall accept a contract, lease, or other agreement that requires an expenditure in excess of ten thousand dollars ($10,000) with the consolidated local government until and unless that person, firm, corporation, or association has been prequalified as determined by procedures and requirements enacted by ordinance by the consolidated local government.

(11) All persons, firms, corporations, or associations seeking to bid on contracts, leases, or other agreements that require an expenditure exceeding ten thousand dollars ($10,000) with the consolidated local government shall submit a request for prequalification as an eligible contractor, pursuant to the procedures and requirements enacted by ordinance by the consolidated local government.

(12) The consolidated local government shall make available a list of all bidders who have been prequalified and shall distribute the list to the appropriate purchasing officers, employees, or agents of the consolidated local government.

(13) Any person, firm, corporation, or association that submits an otherwise qualified bid for a contract, lease, or other agreement pursuant to the provisions of KRS 424.260, but that has not prequalified pursuant to this section, may be approved by the consolidated local government as provided by this section. Any person, firm, or corporation that is approved by the consolidated local government shall thereafter be qualified and considered eligible for award for a contract, lease, or other agreement.

(14) The consolidated local government shall prequalify persons, firms, corporations, and associations seeking a contract, lease, or other agreement that requires an expenditure exceeding ten thousand dollars ($10,000) with the consolidated local government if on an analysis of the workforce of that entity the consolidated local government determines that:

(a) The entity is not deficient in the utilization of minority groups or women;

(b) The entity has an acceptable, bona fide affirmative action plan;

(c) The entity is a small business that employs ten (10) or fewer individuals;

(d) The entity has a federally approved affirmative action program; or

(e) The consolidated local government has made a finding based on other reasonable criteria, and after consideration of the provisions of 41 C.F.R. 60-2, determines the entity does not require an affirmative action plan.

(15) An acceptable affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include:

(a) An analysis of the areas of the entity's workforce within which it is deficient in the utilization of minority groups and women; and

(b) Timetables to which the entity's good faith efforts shall be directed to correct the deficiencies and to achieve prompt and full utilization of minorities and women at all levels and in all segments of its workforce where deficiencies exist.

(16) A bona fide affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include a set of specific and result-oriented procedures, goals, and timetables to which an entity commits itself to apply every good faith effort in order to achieve equal employment opportunity. Procedures without effort to make them work are meaningless and effort undirected by specific and meaningful procedures is inadequate.

(17) In reviewing an affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government, the consolidated local government shall be guided by the relevant provisions of 41 C.F.R. 60-2 which outlines the requirements of affirmative action plans for federal contractors and vendors.

(18) The consolidated local government shall use its best efforts, directly and through contracting agencies, other interested federal, state, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work pursuant to contracts, leases, and agreements that are the subject matter of this section or any agency referring workers or providing or supervising apprenticeship or training for or in the course of this work to cooperate in the implementation of the purposes of this section.

(19) The consolidated local government on its own motion or on motion of any interested party shall cause hearings as it deems necessary for compliance or enforcement of this section.

(20) The consolidated local government shall hold a hearing prior to imposing or recommending the imposition of penalties and sanctions for violation of this section. No penalty that would prohibit any contractor from obtaining future contracts under this section shall be made without affording the contractor an opportunity for a hearing.

(21) Notice of any final decision or determination of the consolidated local government that affects the running of time for taking an appeal shall be mailed to all parties in the matter, including the proposed contractor, lessor or other party, and the affected local government offices.

(22) The consolidated local government shall establish an affirmative action appeals board for purposes of hearing appeals from any final decision relating to matters pertaining to this section. The board shall be composed of the county attorney, or his or her designee, the council president of the consolidated local government, or his or her designee, and a representative of the financial department of the consolidated local government, or his or her designee.

(23) Any appeal from a decision of the consolidated local government shall be hand-delivered or mailed by certified mail to the affirmative action appeals board not later than thirty (30) days from the date of the local government's decision. The appeal shall set forth the grounds for the appeal. The appeals board shall notify all parties in writing of the time and place of a hearing. The hearing committee may issue subpoenas for any witnesses requested by either of the parties or in the appeals board's opinion necessary to the proper disposition of the matter to be heard. All parties shall be allowed legal representation, witnesses may be cross-examined, and the proceeding shall be recorded. The local government shall transmit, within ten (10) days after receipt of notice of appeal, all the original papers in action to the appeals board.

(24) The appeals board shall have the power to require the contractor to furnish all necessary records and give testimony as to enable the board to render a fair and competent decision.

The duty of the board shall be to review all records, hear all testimonies of witnesses, and determine whether the decision of the local government was correct. The decision of the appeals board shall be final. The decision of the appeals board shall be transmitted in writing to the appropriate offices of the local government for implementation and shall set forth specifically its findings of fact and conclusions relative to its determination. The administration of sanctions and penalties in accordance with that determination shall be the duty of the appropriate department or contracting agency of the consolidated local government.

(25) (a) On request of the adversely affected party the appeals board may, on terms as are just, relieve a party from its final order of determination on the following grounds:

1. Mistake, inadvertence, surprise, or excusable neglect;

2. Newly discovered evidence that by due diligence could not have been discovered in time for the hearing;

3. Perjury or falsified evidence; or

4. Fraud affecting the proceedings other than perjury or falsified evidence.

(b) The request shall be made within thirty (30) days after notification of the appeals board's final determination. A request under this subsection does not affect the finality of the order or determination or suspend its operation.

(26) In accordance with the enforcement provisions of this section, the consolidated local government may cancel, terminate, suspend, or cause to be canceled, terminated, or suspended, any contract, lease, or agreement that is the subject matter of this section for failure of the contractor or vendor to comply. Contracts, leases, and agreements may be canceled, terminated, or suspended absolutely or continuance of contracts, leases, and agreements may be conditioned on a program for future compliance as approved by the consolidated local government.

(27) Any contracting agency shall refrain from entering into further contracts or extensions or other modifications of existing contracts, with any noncomplying contractor, until the contractor has established and will carry out personnel and employment policies in compliance with the provisions of this section.

(28) Whenever the consolidated local government makes a determination regarding noncompliance by a contractor pursuant to this section, it shall promptly notify the appropriate contracting agency and other affected local government agencies and offices of the action recommended. The contracting agency shall take the action recommended and shall report the results of that action to the consolidated local government.

(29) If the appeals board shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the consolidated local government.

SECTION 11. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) All offices provided for in Section 99 of the Constitution of Kentucky shall remain in existence upon the consolidation of a city of the first class with its county. However, all

existing powers and duties of these offices shall be assigned to the consolidated local government. To the extent permitted by the Constitution of Kentucky, the office of county judge/executive, justices of the peace, and county commissioners may be statutorily limited in a consolidated local government.

(2) Nothing in Sections 1 to 19 of this Act shall alter or affect the election or term of any county court clerk, county attorney, sheriff, jailer, coroner, surveyor, or assessor. Nor shall any provision of Sections 1 to 19 of this Act be construed to alter or affect the powers, duties, or responsibilities of these officers as prescribed by the Constitution and laws of the Commonwealth of Kentucky. Any funding responsibilities or oversight of any constitutional officers or their employees previously exercised by the county, which shall include the approval of the annual budget of the sheriff's and the county clerk's offices, shall be transferred to the consolidated local government.

SECTION 12. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

The tax structure, tax rates, and level of services in effect in the city of the first class and its county upon the adoption of a consolidated local government shall remain in effect after the adoption of the consolidated local government and shall remain the same until changed by the newly elected consolidated local government council.

SECTION 13. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of Sections 1 to 19 of this Act or any subsequent enactment of a general nature of the General Assembly of the Commonwealth of Kentucky, a consolidated local government shall not levy any tax on real property at a rate or rates in excess of that allowed by KRS 68.245 and KRS 132.027. The limitations in those statutes shall apply to the consolidated local government in the same manner as applied to all other counties and cities.

SECTION 14. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

Any cooperative compact in existence in a county containing a city of the first class on the effective date of this Act shall remain in effect unless a consolidated local government is adopted as provided in Sections 1 to 19 of this Act. The terms and agreements within a cooperative compact shall remain the same and in effect until the installation of the officers of the newly consolidated local government. If the voters in a county containing a city of the first class fail to approve a proposal for a consolidated local government then the cooperative compact shall remain in effect for the duration of the terms of the compact agreement.

SECTION 15. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

The salary of the mayor of a newly consolidated local government created by the provisions of Sections 1 to 19 of this Act shall be the same as that allowed for a mayor of a city of the first class as provided by Section 246 of the Kentucky Constitution.

SECTION 16. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) The salary of the members of the legislative council of a newly consolidated local government created by the provisions of Sections 1 to 19 of this Act shall be eighty

percent (80%) of that amount that is permitted for county commissioners on the effective date of this Act as provided by Section 246 of the Kentucky Constitution. In order to equate the compensation of legislative council members with the purchasing power of the dollar, the Department for Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year. The Department for Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the Department for Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department for Local Government.

(2) Each legislative council member may hire one (1) full-time staff person.

SECTION 17. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

The Auditor of Public Accounts, in order to insure the authorized, legal, regular, and safe handling, administration, or expenditure of public funds, shall annually audit the funds budgeted by any consolidated local government in a county containing a city of the first class. Actions taken by the Auditor and the local government for compliance with this section shall be the same as those required by KRS Chapters 43 and 424 and by KRS 43.070, 64.810, 64.820, 64.830, 64.840, and 64.850 relating to financial administration and the responsibilities of the handling of public funds.

SECTION 18. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) After certification of the election at which the voters of a county containing a city of the first class have approved the consolidation of a city of the first class and the county and after receipt of the 2000 census data, a plan to divide the county into twenty-six (26) legislative council districts shall be submitted to the fiscal court in order to establish the initial boundaries of the legislative council districts for the newly consolidated government.

(2) The district plan for the legislative council shall be prepared and submitted by representatives of a department of geography from the largest public university that exists within the county.

(3) Upon submission of the plan that lays out the initial boundaries of the legislative council districts, the fiscal court shall approve the plan within thirty (30) days as submitted and without amendment.

(4) The boundaries of the districts shall be drawn so that the districts are compact and contiguous, and the population of each district shall be as nearly equal as is reasonably possible.

(5) Thereafter, and not less than every ten (10) years, the legislative council shall initiate reapportionment proceedings in May of the first year following the decennial census of the United States to review the districts and reapportion them if necessary.

(6) To initiate a reapportionment proceeding, the legislative council shall publish notice of the planned reapportionment in accordance with KRS Chapter 424.

(7) In no event shall districts be reapportioned during the period from thirty (30) days prior to the last date for filing for candidacy for local government office as provided in KRS 118.165 and the regular election for candidates for local government office.

(8) Precinct lines shall be drawn when necessary in accordance with the provisions of law. No precinct shall be in more than one (1) district.

(9) Within twenty (20) days of the establishment of the districts by the legislative council, any registered voter of the county may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the legislative council has violated the provisions of this section, remand the matter to the legislative council. The Circuit Court, in its discretion, may allow the prevailing party, other than the legislative council, a reasonable attorney's fee, to be paid from the treasury of the local government, as part of the costs.

SECTION 19. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) In every county containing a city of the first class in existence on the effective date of this Act, a question regarding the consolidation of the city of the first class and their county as provided by Sections 1 to 19 of this Act shall be submitted to the voters of the county at the regular election to be held in November of 2000. The election shall be governed by the general election laws of the Commonwealth. Approval of the proposal shall require a simple majority of those voting on the question.

(2) The question to be submitted to the voters shall read as follows:

"Are you in favor of combining the City of ..... and ..... County into a single government with a mayor and legislative council, keeping all other cities, fire protection districts and special districts in existence?"

Section 20. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

Approved March 28, 2000

CHAPTER 190

(HB 322)

AN ACT relating to safety and security at postsecondary education institutions.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

As used in Sections 2, 3, and 4 of this Act, unless the context requires otherwise:

(1) "Campus" means all property owned, managed, or controlled by an institution of postsecondary education including, but not limited to, academic buildings; student

housing and recreational facilities; residential facilities operated by any officially recognized student organization; all sections of public property such as streets, sidewalks, and parking facilities immediately contiguous to campus buildings; and remote facilities leased for use as classroom space or student living.

(2) "Campus security authority" means campus police, security officers, and any official at a postsecondary education institution who has significant responsibility for student and campus activities, including student discipline, student housing, student judicial affairs, and student life administration. Professional mental health, pastoral, and other licensed counselors when functioning in that capacity are not considered campus security authorities.

(3) "Crime" means murder, manslaughter, reckless homicide, assault, menacing, wanton endangerment, terroristic threatening, stalking, forcible or nonforcible sex offenses, burglary, criminal damage to property, arson, theft, motor vehicle theft, robbery, weapons possession and criminal attempt for any of the aforementioned crimes, and arrests for drug-related violations and liquor law violations.

(4) "Postsecondary education institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, and any private college or university that is licensed by the Council on Postsecondary Education under KRS 164.945 to 164.947.

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) Crime log:

(a) Each postsecondary education institution shall make, keep, and maintain a daily log, written in a form approved by the Council on Postsecondary Education that can be easily understood, recording all crimes occurring on campus and reported to campus security authorities or local law enforcement agencies, including:

1. The category of crime, and a description of the incident, date, time, and general location of each crime; and

2. The disposition of the complaint if known, including referral for prosecution, institutional disciplinary proceedings, or investigation by another state agency. The disposition shall include a reference to an investigation or incident report number.

(b) All entries in the campus crime log shall be made available for public inspection within twenty-four (24) hours after the first report of an incident was made to any campus security authority or local law enforcement officials.

1. If there is clear and convincing evidence that the release of the information would cause a suspect to flee or evade detection, would result in the destruction of evidence, or is prohibited from release by law, the information may be withheld until that damage is no longer likely to occur from the release of the information. Only the information that is absolutely necessary to withhold for the reasons stated in this paragraph may be withheld; all other information shall be released.

2. In the event information is withheld under the provisions of paragraph (a) of this subsection, the crime shall still be reported and made available for public inspection.

(c) The campus crime log required by this section shall be readily accessible and open for public inspection at all times and shall be made available on campus computer networks to which students, employees, and other campus community members have access. Each semester the institution shall notify currently enrolled students, students applying to the institution, and employees of the availability of the campus crime log, where it can be accessed, and the exact electronic address on the computer network.

(2) Special reports: In addition to the campus crime log, each postsecondary education institution shall make timely reports to the campus community on crimes reported to campus security authorities or local law enforcement authorities determined by those authorities to present a safety or security threat to students or employees.

(a) The reports shall be made available to students and employees within twenty-four (24) hours after an incident is first reported.

(b) The information shall be reported in a manner that will aid in the prevention of similar occurrences.

(c) Institutions shall use computer networks and post the reports in each residential facility. The institution may also use flyers and other campus publications including newspapers, and other media.

(d) Each institution shall adopt a policy to comply with this requirement and the policy shall be included in the postsecondary education institution's annual campus safety and security report published in compliance with Section 4 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) Under the provisions of KRS Chapter 227, the state fire marshal shall have jurisdiction over all property in the state including property of public postsecondary education institutions and property of any private college or university that is licensed by the Council on Postsecondary Education as provided for by KRS 164.945 to 164.947, insofar as it is necessary for the administration and enforcement of any duty imposed on the office by law or administrative regulation and all laws, ordinances, regulations, and orders designed to protect the public from fire loss.

(2) The state fire marshal or the fire marshal's employee or appointee may, without delay or advance notice and at all reasonable hours of the day or night, enter in, or upon any property defined under KRS 227.200 located on the campus to make an inspection, investigation, or any other action necessary for the purpose of preventing fire loss or determining the origin of any fire.

(3) No person shall obstruct, hinder, or delay such an officer in the performance of his or her duty.

(4) Upon learning of a fire or threat of fire, campus security authorities shall immediately report each fire or threat of fire to the state fire marshal's office in Frankfort and the local deputies, assistants, and employees appointed under KRS 227.230.

SECTION 4. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Effective September 1, 2000, and each year thereafter, each postsecondary education institution shall submit to the Council on Postsecondary Education a statement of current policies concerning campus safety and security including, but not limited to:

(1) The enforcement authority of security personnel, including their working relationship with state and local police agencies;

(2) A description of programs designed to inform students and employees about the campus safety and security procedures and practices, how to report crimes, and how to prevent crimes; and

(3) Statistics concerning the occurrence of crimes on campus during the most recent calendar year. The statistical data shall be reported by the number of occurrences based on:

(a) Location, broken down in the following classifications:

1. Total number on campus:

a. Subtotal of occurrences indicating specifically those in dormitories or other residential facilities;

b. Subtotal of occurrences indicating specifically those in or on noncampus buildings or property; and

2. On public property contiguous to the campus.

(b) Category of crime committed:

1. As defined in Section 1 of this Act; and

2. By category of prejudice, any crime reported to local police agencies or to a campus security authority, that manifests evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

SECTION 5. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) In complying with the statistical and reporting requirements mandated in Sections 1 to 7 of this Act, an institution shall make a reasonable, good-faith effort to obtain statistics and crime reports from outside agencies. An institution that makes such an effort is not responsible for an outside agency's failure to provide statistics or crime reports or for verifying the accuracy of the statistics or reports that are provided.

(2) The Council on Postsecondary Education shall specify formats for reporting to ensure uniformity.

SECTION 6. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Any person violating the provisions of Sections 2 and 3 of this Act, 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.

SECTION 7. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 7 of this Act may be cited as the Michael Minger Act.

Approved March 28, 2000

CHAPTER 191

(HB 321)

AN ACT relating to students with disabilities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context requires otherwise, "disability" has the same meaning as the definition given in KRS 344.010.

(2) The Council on Postsecondary Education shall develop guidelines for the adoption of policies by postsecondary education institutions with residence facilities that provide students with a disability a safe environment in which to live and study.

(3) Each institution shall develop a housing and security policy in compliance with the council's guidelines that shall be visibly posted in each residence facility, made available on campus computer networks to which students have access, and included in all student housing information. The policies shall include, but not be limited to, an appeals process that may be used by students, their parents, or their advocates when they have reason to believe that the institution's policy or the student's housing assignment does not reasonably accommodate the student's disability or endangers the student's safety or health. The appeals process shall mandate that the body assigned to hear the appeal shall not include representatives of the original department that made the housing assignment that is being appealed.

(4) Each institution shall prepare at the beginning of each semester a list with the name and residency assignment of each student with a disability, as reported to the institution by the student or the student's parent or advocate, as appropriate. The list shall be given to the campus housing and security authorities to be used in an emergency to identify, locate, and act to help, protect, and if necessary, rescue the student with a disability.

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Any person who knowingly violates the provisions of Section 1 of this Act, or who knowingly induces another, directly or indirectly, to violate the provisions of Section 1 of this Act, shall be fined not less than five hundred dollars ($500), nor more than one thousand five hundred dollars ($1,500).

Approved March 28, 2000

CHAPTER 192

(SB 240)

AN ACT relating to tuition.

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

Section 1. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

(1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;

(2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;

(3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;

(4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;

(5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;

(6) Engage in analyses and research to determine the overall needs of postsecondary education in the Commonwealth;

(7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;

(8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;

(9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities and the Kentucky Community and Technical College System. The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;

(10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;

(11) (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.

(b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;

(12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;

(13) Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs;

(14) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;

(15) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:

(a) Consistency with the institution's mission and the strategic agenda;

(b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;

(c) Elimination of unnecessary duplication of programs within and among institutions; and

(d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;

(16) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;

(17) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;

(18) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;

(19) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;

(20) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;

(21) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes, but is not limited to, contractual arrangements for programs of research, specialized training, and cultural enrichment;

(22) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;

(23) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;

(24) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include, but not be limited to, the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;

(25) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;

(26) Select and appoint a president of the council under KRS 164.013;

(27) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;

(28) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;

(29) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;

(30) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions;

(31) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;

(32) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions ***and in state and locally operated secondary area technology centers*** through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution ***or a state or locally operated secondary area technology center*** may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term; and

(33) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

Approved March 29, 2000

CHAPTER 193

(HB 296)

AN ACT relating to juvenile justice.

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

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

(a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

(b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);

(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

(g) Abandons or exploits the child; or

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

(2) ***"Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;***

(3) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency which behavior results in danger to the

child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;

(4) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(5)~~[(3)]~~ "Cabinet" means the Cabinet for Families and Children;

(6)~~[(4)]~~ "Certified juvenile~~[holding]~~ facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training ***in juvenile detention*** developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;

(7)~~[(5)]~~ "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(8)~~[(6)]~~ "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(9)~~[(7)]~~ "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(10)~~[(8)]~~ "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(11)~~[(9)]~~ "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;

(12)~~[(10)]~~ "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(13)~~[(11)]~~ "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(14)~~[(12)]~~ "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(15)~~[(13)]~~ "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(16)[~~(14)~~] "Deadly weapon" has the same meaning as it does in KRS 500.080;

(17)[~~(15)~~] "Department" means the Department for Social Services;

(18)[~~(16)~~] "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(19) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his or her own or the community's protection[~~(17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention~~];

(20) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;

(21)[~~(18)~~] "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(22)[~~(19)~~] "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(23)[~~(20)~~] "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;

(24)[~~(21)~~] "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(25)[~~(22)~~] "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;

(26)[~~(23)~~] "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(27)[~~(24)~~] "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(28)[~~(25)~~] "Habitual truant" means any child who has been found by the court to have been ***reported as a truant as defined in KRS 159.150 three (3) or more times***[~~absent from school without valid excuse for three (3) or more days~~] during a one (1) year period[~~ or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period~~];

(29)[~~(26)~~] "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(30)[~~(27)~~] "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(31)[~~(28)~~] "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(32)[~~(29)~~] "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(33)[~~(30)~~] "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, ***in which a child accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays prior to a detention hearing as provided for in KRS 610.265, and*** in which children are supervised and observed on a regular basis ***by certified juvenile facility staff***;

(34)[~~(31)~~] "Juvenile holding facility" means a physically secure ***facility***[~~setting~~], approved by the Department of Juvenile Justice, which is an entirely separate[~~ facility or~~] portion or wing of a building containing an adult jail, which provides total ***sight and sound*** separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile[~~ holding~~] facility staff to provide twenty-four (24) hours per day supervision[~~. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners~~];

(35)[~~(32)~~] "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; ***or protection of the community,*** and is conducted at the suitable available facility closest to the child's place of residence;

(36)[~~(33)~~] "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(37)[~~(34)~~] ""Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;

(38)[~~(35)~~] Needs of the child" means necessary food, clothing, health, shelter, and education.

(39)[~~(36)~~] "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(40) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention

facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

(41)[~~(37)~~] "Parent" means the biological or adoptive mother or father of a child;

(42)[~~(38)~~] "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(43)[~~(39)~~] "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(44)[~~(40)~~] "Physical injury" means substantial physical pain or any impairment of physical condition;

(45) "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

(46)[~~(41)~~] "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(47)[~~(42)~~] "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the

Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(48)[~~(43)~~] "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

(49)[~~(44)~~] "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(50)[~~(45)~~] "School personnel" means those certified persons under the supervision of the local public or private education agency;

(51)[~~(46)~~] "Secretary" means the secretary of the Cabinet for Families and Children;

(52)[~~(47)~~] "Secure juvenile detention facility" means any ***physically secure*** facility used for the secure detention of children other than[~~ a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to,~~] any facility in which adult prisoners are confined[~~ or which shares staff with a facility in which adult prisoners are confined~~];

(53)[~~(48)~~] "***Staff*** Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(54)[~~(49)~~] "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(55)[~~(50)~~] "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(56)[~~(51)~~] "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(57)[~~(52)~~] "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(58)[~~(53)~~] "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(59) "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:

(a) Who was brought before the court and made subject to the order;

(b) Whose future conduct was regulated by the order;

(c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings ; and

(d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.

(60)[~~(54)~~] "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(61)[~~(55)~~] "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and

(62)[~~(56)~~] "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 2. KRS 610.010 is amended to read as follows:

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:

(a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

(b) ***Is beyond the control of the school or beyond the control of parents as defined in Section 1 of this Act***[~~Has not subjected himself to the reasonable control of his parent~~

~~or guardian, school personnel, or other person exercising custodial control or supervision of the child]~~;

(c) Is an habitual truant from school;

(d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;

(e) Is dependent, neglected, or abused; or

(f) Is mentally ill.

(2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.

(3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.

(4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.

(5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.

(6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights. The court shall have no jurisdiction to make permanent awards of custody of a child, but if the court finds an emergency to exist affecting the welfare of a child, it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.

(7) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence or the county wherein the offense was committed, as the case may be.

(8) Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.

(9) Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or

the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.

(10) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.

(11) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct dispositional hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Section 3. KRS 610.100 is amended to read as follows:

(1) Unless there is a suitable prior disposition investigation report or unless waived by the child ***who is represented by counsel***, before making disposition of the case of a child brought before the court under the provisions of KRS Chapters 630 or 635, whether by complaint pursuant to KRS 610.020, or by reason of having been taken into custody pursuant to KRS 610.190, the judge shall cause an investigation to be made concerning the nature of the specific act complained of and any surrounding circumstances which suggest the future care and guidance which should be given the child. The investigation shall include an inquiry into the child's age, habits, school record, general reputation, and everything that may pertain to his life, and character. The investigation shall also include an inquiry into the home conditions, life, and character of the person having custody of the child. The investigation shall also include an assessment of the parent or guardian's ability to pay all or part of the cost of the child's care and treatment should the child be ordered into a treatment program or placed on supervised probation. The result of the investigation shall be reported in writing to the court and to counsel for the parties three (3) days prior to the child's dispositional hearing and shall become a part of the record of the proceedings. The child may waive the three (3) day requirement. Objections by counsel at the dispositional hearing to portions of the dispositional report shall be noted in the record.

(2) The investigation shall be conducted by~~[volunteer or salaried probation officers of the juvenile court or by]~~ a suitable public or private agency. The cabinet and the Department of Juvenile Justice may furnish investigation services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county government may enter into a contract on behalf of his county with the Department of Juvenile Justice or the cabinet for the furnishings of such services.

(3) Upon the court's motion or the motion of any party, an informal adjustment may be made at any time during the proceedings and with the victim and with those persons specified in KRS 610.070 having prior notification of the motion.

Section 4. KRS 610.220 is amended to read as follows:

(1) If an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, ***a nonsecure facility,***~~[the offices of the court-designated worker,]~~ or, as necessary, in a hospital or clinic for the following purposes:

(a) Identification and booking;

(b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;

(c) Photographing;

(d) Fingerprinting;

(e) Physical examinations, including examinations for evidence;

(f) Evidence collection, including scientific tests;

(g) Records checks;

(h) Determining whether the child is subject to trial as an adult; and

(i) Other inquiries of a preliminary nature.

(2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody ***for up to an additional ten (10) hours at a facility of the type***~~[in facilities]~~ listed in subsection (1) of this section ***except for an intermittent holding facility*** for the period of retention.

(3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location.

Section 5. KRS 610.265 is amended to read as follows:

(1) Any child who is ***alleged to be a status offender or who is*** accused of ***being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of*** committing a~~[status or]~~ public offense or of being in contempt of court ***on an underlying public offense*** may be detained in a secure juvenile detention facility or juvenile holding facility ***for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays*** or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays ***pending a detention hearing***.

(2) (a) Within~~[twenty-four (24) hours of the start of]~~ the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a ***detention*** hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(b) If the court orders ***a***~~[the]~~ child detained further~~[, and]~~ ***after the detention hearing, that detention shall be served as follows:***

1. If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.

2. If it is alleged that the child is a status offender, detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.

3. If a status offender is charged with violating a valid court order, and the court orders the child to serve detention, that detention shall be served in a nonsecure setting approved by the Department of Juvenile Justice unless the court issues an order in accordance with the requirements of subparagraph 4. of this paragraph.

4. Prior to ordering a status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:

a. Affirm that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;

b. Make a determination during the detention hearing that there is probable cause to believe that the child violated the valid court order; and

c. Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receive an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receive and review a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.

5. If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.

6. If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child~~[Any other child ordered to be detained in a state-operated facility pursuant to the statewide detention plan]~~ shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.~~[The security assessment shall be done at the facility where the juvenile is initially detained]~~

(c) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult.

Section 6. KRS 610.280 is amended to read as follows:

(1)~~[(a) If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty-eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.~~

~~(b) If a child is detained for the alleged commission of a status offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention.~~

~~(2)]~~ ***At the detention***~~[The]~~ hearing ***held pursuant to Section 5 of this Act, the court shall make separate findings as follows***~~[shall address the following issues]~~:

(a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof, and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case;~~[and]~~

(b) In determining ***whether a child should be further detained***~~[detention]~~, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child.~~[Any child ordered to be detained in a state-operated facility pursuant to the statewide detention plan shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained]~~

(3) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

Section 7. KRS 610.290 is amended to read as follows:

(1) Unless a hearing is held ***within the time frame established by Section 5 of this Act,*** and the necessity for detention properly established, the child shall be released to the custody of his parents, person exercising custodial control or supervision or other responsible adult pending further disposition of the case. A child shall have a right to counsel at his detention hearing determining his right to freedom pending the disposition of his case, and his parents, person exercising custodial control or supervision or other responsible adult shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing. Any person aggrieved by a proceeding under this subsection may proceed by habeas corpus to the Circuit Court.

(2) Whether the child is released before or after a hearing, or is detained as a result of such hearing, the child and his parents, person exercising custodial control or supervision or other responsible adult shall be given written notice of the time and place of the adjudicatory hearing concerning the child and an account of the specific charges against the child, including the specific statute alleged to have been violated. Such notice shall be given at least seventy-two (72) hours prior to the initial hearing on the case.

Section 8. KRS 630.010 is amended to read as follows:

In addition to those purposes set forth in KRS 600.010, this chapter shall be interpreted and construed to effectuate the following purposes regarding status offenders:

(1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;

(2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;

(3) ***Status offenders shall not be detained***~~[Detention of status offenders]~~ in secure juvenile detention facilities or juvenile holding facilities ***after the initial detention hearing unless the child is accused of, or has an adjudication that the child has violated a valid court order, in which case the child may be securely detained for up to seventy-two (72) hours, exclusive of weekends and holidays, pending receipt of the report required under subsection (3) of Section 12 of this Act. Any period of secure detention prior to the detention hearing shall not exceed twenty-four (24) hours, exclusive of weekends and holidays;***~~[should only be used for very specific and constructive purposes, when all other less restrictive alternatives to detention have been attempted and are not feasible; and]~~

(4) ***Status offenders accused of violating a valid court order shall not be securely detained in intermittent holding facilities; and***

(5) Status offenders accused of or found guilty of violating a valid court order~~[Status offenders]~~ shall not be converted into public offenders by virtue of ***this***~~[status]~~ conduct.

Section 9. KRS 630.020 is amended to read as follows:

The court shall have exclusive jurisdiction in proceedings concerning any child living, or found within the district, who allegedly:

(1) Has been an habitual runaway from his parent or person exercising custodial control or supervision of the child;

(2) ***Is beyond the control of the school or beyond the control of parents as defined in Section 1 of this Act***[~~Has not subjected himself to the reasonable control of his parent or guardian or school personnel or person exercising custodial control or supervision of the child~~]; or

(3) Has been an habitual truant from school.

Section 10. KRS 630.040 is amended to read as follows:

Any person taking a child into custody, with all reasonable speed, shall in this sequence:

(1) Deliver the child suffering from a physical condition or illness which requires prompt medical treatment to a medical facility or physician. Children suspected of having a mental or emotional illness shall be evaluated in accordance with the provisions of KRS Chapter 645;

(2) Contact a court designated worker who shall have the responsibility for determining appropriate placement pursuant to KRS 610.200(5);

(3) If the court designated worker determines that the placements designated in KRS 610.200(5) and subsection (1) of this section have been exhausted ***or are not appropriate***, a child may be delivered to a secure juvenile detention facility***, a***[~~ or~~] juvenile holding facility***, or a nonsecure setting approved by the Department of Juvenile Justice pending the detention hearing***;

(4) When the child has not been released to his parents or person exercising custodial control or supervision, the person taking the child into custody shall make a reasonable effort promptly to give oral notice to the parent or person exercising custodial control or supervision of the child;

(5) In all instances the peace officer taking a child into custody shall provide a written statement to the court designated worker of the reasons for taking the child into custody;

(6) If the child is placed in an emergency shelter or medical facility, during the adjudication and disposition of his case, the court may order his parents to be responsible for the expense of his care; and

(7) The peace officer taking the child into custody shall within three (3) hours of taking a child into custody file a complaint with the court, stating the ***basis for taking the child into custody***[~~status offense charged by KRS number~~] and the reason why the child was not released to the parent or other adult exercising custodial control or supervision of the child, relative or other responsible adult, a court designated agency, an emergency shelter or medical facility. Pending further disposition of the case, the court or the court designated worker may release the child to the custody of any responsible adult who can provide adequate care and supervision.

Section 11. KRS 630.070 is amended to read as follows:

No ***status offender***[~~child~~] shall be placed in a secure juvenile detention facility or juvenile holding facility as a means or form of punishment except following a finding that ***the child has violated a valid court order***[~~he is in contempt of court. When a child is detained for the alleged commission of a status offense, a detention hearing shall be held as soon as is practical, but within forty-eight (48) hours of the detention, exclusive of weekends and holidays~~].

Section 12. KRS 630.080 is amended to read as follows:

(1) In order for the court to detain ***a***[~~the~~] child[~~ in a secure juvenile detention facility or juvenile holding facility~~] after the ***detention hearing***[~~twenty-four (24) hour period~~], the Commonwealth shall establish probable cause at the detention hearing that ***the child is a status offender and that further detention of the child is necessary for the protection of the child or the community***[~~a status offense has been committed and that the child committed the offense~~]. If the Commonwealth fails to establish ***probable cause that the child is a status offender***[~~these grounds~~], the complaint shall be dismissed and the child shall be released. ***If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the child is not necessary for the protection of the child or the community, the child shall be released to the parent or person exercising custodial control or supervision of the child.*** If[~~ the~~] grounds are established ***that the child is a status offender, and that further detention is necessary***, the child may be ***placed in a nonsecure setting approved by the Department of Juvenile Justice***[~~held in a secure juvenile detention facility or juvenile holding facility, as provided in subsection (3) of KRS 630.040, pending an adjudicatory hearing only if the Commonwealth shows probable cause to believe one (1) of the following:~~

~~(1) All alternatives to secure detention have been exhausted;~~

~~(2) The child has, within the last year, failed to appear at court hearings and requires detention to assure his presence at subsequent hearings;~~

~~(3) The child has run away from a secure or nonsecure facility;~~

~~(4) The child has run away from his home, and his parent, guardian, or person exercising similar custodial control or supervision of the child has orally agreed to assume physical custody or pay for his transportation within forty-eight (48) hours. The child may on his own motion present to the court reasons why he should not be returned to his parents or person exercising similar custodial control or supervision of the child. Upon consideration of such motion or if the parents refuse to assume custody of the child, the court may in its discretion place the youth in a nonsecure facility and concurrently order that a protective services investigation be commenced as allowed by KRS Chapter 620~~];

(2)[~~(5)~~] ***A status offender may be securely detained if*** the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615;[~~ or~~]

(3) A status offender who is subject to a valid court order may be securely detained upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:

(a) Affirms that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;

(b) Makes a determination during the detention hearing that there is probable cause that the child violated the valid court order; and

(c) Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receives an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receives and reviews a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the

child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report, exclusive of weekends and holidays. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.

~~[(6) The child is a danger to himself or others, unless he is suspected of having a mental or emotional illness and requires medical attention in which case the provisions of KRS Chapter 645 shall be followed.]~~

Section 13. KRS 630.100 is amended to read as follows:

Except as otherwise provided in this chapter, no adjudicated status offender shall be ***securely detained***~~[held in a secure juvenile detention facility or juvenile holding facility as provided in KRS 630.040 pending disposition for a period exceeding ten (10) days after the adjudicatory hearing, unless waived by the child and the court considers it in the child's best interest. A child shall not be held in a secure juvenile detention facility or juvenile holding facility more than ten (10) days after the exercise of this waiver]~~.

Section 14. KRS 630.120 is amended to read as follows:

(1) ***All dispositional hearings conducted under this chapter shall be conducted in accordance with the provisions of KRS 610.060 and 610.070. In addition, the court shall, at the time the dispositional order is issued***:

(a) Give the child adequate and fair warning of the consequences of the violation of the order; and

(b) Provide the child and the child's attorney, parent, or legal guardian a written statement setting forth the conditions of the order and the consequences for violating the order.

An order issued pursuant to this section is a valid court order and any child violating that order may be subject to the provisions of subsection (3) of Section 12 of this Act.~~[The general conduct of the dispositional hearings under this section relating to status offenders shall follow the procedures pursuant to KRS 610.070 and:]~~

(2) The court shall consider all appropriate local remedies to aid the child and ***the child's***~~[his]~~ family subject to the following conditions:

(a) Residential and nonresidential treatment programs for status offenders shall be community-based and nonsecure; and

(b) With the approval of the education agency, the court may place the child in a nonsecure public or private education agency accredited by the Department of Education.

(3)[~~(2)~~] At the disposition of a child adjudicated on a petition brought pursuant to this chapter, all information helpful in making a proper disposition, including oral and written reports, may be received by the court provided that the child, ***the child's***[~~his~~] parents, their counsel, the prosecuting attorney, the child's counsel, or other interested parties as determined by the judge shall be afforded an opportunity to examine and controvert the reports. For good cause, the court may allow the admission of hearsay evidence.

(4)[~~(3)~~] The court shall ***affirmatively***[~~first~~] determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized.

(5)[~~(4)~~] The court may order the child and ***the child's***[~~his~~] family to participate in any programs which are necessary to effectuate a change in the child and the family.

(6)[~~(5)~~] When all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and ***the child's***[~~his~~] family, the court may commit the child to the cabinet for such services as may be necessary. The cabinet shall consider all appropriate local remedies to aid the ***child***[~~youth~~] and ***the child's***[~~his~~] family subject to the following conditions:

(a) Treatment programs for status offenders shall be, unless excepted by federal law, community-based and nonsecure;

(b) The cabinet may place the child in a nonsecure public or private education agency accredited by the department of education;

(c) The cabinet may initiate proceedings pursuant to KRS 610.160 when the parents fail to participate in the cabinet's treatment programs; and

(d) The cabinet may discharge the child from commitment after providing ten (10) days' prior written notice to the committing court which may object to such discharge by holding court review of the commitment under KRS 610.120.

Section 15. KRS 635.055 is amended to read as follows:

No child who is found to be in contempt of court shall be committed as a public offender as a result of such finding, nor detained because of such finding in a facility other than a secure juvenile detention facility***,***[~~ or~~] juvenile holding facility***, or a nonsecure detention alternative***.

SECTION 16. A NEW SECTION OF KRS CHAPTER 630 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of KRS Chapter 520 to the contrary, no child accused of being or who has been adjudicated as a status offender or who has been accused of or held in contempt of court based upon an underlying finding that the child is a status offender who is absent without leave from a nonsecure detention option or home detention, or who fails to comply with the conditions of supervised placement, shall be charged with escape for being absent without leave or failing to comply with the conditions of supervised placement.

Section 17. KRS 508.025 is amended to read as follows:

(1) A person is guilty of assault in the third degree when the actor:

(a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:

1. A state, county, city, or federal peace officer;

2. An employee of a detention facility, or state residential treatment facility or state ***staff*** secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;

3. An employee of the Department for Social Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or

4. A probation and parole officer; or

(b) Being a person confined in a detention facility, or state residential treatment facility or state ***staff*** secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces or urine to be thrown upon an employee of the facility.

(2) Assault in the third degree is a Class D felony.

SECTION 18. A NEW SECTION OF KRS CHAPTER 600 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of KRS Chapter 600 to 645, the inherent contempt power of the court shall not be diminished.

Section 19. The following KRS sections are repealed:

610.250 Conditional releases.

630.090 Limitations on detention of alleged status offender.

630.110 Conduct of adjudicatory hearing.

630.130 Limitations on detention of status offender after disposition.

Approved March 29, 2000

CHAPTER 194

(HB 595)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 and 2 of this Act:

(1) A "specialty credit insurance producer" is an individual or business entity licensed by the commissioner to solicit applications or enrollments for group or individual credit life, credit health, credit personal property, and credit unemployment insurance contracts on behalf of an insurer; and if authorized to do so by the insurer, to effectuate them.

(2) A "managing employee" is a salaried full-time employee of the licensed business entity that is responsible for the supervision of the other employees engaged in the placement of insurance under this section.

(3) A license issued under this section shall permit credit insurance sales by the license holder, its subsidiaries, and affiliates.

SECTION 2. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner may issue to an applicant qualified under this section a license to act as a specialty credit insurance producer for the following lines of insurance only:

(a) Credit life;

(b) Credit health;

(c) Credit personal property;

(d) Credit involuntary unemployment; and

(e) Any other credit-related insurance approved by the commissioner as promulgated by administrative regulation.

(2) For a specialty license to be issued under this section, the applicant shall submit to the commissioner all of the following:

(a) A written application, signed by the applicant, on a form prescribed by the commissioner, that contains the information prescribed by the commissioner, including a list of physical locations where activities authorized by the specialty license will be conducted;

(b) A certification by an insurer authorized to do business in this state, signed and affirmed as true under penalty of perjury by an officer stating that:

1. The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and

2. The insurer has appointed the managing employee and business entity applicants to act as agents for the type of insurance specified;

(c) The applicable fee set forth in KRS 304.4-010.

(3) A specialty license issued under this section authorizes an employee or representative of the license holder to participate in any aspect of selling the types of insurance specified in this section, without being licensed, registered, or otherwise individually identified, if all of the following are true:

(a) The employee or representative operates with permission from and under the supervision of a managing employee license holder;

(b) The employee or representative has been instructed by the managing employee license holder with respect to the disclosures that may be required to be made to consumers in connection with the sale of credit insurance; and

(c) The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative.

(4) A specialty license holder may not in any manner advertise, represent, or otherwise hold out the license holder or any employee or representative of the license holder as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.

(5) Insurance shall not be transacted under this section at any location unless the sale of insurance includes the consumer protection disclosures set forth in Regulation Z of the Federal Truth in Lending Act, 15 U.S.C. sec. 501 et seq.

(6) If a specialty credit insurance producer violates this chapter, the commissioner may, after notice and the opportunity for a hearing, impose any penalties set forth in KRS 304.2-360, 304.9-440, and 304.99-020.

(7) An examination is not required for issuance of a license under this section and continuing education requirements do not apply to a license issued under this section. A business entity shall continuously maintain at least one (1) managing employee licensed under this section, but shall not be required to license any of its officers, directors, or other employees individually.

(8) A licensee under this section may receive commissions or other compensation for services rendered in connection with the sale of credit insurance under this section.

(9) Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.

(10) The commissioner shall establish revenue-neutral license, location, and renewal fees by administration regulation in an amount sufficient to maintain the department's revenues generated by credit-limited license fees for the fiscal year ending June, 2000, indexed annually for inflation.

SECTION 3. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The requirements set forth in Section 1 and 2 of this Act shall not apply to any bank licensed to do business in the Commonwealth.

Approved March 29, 2000

CHAPTER 195

(HJR 101)

A JOINT RESOLUTION directing the Kentucky Department of Education to promote strategies to assist school districts in providing a safe student transportation system.

WHEREAS, local school districts transport approximately 428,000 students to and from school each day; and

WHEREAS, student discipline is essential for safely transporting these students; and

WHEREAS, effective student transportation discipline policies require the cooperation of students, parents, bus drivers, principals, and local district superintendents;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Kentucky Department of Education shall promote strategies to assist school districts in providing a safe student transportation system to include, but not be limited to, the following:

(1) Identifying and disseminating model school and district policies and procedures for maintaining student discipline on school buses, and training school bus drivers to address student discipline problems; and

(2) Providing a procedure for bus drivers, students, and parents to report unsafe school transportation situations not satisfactorily addressed at the local level. The Kentucky Department of Education shall investigate and work to resolve all problems.

Section 2. The Kentucky Department of Education shall provide the Interim Joint Committee on Education a report on its efforts by January 1, 2001.

Section 3. The Clerk of the House of Representatives shall send a copy of this resolution to the Commissioner of Education, 500 Mero Street, Frankfort, Kentucky 40601.

Approved March 29, 2000

CHAPTER 196

(SB 53)

AN ACT relating to education finance.

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

Section 1. KRS 164.7891 is amended to read as follows:

(1) It is the intent of the General Assembly to establish a scholarship program to provide eligible Kentucky students the opportunity to attend an accredited osteopathic school of medicine located in the Commonwealth and become certified practitioners rendering medical service in the Commonwealth.

(2) The Kentucky Higher Education Assistance Authority may award scholarships, to the extent funds are available for that purpose, to persons who declare an intent to become osteopaths and practice in the Commonwealth and who are eligible under subsection (4) of this section.

(3) The authority may award scholarships to students who meet the following criteria:

(a) Kentucky residents who are United States citizens as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

(b) Students who are enrolled or accepted for enrollment in an eligible program of study accredited by the Bureau of Professional Education of the American Osteopathy Association or its successor, on a full-time basis, or eligible students who have a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability;

(c) Students who agree to render one (1) year of qualified service in the Commonwealth for each year the scholarship was awarded. "Qualified service" means a full-time

practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year in the fields of family practice, general practice, general internal medicine, general pediatrics, general obstetrics, or gynecology, except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., whose disability, certified by another licensed physician, prevents him or her from practicing full-time, shall be deemed to perform qualified service by practicing the maximum time permitted by the attending physician; and

(d) Students who sign a promissory note as evidence of the scholarship awarded and the obligation to repay the scholarship amount or render medical service as agreed in lieu of payment.

(4) The amount of the scholarship awarded to an eligible student by the authority shall be equal to the difference between***:***

(a) The ***average of the*** prevailing amount charged for in-state tuition at the University of Kentucky School of Medicine and the University of Louisville School of Medicine***;*** and

(b) The prevailing amount charged for tuition at the osteopathic school of medicine in which the student is enrolled.

(5) The authority shall require a promissory note to be executed by the student as evidence of the obligation. The recipient shall render one (1) year of qualified service for each year the scholarship was awarded. Upon completion of each year of qualified service, the authority shall cancel the appropriate number of promissory notes. Promissory notes shall be canceled by qualified service in the order in which the promissory notes were executed. Service credit shall not include residency service. In the event a recipient fails to complete an eligible program of study, or fails to render qualified medical service as a primary care physician as agreed in subsection (3) of this section, the recipient shall be liable for the total repayment of the amount of the scholarship awarded.

(6) A scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of executing the promissory note.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of the scholarship recipient's license to practice medicine, subject to the procedures set forth in KRS Chapter 311.

(9) Notwithstanding KRS 164.753(3), the authority shall establish by administrative regulation procedures for the administration of this program, including the execution of appropriate contracts and promissory notes, cancellation of the obligation, repayment of outstanding debt, and the priority of awarding scholarships if funds are insufficient to honor all requests.

(10) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum,

except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(11) (a) The "Osteopathic Medicine Scholarship Program" is hereby created as a special trust fund in the State Treasury administered by the Kentucky Higher Education Assistance Authority for the purpose of providing funds for scholarships to eligible students studying osteopathic medicine in schools in the Commonwealth.

(b) Funding shall be transferred to the special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each Kentucky resident eligible under subsection (3) of this section to be awarded a scholarship in the amount established under subsection (4) of this section. No more than four percent (4%) of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. To the extent this appropriation and other funds are available, the authority shall award scholarships to all renewal applicants and eligible students in accordance with the formula for determining the amount of the scholarship award established in this section.

(c) The trust fund may also receive state appropriations, gifts, and grants from public and private sources, and federal funds. Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this section.

(12) On or before August 1 of each year, sixty-five percent (65%) of the amount of funding provided in subsection (11)(b) of this section shall be transferred to the special trust fund and the remaining thirty-five percent (35%) shall be transferred on or before December 1 of each year. The revenue transfers shall be based upon the revenue estimates prevailing at the time each transfer is due.

(13) The calculation and transfer of funds under subsection (11) of this section shall be made only after the quarterly installment of the annual nineteen million dollars ($19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Workers' Compensation Funding Commission as required by KRS 342.122.

Approved March 29, 2000

CHAPTER 197

(SB 56)

AN ACT relating to the National Guard Tuition Award Program.

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

Section 1. KRS 164.5169 is amended to read as follows:

Upon certification by the Department of Military Affairs that the member is eligible, the Kentucky Higher Education Assistance Authority shall, to the extent that funds have been appropriated and

are available to the National Guard Tuition Award Program, pay to the educational institution an amount ***up to or*** equal to the in-state tuition costs of full-time or part-time study.

Approved March 29, 2000

CHAPTER 198

(SB 125)

AN ACT relating to the Kentucky Educational Excellence Scholarship.

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

Section 1. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

(1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;

(2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;

(3) "ACT score" means the composite score achieved on the American College Test ***at a national test site on a national test date*** or an equivalent score, as determined by the council, on the Scholastic Assessment Test;

(4) "Authority" means the Kentucky Higher Education Assistance Authority;

(5) "Award period" means two (2) consecutive academic terms;

(6)[~~ "Commonwealth merit scholarship" means a scholarship provided to an eligible student to attend a participating institution;~~

~~(7) "Commonwealth merit scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;~~

~~(8) "Commonwealth merit scholarship trust fund" means the Wallace G. Wilkinson Commonwealth merit scholarship trust fund;~~

~~(9)~~] "Council" means the Council on Postsecondary Education created under KRS 164.011;

(7)[~~(10)~~] "Eligible ***high school*** student" means any person who is a ***citizen, national, or permanent resident of the United States and*** Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the ***Kentucky Educational Excellence***[~~Commonwealth merit~~] Scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;

(8) "Eligible postsecondary student" means a citizen, national, or permanent resident of the United States and Kentucky resident, as determined by the participating institution in accordance with criteria established by the council for the purposes of admission and tuition assessment, who:

(a) Earned a Kentucky Educational Excellence Scholarship base, supplemental, or base and supplemental final award;

(b) Has the required postsecondary G.P.A. required under KRS 164.7881;

(c) Has remaining semesters of eligibility under KRS 164.7881;

(d) Is enrolled in a participating institution as a part-time or full-time student; and

(e) Is not a convicted felon;

(9)[~~(11)~~] "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;

(10)[~~(12)~~] "Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;

(11)[~~(13)~~] "High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;

(12) "KEES" means Kentucky Educational Excellence Scholarship;

(13) "KEES curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;

(14) "Kentucky Educational Excellence Scholarship" means a scholarship provided under KRS 164.7871 to 164.7885;

(15) "Kentucky Educational Excellence Scholarship Trust Fund" means the Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund;

(16)[~~(14)~~] "Maximum award amount" means the sum of the[~~ proportionate~~] base scholarship amount earned by an eligible ***high school*** student in each academic year of high school study ***plus***[~~and~~] any supplemental award earned by an eligible ***high school*** student ***or earned pursuant to KRS 164.7879(3)(c)***. The amount so determined shall be the maximum amount available to the eligible ***postsecondary*** student for any award period;

(17)[~~(15)~~] "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:

(a) 1. Is publicly operated; or

2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; and

(b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;

(18)[~~(16)~~] "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the

student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and

(19)[~~(17)~~] "Supplemental award" means commitment of[~~ additional~~] scholarship funds under KRS 164.7879(3)[~~ to an eligible student based on the eligible student's ACT score~~].

Section 2. KRS 164.7877 is amended to read as follows:

(1) There is established in the State Treasury a permanent and perpetual fund to be known as the "Wallace G. Wilkinson ***Kentucky Educational Excellence***[~~Commonwealth Merit~~] Scholarship Trust Fund" to which shall be credited net lottery revenues transferred in accordance with KRS 154A.130; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private.

(2) The moneys in the fund are hereby continuously appropriated only for the purposes set forth in KRS 164.7871 to 164.7885 and KRS 164.7889.

(3) The council shall administer the ***Kentucky Educational Excellence***[~~Commonwealth merit~~] Scholarship trust fund. Upon the approval of the council, the authority may expend funds from the ***Kentucky Educational Excellence***[~~Commonwealth merit~~] Scholarship trust fund that are necessary and reasonable to meet the expenses of administering the ***Kentucky Educational Excellence***[~~Commonwealth merit~~] Scholarship[~~ trust fund~~].

Section 3. KRS 164.7879 is amended to read as follows:

(1) ***Kentucky Educational Excellence***[~~Commonwealth merit~~] Scholarship awards shall be based upon an established base scholarship amount and an eligible ***high school*** student's grade point average. The base scholarship amount for students attaining a grade point average ***of at least***[~~between~~] 2.5[~~ and 4.0~~] for the 1998-1999 academic year shall be as follows:

GPA	Amount	GPA	Amount
2.50	$125.00	3.30	$325.00
2.60	$150.00	3.40	$350.00
2.70	$175.00	3.50	$375.00
2.75	$187.***00***[~~50~~]	3.60	$400.00
2.80	$200.00	3.70	$425.00
2.90	$225.00	3.75	$437.***00***[~~50~~]
3.00	$250.00	3.80	$450.00
3.10	$275.00	3.90	$475.00
3.20	$300.00	4.00	$500.00
3.25	$312.***00***[~~50~~]		

The council shall review the base amount of the ***Kentucky Educational Excellence***[~~Commonwealth merit~~] Scholarship beginning with the 1999-2000 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

(2) The authority shall commit to provide to each eligible ***high school*** student the base amount of the Commonwealth merit scholarship for each academic year of high school study in the Commonwealth merit scholarship curriculum that the student has attained at least a 2.5 grade point average. The award shall be based upon the eligible student's grade point average at the close of each academic year. An award attributable to a past academic year shall not be increased after the award has been earned by an eligible ***high school*** student, regardless of any subsequent increases made to the base amount of the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ scholarship through the promulgation of an administrative regulation by the council.

(3) (a) The authority shall commit to provide to each eligible ***high school*** student graduating from high school before June 30, 1999, and achieving a score of at least 15 on the American College Test, a supplemental award for the award period beginning in the fall of 1999, based on the eligible ***high school*** student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Annual Bonus	ACT Score	Annual Bonus
15	$21	22	$171
16	$43	23	$193
17	$64	24	$214
18	$86	25	$236
19	$107	26	$257
20	$129	27	$279
21	$150	28 or above	$300

Subsequent supplemental awards for eligible ***high school*** students graduating before June 30, 1999, shall be determined in accordance with the provisions of paragraph (b) of this subsection.

(b) The authority shall commit to provide to each eligible ***high school*** student upon achievement after June 30, 1999, of an ACT score of at least 15 on the American College Test a supplemental award based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Amount	ACT Score	Amount
15	$36	22	$286
16	$71	23	$321
17	$107	24	$357
18	$143	25	$393
19	$179	26	$428
20	$214	27	$464

21	$250	28 and above	$500

The council shall review the base amount of the supplemental award beginning with the 2001-2002 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

(c) The council shall promulgate administrative regulations establishing the eligibility criteria and procedures for making a supplemental award to Kentucky residents who ***are citizens, nationals, or permanent residents of the United States and who*** graduate from a nonpublic ***secondary***~~[high]~~ school not certified by the Kentucky Board of Education and Kentucky residents ***who are citizens, nationals, or permanent residents of the United States and*** who obtain a General Educational Development (GED) diploma within five (5) years of their high school graduating class.

Section 4. KRS 164.7881 is amended to read as follows:

(1) ~~[Every]~~Eligible ***high school students***~~[student]~~ who ***have***~~[has]~~ graduated from high school ***and eligible postsecondary students***~~[and]~~ who ***have***~~[has]~~ earned a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship,~~[or]~~ a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship and a supplemental award, ***or a supplemental award only pursuant to KRS 164.7879(3)(c),*** shall be eligible to receive the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship,~~[or]~~ the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ scholarship and the supplemental award, ***or a supplemental award only*** for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.

(2) To receive the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship***,***~~[or]~~ a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship and supplemental award, ***or a supplemental award only,*** an eligible ***high school or postsecondary*** student shall:

(a) Enroll in and attend a participating institution as a full-time student or a part-time student; and

(b) Maintain eligibility as provided in subsection (3) of this section.

(3) Eligibility for a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship or a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship and supplemental award shall terminate upon the earlier of:

(a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or

(b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship***,***~~[or]~~ a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship and supplemental award***, or a supplemental award only,*** for a cumulative total of eight (8) academic terms if the student enrolls ***as at least a part-time student***~~[full-time]~~ in a four (4) year program.

(4) (a) The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible ***postsecondary*** student for an award period shall be disbursed by the authority to the eligible ***postsecondary*** student in two (2)~~[equal]~~ installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period.

(b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible ***postsecondary*** student for any academic term in which the student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible ***postsecondary*** student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible ***postsecondary*** student.

(c) 1. An eligible ***postsecondary*** student who is enrolled full-time in an undergraduate program of study shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study. To retain the maximum award for the second award period, an eligible ***postsecondary*** student shall have ***at least*** a 2.5 grade point average at the end of the first award period. To retain the maximum award amount for subsequent award periods, an eligible ***postsecondary*** student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period.

2. Any eligible ***postsecondary*** student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.

3. Any eligible ***postsecondary*** student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.

4. Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each ***Kentucky Educational Excellence Scholarship recipient***~~[eligible student]~~ enrolled as a full-time or part-time student at the participating institution.

5. Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.

(5) The expiration of a student's five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:

(a) A serious and extended illness or injury of the student, certified by an attending physician;

(b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;

(c) Natural disasters that would render a student unable to attend classes; or

(d) Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.

(6) An eligible ***postsecondary*** student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship,~~[or]~~ the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship and the supplemental award***, or the supplemental award only*** for a maximum of ten (10) academic terms. The expiration of an eligible ***postsecondary*** student's five (5) year eligibility shall be extended to six (6) years for eligible ***postsecondary*** students meeting the requirements of this subsection.

(7) Each eligible ***high school*** student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "***Senator*** Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District***, and shall be recognized by the high school in a manner consistent with recognition given by the high school to other high levels of academic achievement***.

Section 5. KRS 164.7885 is amended to read as follows:

(1) Not later than August 1, 1999, and each June 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all ***high school***~~[eligible]~~ students during the academic year. The list shall identify the high school and shall contain each ***high school***~~[eligible]~~ student's name, social security number, address, grade point average for the academic year, expected or actual graduation date, and highest ACT score. ***The list need not contain the ACT score if the authority receives the ACT score directly from the testing services.*** The authority shall notify each eligible ***high school*** student of his or her ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship award earned each academic year. The authority shall determine the final ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ scholarship and supplemental award based upon the actual final grade point average and highest ACT score and shall notify each eligible ***high school*** student of the final determination. The authority shall make available a list of eligible ***high school and postsecondary*** students to participating institutions.

(2)~~[Not later than January 30, 1999, and each January 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students expected to graduate during the academic year. The list shall identify the high school and shall contain each eligible student's name, Social Security number, address, grade point average for the fall academic period of the current academic year, and highest ACT score. The authority shall then calculate each eligible student's projected Commonwealth merit scholarship and supplemental award based on the eligible student's data available to the Authority and shall make available to participating institutions by April 1 of each academic year a comprehensive list of prospective graduates who are eligible students and their projected scholarship and supplemental award amounts.~~

~~The authority shall notify each prospective high school graduate who is an eligible student of his or her projected Commonwealth merit scholarship and supplemental award amount.~~

~~(3)]~~ The authority shall provide data access only to participating institutions that have either received an admission application from an eligible ***high school or postsecondary*** student or have been listed by the eligible ***high school or postsecondary*** student on the Free Application For Federal Student Aid.

(3)~~[(4)]~~ For each eligible ***postsecondary*** student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority:

(a) The student's initial eligibility for a ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship***, Kentucky Educational Excellence***~~[or Commonwealth]~~ Scholarship and supplemental award***, or supplemental award only pursuant to KRS 164.7879(3)(c)*** through the comprehensive list compiled by the authority or an alternative source satisfactory to the authority;

(b) The student's highest ACT score attained by the date of graduation from high school***, provided that the participating institution need not report the ACT score if the authority receives the ACT score directly from the testing services***;

(c) The eligible ***postsecondary*** student's full-time or part-time enrollment status at the beginning of each academic term; and

(d) The eligible ***postsecondary*** student's cumulative grade point average after the completion of each award period.

(4)~~[(5)]~~ Each participating institution shall submit to the authority a report, in a form satisfactory to the authority, of all eligible ***postsecondary*** students enrolled for that academic term. ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarships and supplemental awards shall be disbursed by the authority to each eligible ***postsecondary*** student attending a participating institution during the academic term within thirty (30) days after receiving a satisfactory report.

(5)~~[(6)]~~ ~~[Except as provided in this subsection,]~~The ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship and the supplemental award shall not be reduced***,*** ~~[.~~

~~(a)]~~***except as provided in KRS 164.7881(4)***~~[If the sum of the Commonwealth merit scholarship and the supplemental award plus other student financial assistance from all sources exceeds the eligible student's total cost of education, as defined in 20 U.S.C. sec. 1087ll, need-based financial assistance awards administered by the authority and the participating institution shall be reduced by the amount that all student financial assistance exceeds the total cost of education]~~.

(6)~~[(b)]~~ ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarships and supplemental awards shall not be awarded ***or disbursed*** to any eligible ***postsecondary*** students who are in default on any obligation to the authority under any programs administered by the authority~~[under KRS 164.785]~~ until financial obligations to the authority are satisfied, except that ineligibility may be waived by the authority for cause.

(7) Notwithstanding the provisions of KRS 164.753, the authority may promulgate administrative regulations for the administration of ***Kentucky Educational***

Excellence~~[Commonwealth merit]~~ Scholarships and supplemental awards under the provisions of KRS 164.7871 to 164.7885 and KRS 164.7889.

Approved March 29, 2000

CHAPTER 199

(SB 166)

AN ACT relating to the duties of the secretary of the Cabinet for Workforce Development.

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

Section 1. KRS 151B.020 is amended to read as follows:

(1) The Cabinet for Workforce Development is hereby created, which shall constitute a cabinet of the state government within the meaning of KRS Chapter 12. The cabinet shall consist of a secretary and those administrative bodies and employees as provided by law.

(2) The cabinet, subject to the provisions of KRS Chapter 12, shall be composed of the major organizational units listed below, and other departments, divisions, and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet:

(a) The Department for Adult Education and Literacy, which is created by KRS 151B.023;

(b) The Department for Technical Education, which is created by KRS 151B.025;

(c) The Department of Vocational Rehabilitation, which is created by KRS 151B.185;

(d) The Department for the Blind, established by KRS 163.470;

(e) The Department for Employment Services, which is created by KRS 151B.280;

(f) The State Board for Adult and Technical Education, which is created by KRS 151B.095;

(g) The Governor's Council on Vocational Education, established by KRS 163.086;

(h) The State Board for Proprietary Education, established by KRS 165A.340;

(i) The Foundation for Adult Education, established by KRS 151B.130;

(j) The Kentucky Job Training Coordinating Council, established by KRS 151B.220;

(k) The Unemployment Insurance Commission established by KRS 341.110;

(l) The Office of Training and Reemployment created in KRS 151B.260; and

(m) The Office of School-to-Work, established by KRS 151B.250.

(3) The executive officer of the cabinet shall be the secretary of the Cabinet for Workforce Development. The secretary shall be appointed by the Governor pursuant to KRS 12.040 and shall serve at the pleasure of the Governor. The secretary shall have general supervision and direction over all activities and functions of the cabinet and its employees and shall be responsible for carrying out the programs and policies of the cabinet. The secretary shall be the chief executive officer of the cabinet and shall have authority to enter into contracts, subject to the approval of the secretary of the Finance and Administration Cabinet, when the contracts are deemed necessary to implement and carry out the programs of the cabinet. ***The***

secretary shall have the authority to require coordination and nonduplication of services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. sec. 9201 et seq. The secretary shall have the authority to mandate fiscal responsibility dispute resolution procedures among state organizational units for services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. sec. 9201 et seq. The Office of the Secretary of the Cabinet for Workforce Development shall consist of the Offices of General Counsel, Communication Services, Development and Industry Relations, Workforce Analysis and Research, the Office for Policy and Budget, the Office of Personnel Services, and the Office for Administrative Services. The Office for Administrative Services shall contain the Divisions of Fiscal Services, Computer Services, and Facilities Management. Each division shall be headed by a director appointed by the secretary of the Cabinet for Workforce Development pursuant to KRS 12.050.

(4) The secretary of the Cabinet for Workforce Development and his designated representatives, in the discharge of the duties of the secretary, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.

(5) The secretary of the Cabinet for Workforce Development may delegate any duties of his office to employees of the cabinet as he deems necessary and appropriate, unless otherwise prohibited by statute.

(6) The secretary of the Cabinet for Workforce Development shall promulgate, administer, and enforce administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

Approved March 29, 2000

CHAPTER 200

(SB 143)

AN ACT relating to teacher tribunals.

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

Section 1. KRS 161.790 is amended to read as follows:

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

(a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education***, the Education Professional Standards Board,*** or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

(b) Immoral character or conduct unbecoming a teacher;

(c) Physical or mental disability;

(d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

(2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made under KRS 158.6455.

(3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the chief state school officer and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

(4) Upon receiving the teacher's notice of his intention to answer the charge, the chief state school officer shall appoint a three (3) member tribunal, consisting of one (1) teacher, one (1) administrator, and one (1) lay person, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. The chief state school officer shall name the chairman and set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge.

(5) ***A hearing officer shall have final authority to rule on dispositive prehearing motions.***

(6) The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the chief state school officer shall preside with authority to rule on procedural matters, but the tribunal shall be the ultimate trier of fact. The local board shall pay each member of the tribunal a per diem of one hundred dollars ($100) and travel expenses.

(7)[~~(6)~~] Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. Provisions of KRS Chapter 13B notwithstanding, the tribunal decision shall be a final order and may be rendered on the record.

(8)[~~(7)~~] The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.

(9)[~~(8)~~] The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B. ***The review of the final order shall be conducted by the Circuit Court as required by KRS 13B.150.***

(10)[~~(9)~~] As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including, suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply ***if the teacher***

is suspended without pay or publicly reprimanded~~[, except to a private reprimand]~~. The teacher may appeal the action of the superintendent ***if these sanctions are imposed***~~[, except a private reprimand,]~~ in the same manner as established in subsections (4) to ***(9)***~~[(8)]~~ of this section. Upon completion of a suspension period, the teacher may be reinstated.

Approved March 29, 2000

CHAPTER 201

(SB 174)

AN ACT relating to uniform child support orders.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

All forms, child support orders, wage withholding orders, or orders amending an existing child support order, entered in any case in Circuit, District, or Family Court that require entry into the state case registry pursuant to KRS 205.712(3), shall be entered on forms adopted by the Administrative Office of the Courts in coordination with the Cabinet for Families and Children. If the provisions of a child support order are contained in an order that is narrative in nature, the adopted forms shall be used in addition to the narrative order.

Approved March 29, 2000

CHAPTER 202

(SB 202)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-1722, dated December 28, 1999, which designates the Office of Training and Reemployment, Workforce Development Cabinet, established under KRS 151B.260, as the administrator for Title I of the Workforce Investment Act and the State Workforce Investment Board. The General Assembly also confirm, that part of Executive Order 99-1722 providing that under Title I, the eight percent (8%) Job Training and Partnership Act positions, funds, and functions administered by the Office of Policy and Budget, Workforce Development Cabinet, shall be moved to the Office of Training and Reemployment as part of the office's new responsibility.

Approved March 29, 2000

CHAPTER 203

(SB 233)

AN ACT relating to reorganization.

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

Section 1. KRS 156.760 is repealed, reenacted as a new section of KRS Chapter 194B, and amended to read as follows:

(1) As used in KRS 156.760 to 156.766, "commission" means the Kentucky Commission on Community Volunteerism and Service.

(2) The Kentucky Commission on Community Volunteerism and Service is created and shall be attached to the ***Office of the Secretary of the Cabinet for Families and Children***~~[Council on Postsecondary Education]~~ for ***oversight, technical, and*** administrative ***support*** purposes~~[only. Initial temporary staffing for the commission shall be provided jointly by existing staff of the Council on Postsecondary Education and the Department of Education]~~. A director and other appropriate staff shall be hired by the commission when federal funds become available.

Section 2. KRS 156.762 is repealed and reenacted as a new section of KRS Chapter 194B to read as follows:

The commission shall initially consist of twenty-five (25) voting members who shall be appointed by the Governor. Membership on the commission shall be for a three (3) year term, with the exception that initially one third (1/3) of the members shall serve for a term of one (1) year, one-third (1/3) of the members shall serve for a term of two (2) years, and one-third (1/3) of the members shall serve for a term of three (3) years. After the first six (6) months of operations, the Governor reserves the option to request the commission to submit recommendations for any additional members deemed necessary to balance the commission's perspective, provided that the commission's membership does not exceed twenty-five (25). The commission shall annually select from its membership a chair to serve for a term of one (1) year.

Section 3. KRS 156.764 is repealed and reenacted as a new section of KRS Chapter 194B to read as follows:

The purpose of the commission is to engage in statewide strategic planning, establish relevant policies, provide administrative oversight, and promote programs and strengthen the service ethic among the Commonwealth's citizens by facilitating the development of strategic programs that enable citizens to address serious societal problems including, but not limited to, education reform through service to local communities.

Section 4. KRS 156.766 is repealed and reenacted as a new section of KRS Chapter 194B to read as follows:

The commission shall:

(1) Develop a strategic plan for service in Kentucky which covers a three (3) year period, and supporting efforts to achieve the goals of this plan. The plan shall be updated annually;

(2) Oversee and submit Kentucky's annual applications to the Corporation for National Service, the federal funding authority, and other funding sources for the continuation and any expansion of the current KentuckyServe initiative;

(3) Conduct a competitive application process to determine the organizations that will be awarded subgrants to operate national service programs;

(4) Fulfill any other responsibilities required by the Corporation for National Service and other funding sources; and

(5) Promulgate administrative regulations pursuant to KRS Chapter 13A to establish operational guidelines for the commission.

Section 5. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   (a) Department of State Police.
   (b) Department of Criminal Justice Training.
   (c) Department of Corrections.
   (d) Department of Juvenile Justice.

(e) Office of the Secretary.

(f) Offices of the Deputy Secretaries.

(g) Office of General Counsel.

(h) Division of Kentucky State Medical Examiners Office.

(i) Parole Board.

(j) Kentucky State Corrections Commission.

(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

1. Kentucky Commission on Community Volunteerism and Service.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

~~[(a) Kentucky Commission on Community Volunteerism and Service.]~~

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 6. KRS 18A.115 is amended to read as follows:

(1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:

(a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;

(b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;

(c) Members of boards and commissions;

(d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;

(e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television;

(f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;

(g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;

(h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;

(i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;

(j) Physicians employed as such;

(k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;

(l) The judicial department, referees, receivers, jurors, and notaries public;

(m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;

(n) Patients or inmates employed in state institutions;

(o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;

(p) Interim employees;

(q) Officers and members of the state militia;

(r) State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;

(s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;

(t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);

(u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;

(v) County and Commonwealth's attorneys and their respective appointees;

(w) Chief district engineers and the state highway engineer;

(x) Veterinarians employed as such by the Kentucky State Racing Commission or the Kentucky Harness Racing Commission;

(y) Employees of the Kentucky Peace Corps;

(z) Employees of the Council on Postsecondary Education;~~[and]~~

(aa) Chief information officer of the Commonwealth***; and***

(ab) Employees of the Kentucky Commission on Community Volunteerism and Service.

(2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.

(3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.

(4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.

(5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.

(6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.

Section 7. KRS 194B.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

(1) Office of the Secretary. The Office of the Secretary for Families and Children may, in addition to the secretary for families and children, include other personnel as are necessary to direct and carry out the missions and goals of the cabinet, including a deputy secretary if deemed necessary by the secretary of the cabinet and upon approval of the Governor. ***The Kentucky Commission on Community Volunteerism and Service shall be attached to the Office of the Secretary for oversight, technical, and administrative support purposes.***

(2) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The

Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.

(3) Office of Program Support. The Office of Program Support shall be responsible for providing administrative and management support, planning, and appraisal of need services within the Cabinet for Families and Children. All personnel, fiscal, budgetary, contract monitoring, quality assurance, quality control, outcome assessment, and facility management functions of the cabinet shall be vested in the Office of Program Support. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Program Support under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(4) Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(5) Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner is under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(6) Office of Family Resource and Youth Services Centers. The Office of Family Resources and Youth Services Centers shall be responsible for the administration, management, and operations of the Family Resources and Youth Services Centers Program. The Office of Family Resources and Youth Services Centers shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.

(7) Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including, but not limited to, a review and resolution of

citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies; contract monitoring; and professional development and training. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.

(8) Office of Technology Services. The Office of Technology Services shall develop and maintain technology and information management systems in support of all units of the cabinet. The Office of Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director for technology services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director for technology services shall exercise authority of the Office of Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

(9) Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended by 42 U.S.C. secs. 3001 et seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long-term care ombudsman program for Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.

Section 8. The General Assembly confirms Executive Order 2000-8, issued by the Governor on January 4, 2000, to the extent that it is not otherwise confirmed by this Act.

Approved March 29, 2000

CHAPTER 204

(SB 236)

AN ACT relating to education advisory groups.

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

Section 1. KRS 157.317 is amended to read as follows:

(1) The Kentucky Board of Education through administrative regulations shall develop and implement a statewide Early Childhood Education Program which shall include basic principles of child development, early childhood education, and all other related concepts which deal with generally accepted early childhood programs, including the delivery of health and social services to children as needed.

(2) (a) The Kentucky Early Childhood Advisory Council is created to advise the chief state school officer on the implementation of early childhood education programs. The

Department of Education shall provide staff and administrative support for the council.

(b) The Kentucky Early Childhood Advisory Council shall consist of one (1) member of the Kentucky Board of Education appointed by the chairman and sixteen (16) members appointed by the Governor. The sixteen (16) appointed members shall include one (1) representative from each of the following agencies or groups: preschool teachers, public school teachers, elementary school principals, parents, child-care providers, community education, ***a representative of***~~[the Interagency Task Force on]~~ Family Resource Centers ***or***~~[and]~~ Youth Services Centers, the Head Start Association, the Head Start director, the Head Start Program, the Infant/Toddler Coordinating Council, the Department for Public Health, the Department for ***Community Based***~~[Social]~~ Services, ***a local district superintendent***~~[the Department for Social Insurance]~~, the colleges of education, and the colleges of home economics.

(c) Members shall serve a four (4) year term, except initial appointments shall be set so that four (4) members shall serve one (1) year, four (4) members shall serve two (2) years, four (4) members shall serve three (3) years, and four (4) members shall serve four (4) years.

Section 2. KRS 158.794 is amended to read as follows:

(1) The Early Reading Incentive Grant Steering Committee is hereby created for the purpose of advising the Kentucky Board of Education and the Department of Education concerning the implementation and administration of the early reading incentive grant fund created by KRS 158.792. The committee shall be composed of fifteen (15) members including the commissioner of education or the commissioner's designee, the president of the Council on Postsecondary Education or the president's designee, ***the commissioner of the Department***~~[a representative from the Advisory Council]~~ for Adult Education and Literacy ***or the commissioner's designee***~~[to be selected by its membership]~~, and the following members, to be appointed by the Governor:

(a) Two (2) primary program teachers with a specialty or background in reading and literacy;

(b) Eight (8) university professors with a specialty or background in reading and literacy representing each of the public universities; and

(c) Two (2) individuals from the state at large with background and interest in reading and literacy.

(2) Each member of the committee, other than members who serve by virtue of their position, shall serve for a term of three (3) years or until a successor is appointed and qualified, except that upon initial appointment, four (4) members shall serve a one (1) year term, four (4) members shall serve a two (2) year term, and four (4) members shall serve a three (3) year term.

(3) A majority of the full authorized membership shall constitute a quorum.

(4) The committee shall elect, by majority vote, a chair, who shall be the presiding officer of the committee, preside at all meetings, and coordinate the functions and activities of the committee. The chair shall be elected or reelected each calendar year.

(5) The committee shall be attached to the Department of Education for administrative purposes.

(6) The committee shall:

(a) Identify needs in schools throughout the state regarding reading and literacy programs;

(b) Develop criteria for the solicitation, review, and approval of grant applications provided under KRS 158.792;

(c) Develop a process for monitoring grants that are awarded; and

(d) Recommend approval of grant applications based upon criteria established by the committee.

Section 3. KRS 167.037 is amended to read as follows:

(1) There shall be established a Kentucky School for the Deaf Advisory Board, composed of ***nine (9)***[~~seven (7)~~] members appointed by the Kentucky Board of Education upon recommendation of the chief state school officer. At the first regular meeting in each fiscal year, the board shall elect a chairman and vice chairman. A member may serve no more than two (2) consecutive years as chairman. Members shall be appointed for regular terms of four (4) years. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.

(2) Advisory board members for the Kentucky School for the Deaf shall be selected from nominations submitted by the Kentucky Association of the Deaf Inc., the Parent-Teacher-Cottage Parent Association, the Kentucky School for the Deaf Alumni Association Inc., ***the Kentucky Association of School Administrators,*** and the chief state school officer. Membership on the board shall be statewide and shall consist of two (2) parents of deaf children, one (1) professional in education of the deaf, one (1) former student of the Kentucky School for the Deaf, one (1) member of the Kentucky Association for the Deaf, ***two (2) members who shall represent school districts,*** and two (2) members at large. ***A majority of the board's membership shall be persons who are deaf or hard of hearing.***

(3) The board shall act in an advisory capacity to assist the school superintendent in conducting the activities of the school. The board shall also make recommendations to the chief state school officer concerning all areas relating to the effective operation of the school, including but not limited to:

(a) Goals and objectives,

(b) Budget requests,

(c) Student services,

(d) Public relations,

(e) Construction and maintenance, and

(f) Program evaluation.

Approved March 29, 2000

CHAPTER 205

(SB 316)

AN ACT relating to supersedeas bonds and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) If the appellee in a civil action obtains a judgment for punitive or exemplary damages and the appellant seeks a stay of enforcement of the judgment in order to obtain review by an appellate court, the supersedeas bond for the punitive damages portion of the judgment on appeal shall not exceed one hundred million dollars ($100,000,000).

(2) If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the punitive damages judgment, the limitation granted under subsection (1) of this section shall be rescinded and the bond requirement shall be reinstated for the full amount of the judgment.

Section 2. KRS 426.965 is amended to read as follows:

(1) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state would be stayed, ***including the ground that an appeal from the foreign judgment is pending or will be taken, or that the time for taking such an appeal has not yet expired,*** the court shall stay enforcement of the foreign judgment for an appropriate period ***until all available appeals are concluded or the time for taking all appeals has expired***, upon requiring the same security for satisfaction of the judgment which is required in this state***, subject to Section 1 of this Act***.

Section 3. The provisions of Sections 1 and 2 of this Act are hereby expressly declared to be retroactive and may be applied to all civil actions, including those on appeal, presently docketed in the courts of this Commonwealth.

Section 4. Whereas the business environment of the state is under an unreasonable burden and the protection of the economy of this state is a matter directly related to the well-being of the citizens of the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 29, 2000

CHAPTER 206

(SB 68)

AN ACT relating to the pledge of allegiance to the flag of the Commonwealth of Kentucky.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

The following shall be the official pledge of allegiance to the flag of the Commonwealth of Kentucky: "I pledge allegiance to the Kentucky flag, and to the Sovereign State for which it stands, one Commonwealth, blessed with diversity, natural wealth, beauty, and grace from on High."

Approved March 29, 2000

CHAPTER 207

(SB 72)

AN ACT relating to municipal finances.

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

Section 1. KRS 91A.060 is amended to read as follows:

(1) The executive authority shall designate as the city's official depositories one (1) or more banks, federally insured savings and loan companies or trust companies within the Commonwealth. The amount of funds on deposit in an official depository shall be fully insured by deposit insurance or ***collateralized in accordance with 12 U.S.C. sec. 1823, to the extent uninsured, by any obligations, including*** surety bonds ***permitted by KRS 41.240(4)***.

(2) All receipts from any source of city money or money for which the city is responsible, which has not been otherwise invested or deposited in a manner authorized by law, shall be deposited in official depositories. All city funds shall be disbursed by written authorization approved by the executive authority which shall state the name of the person to whom funds are payable, the purpose of the payment and the fund out of which the funds are payable. Each authorization shall be numbered and recorded.

Approved March 29, 2000

CHAPTER 208

(SB 73)

AN ACT relating to municipal budgets.

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

Section 1. KRS 91A.020 is amended to read as follows:

(1) Each city shall keep its accounting records and render financial reports in such a way as to:

(a) Determine compliance with statutory provisions; ***and***

(b) Determine fairly and with full disclosure the financial operations of constituent funds and account groups of the city in conformity with generally accepted governmental accounting principles~~[; and~~

~~(c) Readily provide such financial data as may be required by the Federal Revenue Sharing Program]~~.

(2) Municipal accounting systems shall be organized and operated on a fund basis.

Approved March 29, 2000

CHAPTER 209

(SB 86)

AN ACT relating to sales and use taxes.

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

Section 1. KRS 139.472 is amended to read as follows:

(1) "Prescription medicine" shall mean and include:

(a) Any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use which is prescribed for the treatment of a human being by a person authorized to prescribe the medicines and dispensed on prescription by a registered pharmacist in accordance with law; and

(b) Medical oxygen when purchased by the patient for private use.

(2) "Prosthetic devices and physical aids" for the purpose of this section shall mean and include artificial devices prescribed by a licensed physician, or individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual; artificial limbs, artificial eyes, hearing aids prescribed by a licensed physician, or individually designed, constructed or altered solely for the use of a particular disabled person; crutches, walkers, hospital beds, wheelchairs***, wheelchair repair and replacement parts,*** and wheelchair lifting devices for the use of invalids and crippled persons; colostomy supplies, ***urostomy supplies, ileostomy supplies,*** insulin and diabetic supplies, such as hypodermic syringes and needles, and sugar (urine and blood) testing materials purchased for use by diabetics.

(3) The terms "sale at retail," "retail sale," "use," "storage" and "consumption" as used in this chapter shall not include the sale, use, storage or consumption of prescription medicine, prosthetic devices and physical aids.

Section 2. The provisions of this Act shall apply to sales made on or after August 1, 2000.

Approved March 29, 2000

CHAPTER 210

(SB 87)

AN ACT relating to retirement.

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

Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

(1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;

(2) "Board" means the board of trustees of the Kentucky Retirement Systems;

(3) "Employer" or "State Police" means the Department of State Police, or its successor;

(4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided in KRS 61.555;

(5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;

(6) "Service" means the total of current service and prior service;

(7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;

(8) "Creditable compensation" means all salary and wages paid to the employee as a result of services performed for the employer which are includable on the member's federal form W-2 wage and tax statement, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4); living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(9) "Final compensation" at any time means the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than ***twenty-four (24)***~~[twenty-eight (28)]~~, one (1) or more additional fiscal years shall be used;

(10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;

(11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;

(12) "Retirement allowance" means the retirement payments to which a retired member is entitled;

(13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of State Police;

(15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959. A member of the State Police Retirement System, a member of the County Employees Retirement System, or a member of the Kentucky Employees Retirement System covered by this section with twenty (20) or more years of service credit, at least fifteen (15) of which are current, may declare his "normal retirement date" to be some date prior to his fifty-fifth birthday;

(16) "Disability retirement date" means the first day of the month following total and permanent disability or hazardous disability;

(17) "Dependent child" means a child en ventre sa mere and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);

(18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;

(19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;

(20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;

(21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;

(22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;

(23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;

(24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;

(26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(27) "Person" means a natural person;

(28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(29) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;

(30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month;

(31) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;

(32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year; and

(33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543.

Section 2. KRS 61.510 is amended to read as follows:

As used in KRS 61.515 to 61.705, unless the context otherwise requires:

(1) "System" means the Kentucky Employees Retirement System created by KRS 61.515 to 61.705;

(2) "Board" means the board of trustees of the system as provided in KRS 61.645;

(3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.515 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;

(4) "Examiner" means the medical examiners as provided in KRS 61.665;

(5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.515 to 61.705;

(6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;

(7) "State" means the Commonwealth of Kentucky;

(8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;

(9) "Service" means the total of current service and prior service as defined in this section;

(10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7) and 61.555, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he occupies the position during a legislative biennium subsequent to January 1, 1960;

(11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he occupied the position during a legislative biennium prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service; except that for an employee participating in any of the three (3) systems administered by the Kentucky

Retirement Systems whose prior service was in a position in an office of a Commonwealth's attorney the prior service may be validated by at least twelve (12) months of current service in the Kentucky Employees Retirement System or by at least fifteen (15) years of current service in the County Employees Retirement System. An employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems who wishes to validate prior service in a position in an office of a Commonwealth's attorney with fifteen (15) years of County Employees Retirement System service shall notify the Kentucky Retirement Systems of his or her eligibility for the service prior to January 1, 1999;

(12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon;

(13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees paid to the employee as a result of services performed for the employer which are includable on the member's federal form W-2 wage and tax statement, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), except that for members of the General Assembly, it shall mean an assumed salary of twenty-seven thousand five hundred dollars ($27,500) per annum which shall include per diem and expense payments authorized by KRS Chapter 6. The creditable compensation of members, officers, and employees of the General Assembly shall be calculated as having been received in equal amounts for each month of the biennium. In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(14) "Final compensation" of a member means***:***

(a) ***For a member who is not employed in a hazardous position, as provided in Section 3 of this Act,*** the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12), except that for members of the General Assembly who retire pursuant to KRS 61.600, or who die in office, "final compensation" shall be twenty-seven thousand five hundred dollars ($27,500). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

(b) ***For a member who is employed in a hazardous position, as provided in Section 3 of this Act, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;***

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). In the case of members of the General Assembly, the "final rate of pay" shall be the creditable compensation. The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are from time to time adopted by the board, except in cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.515 to 61.705;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150 and the assistants if employed by the General Assembly for at least six (6) legislative bienniums;

(21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:

(a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;

(b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;

(c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months; and

(d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty;

(22) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and

considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;

(23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;

(24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;

(25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;

(27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded past service liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded past service liability shall be projected to be fully amortized at the conclusion of the set period;

(29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;

(30) "Person" means a natural person;

(31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month;

(33) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable

laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests; and

(34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543.

Section 3. KRS 61.592 is amended to read as follows:

(1) "Hazardous position" means any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. Hazardous positions shall include positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.

(2) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section, but a county, narrowly defined as one (1) of Kentucky's one hundred and twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall request hazardous duty coverage for its full-time paid firefighters. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.

(3) (a) An employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, ***eight percent (8%)***~~[seven percent (7%)]~~ of his creditable compensation. An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation;

(b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565;

(c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost in order that the nonhazardous service be credited as hazardous service, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper

retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.

(4) ~~[Except for the employee contribution by members of the Kentucky Employees Retirement System,]~~The normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.510 to 16.652.~~[The employee contribution for a member of the Kentucky Employees Retirement System shall be seven percent (7%).]~~

(5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.

(6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.515 to 61.705, or 78.520 to 78.852, or 16.510 to 16.652.

Section 4. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

(1) "System" means the County Employees Retirement System;

(2) "Board" means the board of trustees of the system as provided in KRS 78.780;

(3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(5) "Examiner" means the medical examiners as provided in KRS 61.665;

(6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent

contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;

(7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;

(8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;

(9) "Service" means the total of current service and prior service as defined in this section;

(10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7), 61.555, and 78.530;

(11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;

(12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;

(13) "Creditable compensation" means all salary, wages, and fees paid to the employee as a result of services performed for the employer which are includable on the member's federal form W-2 wage and tax statement, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(14) "Final compensation" means:

(a) For a member who is employed in a nonhazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

(b) For a member who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years

may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than ***twenty-four (24)***[~~twenty-eight (28)~~], one (1) or more additional fiscal years shall be used;

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2080) hours for eight (8) hour workdays, nineteen hundred fifty (1950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth (65th) birthday of a member unless otherwise provided in KRS 78.520 to 78.852;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;

(21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:

(a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;

(b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;

(c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or

(d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work

per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;

(22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);

(23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;

(24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;

(26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(27) "Person" means a natural person;

(28) "School term or year" means the twelve (12) months from July 1 through the following June 30;

(29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434; and

(31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615.

Section 5. KRS 61.637 is amended to read as follows:

(1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.515 to 61.705 and 78.520 to 78.852 and who is reemployed as an employee by a participating agency shall have his retirement payments suspended for the duration of reemployment, except as provided in subsection (7) of this section. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the Federal Social

Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.

(2) Employer and employee contributions shall be made as provided in KRS 61.515 to 61.705 and 78.520 to 78.852 on the compensation paid during reemployment, except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar ($1), and the member shall be credited with additional service credit.

(3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.

(4) (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment;

(b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment;

(c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:

1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;

2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);

3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;

4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691;

5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.

(5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents ($0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar ($1) for every three dollars ($3) earned if over age sixty-five (65).

(6) (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095; and

(b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.

(7) If a member is retired from a hazardous position, as defined by KRS 61.592, the member shall be permitted to seek and hold an elected city or county office under the provisions of this subsection:

(a) The member may receive the pay for the elected city or county office but shall not contribute to, receive benefits from, or otherwise participate in the office's retirement system; and

(b) The member's pension and benefits received because of retirement from the hazardous position shall not be affected if he holds an elected city or county office.

(8) Effective August 1, 1998, the provisions of subsections (1) to (4) of this section shall no longer apply to a retired member who is reemployed in a position covered by the same retirement system from which the member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.

(9) Any former recipient of a disability retirement allowance from the Kentucky Retirement Systems who had at least two hundred forty (240) months of service credit and whose disability retirement allowance was terminated September 1, 1998, who is reemployed as of the effective date of this Act shall be treated under the provisions of subsections (1) to (4) of this section, except that the maximum permissible earnings as used in subsection (1) shall be the maximum permissible earnings under the Federal Social Security Act for calendar year 1998.

Approved March 29, 2000

CHAPTER 211

(SB 114)

AN ACT relating to vocational rehabilitation.

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

Section 1. KRS 151B.240 is amended to read as follows:

(1) The Statewide Independent Living Council is hereby created and attached to the Department of Vocational Rehabilitation for administrative purposes to accomplish the purposes enumerated in 29 U.S.C. sec. 796d (Title VII, Part A, Section 705 of the Rehabilitation Act Amendments of ***1998***[~~1992~~]). Members of the council shall be appointed by the Governor from recommendations submitted by the Department of Vocational Rehabilitation consistent with the federal mandate to include a majority of individuals with disabilities representing geographical and disability diversity as well as representatives from identified service providers and other entities. The composition, qualifications, and terms of service of the council shall conform to the federal law.

(2) ***(a) Except as provided in paragraph (b) of this subsection, any vacancy occurring in the membership of the Statewide Independent Living Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.***

(b) The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.

(3) Each member of the Statewide Independent Living Council may receive a per diem of one hundred dollars ($100), not to exceed six hundred dollars ($600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Statewide Independent Living Council. The per diem and expenses shall be paid out of the federal funds appropriated under Title VII***, Chapter 1,*** Part A, and Title ***VII, Chapter 1,***[~~I~~] Part C of the Rehabilitation Act Amendments of ***1998***[~~1992~~], Pub. L. ***105-220***[~~102-569~~].

Section 2. KRS 151B.245 is amended to read as follows:

(1) The Statewide[~~ Advisory~~] Council for Vocational Rehabilitation is hereby created within the Department of Vocational Rehabilitation to accomplish the purposes and functions enumerated in 29 U.S.C. sec. 725 (Title I, ***Part A***[~~Subtitle B~~], Section ***105***[~~126~~] of the Rehabilitation Act Amendments of ***1998***[~~1992~~]). Members of the council shall be appointed by the Governor from recommendations submitted by the Department of Vocational Rehabilitation consistent with the federal mandate to include a majority of individuals with disabilities not employed by the department as well as representatives of specified organizations, service providers, and advocacy groups. The compensation, qualifications, and terms of service of the council shall conform to the federal law.

(2) ***(a) Except as provided in paragraph (b) of this subsection, any vacancy occurring in the membership of the Statewide Council for Vocational Rehabilitation shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.***

(b) The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.

(3) Each member of the Statewide~~[Advisory]~~ Council on Vocational Rehabilitation may receive a per diem of one hundred dollars ($100), not to exceed six hundred dollars ($600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Statewide~~[Advisory]~~ Council on Vocational Rehabilitation. The per diem and expenses shall be paid out of the federal funds appropriated under Title I part A of the Rehabilitation Act Amendments of ***1998***~~[1992]~~, Pub. L. ***105-220***~~[102-569]~~.

Approved March 29, 2000

CHAPTER 212

(SB 265)

AN ACT relating to school councils.

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

Section 1. KRS 160.345 is amended to read as follows:

(1) For the purpose of this section:

(a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.

(b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:

1. Exclusively vocational-technical, special education, or preschool programs;

2. Instructional programs operated in institutions or schools outside of the district; or

3. Alternative schools designed to provide services to at-risk populations with unique needs.

(c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(d) "Parent" means:

1. A parent, stepparent, or foster parent of a student; or

2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

(2) ~~[By January 1, 1991,]~~Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

(a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. ***A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative***~~[The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor]~~ shall ***not***~~[they]~~ be a local board member or ***a board member's***~~[his]~~ spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.

(b) 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.

2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:

a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and

b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers

who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.

(c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.

(d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council***, consistent with subsection (2)(i)10. of this section***. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;

2. Assignment of all instructional and noninstructional staff time;

3. Assignment of students to classes and programs within the school;

4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;

5. Determination of use of school space during the school day;

6. Planning and resolution of issues regarding instructional practices;

7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;

8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;~~[and]~~

9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal***; and***

10. Procedures to assist the council with consultation in the selection of personnel by the principal, including but not limited to, meetings, timelines, interviews, review of written applications, and review of references.

(j) Each school council shall annually review data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council shall adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b). The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no later than December 31 of each year. If a school does not have a council, the review shall be completed by the principal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;

(d) Professional development plans developed pursuant to KRS 156.095;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school

shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

(9) (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

(c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

(d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 2. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying and rewarding successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork

requirements, and administrative regulations from which high performing schools shall be exempt.

(2) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

(3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:

(a) A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;

(b) School improvement plans;

(c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;

(d) Education assistance from highly skilled certified staff under KRS 158.782;

(e) Evaluation of school personnel; and

(f) Student transfer to successful schools.

(4) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:

1. Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;

2. Reviewing a school's learning environment, efficiency, and academic performance of students ***and the quality of the school council's data analysis and planning in accordance with subsection (2)(j) of Section 1 of this Act***;

3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and

4. Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.

(b) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal ***and report to the public on the resulting findings regarding each aspect of the schools' operations required under paragraph (a)2. of subsection (4) of this section***.

(5) (a) Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of KRS 158.6471 and 158.6472 and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.

(b) 1. The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%).

2. Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under KRS 158.805.

(6) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.

(7) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

Approved March 29, 2000

CHAPTER 213

(HB 15)

AN ACT relating to firearms and ammunition for firearms.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association, or dealer by or on behalf or any city, county, urban-county, charter county, special district, or other local governmental unit created by or pursuant to an act of the General Assembly or Constitution of Kentucky, or any department, agency, or authority thereof, for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public shall be reserved exclusively to the Commonwealth.

(2) This section shall not prohibit a city, county, urban-county, charter county, special district, or other local governmental unit created by or pursuant to an act of the General Assembly or Constitution of Kentucky from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by that unit of local government.

Section 2. As of the effective date of this Act, the provisions of Section 1 of this Act shall apply to any lawsuit by, or on behalf of, entities prohibited from filing a lawsuit pursuant to Section 1 of this Act that has been filed and not concluded prior to the effective date of this Act. Any lawsuit in progress which violates Section 1 of this Act shall, as of the effective date of this Act, be dismissed.

Approved March 29, 2000

CHAPTER 214

(HB 40)

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) There shall be a nominating commission for each community college board of directors to provide names of nominees to the Governor for appointment to the board of directors.

(2) (a) Each nominating commission shall be composed of five (5) members appointed by the Governor who shall reside in the service area of the community college at the time of their appointment. Commission members shall have no conflict of interest in accordance with KRS 45A.340 or have a relative employed by a public postsecondary institution, the Council on Postsecondary Education, the Kentucky Higher Education Assistance Authority, the Kentucky Higher Education Student Loan Corporation, or the Kentucky Authority for Educational Television.

(b) Members of the nominating commission shall serve four (4) year terms, or until a successor shall be appointed, except the initial appointments shall be as follows:

1. One (1) member shall serve a one (1) year term;

2. Two (2) members shall serve a two (2) year term;

3. One (1) member shall serve a three (3) year term; and

4. One (1) member shall serve a four (4) year term.

(3) The Governor shall appoint commission members who reflect, inasmuch as possible, equal representation of the two (2) sexes and in the context of the total membership of all of the commissions, shall approximate the proportional representation of the two (2) leading political parties and the minority racial composition of the state.

(4) (a) The nominating commission shall submit to the Governor the names of three (3) nominees for each position on the board of directors who meet the eligibility criteria for membership under KRS 164.600.

(b) In the selection of the nominees, the nominating commission shall consider the needs of the respective community college, locate potential appointees, review candidates' qualifications and references, conduct interviews, and carry out other search and screening activities as necessary. The commission shall consider the goals for diversity of membership as set out in subsection (3) of this section.

(c) Each appointment to the board of directors shall be made thirty (30) days prior to the expiration of a term or as soon as practicable following an unforeseen vacancy. The Governor may reject all names of nominees and request the submission of three (3) additional names for consideration.

(5) The members of the commissions shall be reimbursed for actual and necessary expenditures incurred in the performance of their duties.

(6) The nominating commissions shall be attached to the Kentucky Community and Technical College System and the Governor's office staff shall provide staffing and administrative assistance.

Section 2. KRS 164.600 is amended to read as follows:

(1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(2) There shall be a board of directors for each community college under the Kentucky Community and Technical College System, except as provided in KRS 165.160. Each board of directors shall:

(a) Recommend one (1) candidate for the community college president from three (3) candidates provided by the president of the Kentucky Community and Technical College System. The president shall have the authority to make the final appointment and shall not be bound by the recommendation from the board of directors;

(b) Evaluate the community college president and advise the chancellor of his or her performance. The president has final authority for the appointment and termination of the community college president;

(c) Approve budget requests for recommendation to the Kentucky Community and Technical College System;

(d) Adopt and amend an annual operating budget and submit it to the board of regents of the Kentucky Community and Technical College System for approval as to the compliance with its guidelines;

(e) Approve and implement a strategic plan that is developed in coordination with local employers, civic leaders, campus constituents, and other postsecondary institutions in the region and that is consistent with the strategic agenda of the General Assembly.

(3) The president of each community college shall have full authority and discretion regarding the use and management of the budget approved by the board of regents for the Kentucky Community and Technical College System under KRS 164.350.

(4) Each board of directors shall consist of nine (9) members, seven (7) of whom shall be appointed by the Governor ***from nominees of the respective community college nominating commission established under Section 1 of this Act*** for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The other two (2) board members shall be one (1) member of the teaching faculty and one (1) member of the student body. An appointed member's term shall be six (6) years.

(5) The faculty member shall be on the teaching or research faculty of the community college. He shall be elected by secret ballot of all full-time faculty members of the community college. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the boards if they cease to be members of the teaching staff of the community college. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original election.

(6) The student member shall be the president of the student body of the community college. If the president of the student body is not a full-time student who maintains permanent residency in the Commonwealth of Kentucky, a special election shall be held to select a full-

time student who does maintain permanent residency in this Commonwealth as the student member.

(7) The members of the board of directors shall receive no compensation for their services but shall be paid for their actual and necessary expenses.

(8) No citizen member of the board of directors shall ***have a conflict of interest in accordance with KRS 45A.340 or*** be a relative of any employee of the community college under its jurisdiction. A person who is a member of the board on July 15, 1998, who is a relative of an employee of the community college may finish out the appointed term of office but the member may not be reappointed.

(9) The board of regents of the Kentucky Community and Technical College System may extend this type of local governance authority to each postsecondary technical institution under its control, subject to review and approval by the Council on Postsecondary Education.

Section 3. The General Assembly hereby confirms Executive Order 98-636, dated May 28, 1998 and Executive Order 98-1591, dated December 2, 1998, to the extent they are not otherwise confirmed or superseded by this Act.

Approved March 29, 2000

CHAPTER 215

(HB 52)

AN ACT relating to operators of motor vehicles.

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

Section 1. KRS 189.930 is amended to read as follows:

(1) Upon the approach of an emergency vehicle equipped with, and operating, one (1) or more flashing, rotating, or oscillating red or blue lights, visible under normal conditions from a distance of five hundred (500) feet to the front of such vehicle; or the driver is given audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way, immediately drive to a position parallel to, and as close as possible to, the edge or curb of the highway clear of any intersection, and stop and remain in such position until the emergency vehicle has passed, except when otherwise directed by a police officer or firefighter.

(2) Upon the approach of any emergency vehicle, operated in conformity with the provisions of subsection (1) of this section, the operator of every vehicle shall immediately stop clear of any intersection and shall keep such position until the emergency vehicle has passed, unless directed otherwise by a police officer or firefighter.

(3) No operator of any vehicle, unless he is on official business, shall follow any emergency vehicle being operated in conformity with the provisions of subsection (1) of this section closer than five hundred (500) feet, nor shall he drive into, or park the vehicle into, or park the vehicle within, the block where the vehicle has stopped in answer to an emergency call or alarm unless he is directed otherwise by a police officer or firefighter.

(4) No vehicle, train, or other equipment shall be driven over any unprotected hose of a fire department when the hose is laid down on any street, private driveway, or track for use at any fire or fire alarm unless the fire department official in command consents that the hose be driven over.

(5) Upon approaching a stationary emergency vehicle, when the emergency vehicle is giving a signal by displaying alternately flashing red, red and white, red and blue, or blue lights, a person who drives an approaching vehicle shall, while proceeding with due caution:

(a) Yield the right-of-way by moving to a lane not adjacent to that of the authorized emergency vehicle, if;

1. The person is driving on a highway having at least four (4) lanes with not fewer than two (2) lanes proceeding in the same direction as the approaching vehicle; and

2. If it is possible to make the lane change with due regard to safety and traffic conditions; or

(b) Reduce the speed of the vehicle, maintaining a safe speed to road conditions, if changing lanes would be impossible or unsafe.

(6) This section does not operate to relieve the person who drives an emergency vehicle from the duty to operate the vehicle with due regard for the safety of all persons using the highway.

Approved March 29, 2000

CHAPTER 216

(HB 69)

AN ACT relating to licensing of motor vehicle dealers, manufacturers, and distributors.

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

Section 1. KRS 190.030 is amended to read as follows:

(1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, or a salesman of motor vehicles shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080. If a person acts as a motor vehicle salesman, he shall secure a motor vehicle salesman's license in addition to a license for a motor vehicle dealer. The motor vehicle commission may provide by administrative regulation for other licensee activities and an appropriate fee.

(2) A manufacturer of motor vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.

(3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.

(4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require in the application, or otherwise, information relating to the applicant's

solvency, his financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.

(5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.

(6) The license fee for a calendar year, or part thereof, shall be as follows:

(a) For new motor vehicle dealers, one hundred dollars ($100) for each office or branch or agent thereof, plus one hundred dollars ($100) for a supplemental license for each used car lot not immediately adjacent to the office or to a branch.

(b) For used motor vehicle dealers, one hundred dollars ($100) for each office or branch or agent thereof.

(c) For motor vehicle leasing dealers, one hundred dollars ($100) for each office or branch or agent thereof.

(d) For restricted motor vehicle dealers, one hundred dollars ($100) for each office or branch or agent thereof.

(e) For motorcycle dealers, one hundred dollars ($100) for each office, branch, or agent thereof.

(f) For motor vehicle manufacturers, one hundred dollars ($100); and for each factory branch in this state, one hundred dollars ($100).

(g) For distributors, motor vehicle auction dealers or wholesalers, the same as for dealers.

(h) For motor vehicle salesmen, ten dollars ($10).

(i) For factory representatives, or distributor branch representatives, one hundred dollars ($100).

(7) The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall ***endorse***~~[indorse]~~ the change of location on the license~~[without charge if it is within the same municipality, if the licensee meets the requirements set forth by the commission through administrative regulations and pays a fee of one hundred dollars ($100)]~~. ***A licensee shall not be charged a fee for changing locations.*** A change of location~~[to another municipality]~~ shall require a new ***application***~~[license]~~.

(8) Every salesman, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the salesman shall immediately mail his license to the licensor who shall indorse the change on the license without charge.

(9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the

applicant or licensee to furnish and maintain a bond in a form, amount and with sureties not less than fifteen thousand dollars ($15,000), conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.

(10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.

(11) Every motor vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

Section 2. 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 Revenue Cabinet;

(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;

(m) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of the motor vehicle manufacturer or factory branch, who has induced, coerced, or attempted to induce or coerce any

automobile dealer to accept delivery of any motor vehicle, vehicles, parts, accessories, or any other commodities that shall not have been ordered by the dealer;

(n) Being a manufacturer of motor 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 automobile 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 or factory branch,*** or wholesaler who makes, attempts to make, or aids or abets the making of a sale of a motor vehicle to a person other than a licensed motor vehicle dealer. This section shall not prevent any ***manufacturer***~~[license holder]~~ from ***offering discounts or rebates on***~~[selling]~~ any motor vehicle to any of its employees;

(q) Being a dealer who advertises for sale a new motor 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 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 the Franklin Circuit Court and to the Court of Appeals in the manner provided by KRS Chapter 13B.

Approved March 29, 2000

CHAPTER 217

(HB 85)

AN ACT relating to reorganization.

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

Section 1. KRS 196.026 is amended to read as follows:

The Department of Corrections shall consist of the following organizational units:

(1) Office of General Counsel;

(2) Division of Administrative Services;

(3) Division of Corrections Training;

(4) Division of Institutional Operations;

(5) Division of Mental Health Programs;

(6) Division of Correctional Industries;

(7) Division of Medical Services;

(8) Division of Probation and Parole;

(9) Division of Local Facilities;

(10) ***Western Region Division and Eastern Region Division, Adult Institutions.*** Each state penal correctional institution referenced in KRS 197.010 shall be considered a division for organizational purposes. Each institution shall be headed by a warden pursuant to KRS 196.160.

Section 2. The General Assembly confirms Executive Order 98-730, dated June 16, 1998, relating to the reorganization of the Department of Corrections, Justice Cabinet, to the extent that it is not otherwise confirmed by this Act.

Approved March 29, 2000

CHAPTER 218

(HB 86)

AN ACT relating to reorganization.

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

Section 1. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

(1) Office of the Secretary of Justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, ***the Office of the Criminal Justice Council,*** and the Criminal Justice Council. The Parole Board shall be attached to the Office of the Secretary for administrative and support purposes only.

(2) Offices of Deputy Secretaries of Justice.

(3) Office of the General Counsel.

(4) Division of Kentucky State Medical Examiners Office.

SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Office of the Criminal Justice Council is hereby established and shall be comprised of the Long Range Planning Branch and the Grants Management Branch. The office shall be responsible for the functions and duties vested in the Criminal Justice Council, as described in Section 3 of this Act, and for state and federal grants management including, but not limited to, the administration of Section 4 of this Act. The office shall be headed by the executive director of the Criminal Justice Council appointed by the secretary of the Justice Cabinet with the approval of the Governor in accordance with KRS 12.050. The executive director shall be responsible to the Secretary of the Justice Cabinet.

Section 3. KRS 15A.040 is amended to read as follows:

(1) The Criminal Justice Council shall advise and recommend to the Governor and the General Assembly policies and direction for long-range planning regarding all elements of the criminal justice system. The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:

(a) Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;

(b) Conduct comprehensive planning to promote the maximum benefits of grants;

(c) Develop model criminal justice programs;

(d) Disseminate information on criminal justice issues and crime trends;

(e) Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their problems, sponsor multidisciplinary training to help communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;

(f) Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;

(g) Provide technical assistance to all criminal justice agencies;

(h) Review and evaluate proposed legislation affecting criminal justice; and

(i) All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly.

(2) Membership of the Criminal Justice Council shall consist of the following:

(a) The secretary of the Justice Cabinet or his designee;

(b) The director of the Administrative Office of the Courts or his designee;

(c) The Attorney General or his designee;

(d) Two (2) members of the House of Representatives as designated by the Speaker of the House;

(e) Two (2) members of the Senate as designated by the President of the Senate;

(f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;

(g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;

(h) A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;

(i) The public advocate or his designee;

(j) The president of the Kentucky Sheriffs' Association;

(k) The commissioner of state police or his designee;

(l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;

(m) The president of the Kentucky Association of Chiefs of Police;

(n) A member of the Prosecutors Advisory Council as chosen by the council;

(o) The Chief Justice or a justice or judge designated by him;

(p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;

(q) One (1) member of the Kentucky Jailers' Association appointed by the president of the organization;

(r) One (1) member of the Circuit Clerks' Association;

(s) Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;

(t) One (1) District Judge, designated by the Chief Justice;

(u) One (1) Circuit Judge, designated by the Chief Justice;

(v) One (1) Court of Appeals Judge, designated by the Chief Justice;

(w) One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders; and

(x) One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor.

(3) The secretary of justice shall serve ex officio as chairman of the council. Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.

(4) The council shall meet at least once every three (3) months.

(5) The council may hold additional meetings:

(a) On the call of the chairman;

(b) At the request of the Governor to the chairman; or

(c) At the written request of the members to the chairman, signed by a majority of the members.

(6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.

(7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.

(8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:

(a) Uniform Criminal Justice Information System committee;

(b) Committee on sentencing; and

(c) Penal Code committee.

(9) The council's administrative functions shall be performed by a full-time executive director***, who also shall serve as the executive director of the Office of the Criminal Justice Council,*** appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

Section 4. KRS 15A.060 is amended to read as follows:

The Office of Secretary of Justice shall serve as the state planning agency for purposes of compliance with the Federal Crime Control and Safe Streets Act of 1968, as amended, or subsequently adopted federal criminal justice legislation, and provide staff services to the ***Criminal Justice Council***~~[Kentucky Crime Commission]~~ relating to the administration of ***these*** federally supported programs~~[pursuant to the above-referenced acts]~~.

Section 5. The General Assembly confirms Executive Order 98-964, dated July 23, 1998, relating to the creation of the Office of the Criminal Justice Council within the Justice Cabinet to the extent it is not otherwise confirmed by this Act.

Approved March 29, 2000

CHAPTER 219

(HB 87)

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1405, dated October 20, 1998, which creates the Division of Training Support and changes the name of the Division of Training to the Division of Training Operations within the Department of Training, Justice Cabinet.

Approved March 29, 2000

CHAPTER 220

(HB 89)

AN ACT relating to reorganization.

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

Section 1. KRS 15A.040 is amended to read as follows:

(1) The Criminal Justice Council shall advise and recommend to the Governor and the General Assembly policies and direction for long-range planning regarding all elements of the criminal justice system. The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:

(a) Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;

(b) Conduct comprehensive planning to promote the maximum benefits of grants;

(c) Develop model criminal justice programs;

(d) Disseminate information on criminal justice issues and crime trends;

(e) Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their problems, sponsor multidisciplinary training to help

communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;

(f) Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;

(g) Provide technical assistance to all criminal justice agencies;

(h) Review and evaluate proposed legislation affecting criminal justice; and

(i) All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly.

(2) Membership of the Criminal Justice Council shall consist of the following:

(a) The secretary of the Justice Cabinet or his designee;

(b) The director of the Administrative Office of the Courts or his designee;

(c) The Attorney General or his designee;

(d) Two (2) members of the House of Representatives as designated by the Speaker of the House;

(e) Two (2) members of the Senate as designated by the President of the Senate;

(f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;

(g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;

(h) A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;

(i) The public advocate or his designee;

(j) The president of the Kentucky Sheriffs' Association;

(k) The commissioner of state police or his designee;

(l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;

(m) The president of the Kentucky Association of Chiefs of Police;

(n) A member of the Prosecutors Advisory Council as chosen by the council;

(o) The Chief Justice or a justice or judge designated by him;

(p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;

(q) One (1) member of the Kentucky Jailers' Association appointed by the president of the organization;

(r) One (1) member of the Circuit Clerks' Association;

(s) Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the

Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;

(t) One (1) District Judge, designated by the Chief Justice;

(u) One (1) Circuit Judge, designated by the Chief Justice;

(v) One (1) Court of Appeals Judge, designated by the Chief Justice;

(w) One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders;~~[and]~~

(x) One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor***; and***

(y) The Governor's chief information officer.

(3) The secretary of justice shall serve ex officio as chairman of the council. Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.

(4) The council shall meet at least once every three (3) months.

(5) The council may hold additional meetings:

(a) On the call of the chairman;

(b) At the request of the Governor to the chairman; or

(c) At the written request of the members to the chairman, signed by a majority of the members.

(6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.

(7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.

(8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:

(a) Uniform Criminal Justice Information System committee;

(b) Committee on sentencing; and

(c) Penal Code committee.

(9) The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

Section 2. The General Assembly confirms Executive Order 99-319, dated March 10, 1999, relating to the reorganization of the Criminal Justice Council, to the extent it is not otherwise confirmed by this Act.

Approved March 29, 2000

CHAPTER 221

(HB 96)

AN ACT relating to establishment of the Kentucky Tobacco Settlement Trust Corporation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Settlement trust" means the national tobacco grower settlement trust established between tobacco companies and states with tobacco growers and tobacco quota owners in accordance with the master settlement agreement between certain tobacco companies and states' Attorneys General dated November 23, 1998;

(b) "Settlement trust agreement" means the agreement to provide economic assistance from the national tobacco grower settlement trust directly to tobacco growers and tobacco quota holders in the Commonwealth;

(c) "Trustee of the settlement trust" means the entity legally responsible for management of the national tobacco grower settlement trust; and

(d) "Corporation" means the Kentucky Tobacco Settlement Trust Corporation created by this section.

(2) The Kentucky Tobacco Settlement Trust Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions by assisting in the implementation of the national tobacco grower settlement trust agreement. The corporation shall be attached to the Finance and Administration Cabinet for administrative purposes. The corporation shall be a public agency within the meaning of KRS 61.805, KRS 61.870, and other applicable statutes.

(3) The corporation shall be directed by a board of directors, which shall include:

(a) The Governor, who shall serve as chair of the corporation;

(b) The Commissioner of Agriculture, who shall serve as vice chair of the corporation;

(c) The Attorney General, who shall serve as secretary of the corporation;

(d) One (1) member of the Senate appointed by the President of the Senate to serve as an ex officio, nonvoting member of the board;

(e) One (1) member of the House of Representatives appointed by the Speaker of the House of Representatives to serve as an ex officio, nonvoting member of the board;

(f) Six (6) citizen members who are tobacco growers or tobacco quota owners appointed by the Governor for a term of four (4) years;

(g) One (1) citizen member with a distinguished record of public service appointed by the Governor for a term of four (4) years; and

(h) Two (2) members appointed by the Governor for a term of four (4) years from a list of six (6) nominees selected and submitted to the Governor by the state's congressional delegation.

(4) Members of the board shall not receive compensation for their services but be reimbursed for necessary travel and lodging expenses incurred in the performance of their duties.

(5) A quorum of the board shall consist of six (6) voting members. A majority of the voting members present may act upon any matter legally before the corporation. The board shall keep minutes and records of all meetings of the corporation and shall record all official actions.

(6) The corporation shall be a body corporate with full corporate powers. The board may develop articles of incorporation and other appropriate documentation to establish the corporation's existence as a corporation authorized by law. The corporation shall not in any form hold, receive, or manage any proceeds from the settlement trust.

(7) The corporation's duties shall include, but not be limited to:

(a) Performing all duties and responsibilities of a state certification body as defined and directed under the terms of the settlement trust agreement;

(b) Preparing and submitting a plan to the trustee of the settlement trust for its approval. The plan shall identify those tobacco growers and tobacco quota owners who are to receive direct payment from the settlement trust and shall determine the respective amount each of the tobacco growers or tobacco quota owners is to receive;

(c) Determining the amount of any administrative expenses to be paid to the corporation under the terms of the settlement trust agreement;

(d) Appointing an officer to conduct executive functions for the corporation. The officer may be a state officer or employee who shall serve as a borrowed servant at no cost to the corporation;

(e) Requesting the trustee of the settlement trust to set aside reserve amounts in anticipation of a decrease in annual payments;

(f) Submitting information required by the trustee of the settlement trust;

(g) Establishing policies and procedures and contracting with other persons or entities if necessary to effectuate its purposes and functions;

(h) Discharging additional powers, duties, and functions as necessary or convenient to carry out the purposes of this section; and

(i) Enacting bylaws concerning the conduct of its business and other administrative procedures as it deems necessary.

(8) There shall be no liability on the part of, and no cause of action for damages shall arise against, the corporation or any member, officer, administrator, agent, or employee of the corporation, either as a part of the corporation's operations or as an individual as a result of any act, omission, proceeding, conduct, or decision relating to the official duties, functions, and responsibilities of the corporation.

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   (a) Department of State Police.
   (b) Department of Criminal Justice Training.
   (c) Department of Corrections.
   (d) Department of Juvenile Justice.
   (e) Office of the Secretary.
   (f) Offices of the Deputy Secretaries.
   (g) Office of General Counsel.

(h) Division of Kentucky State Medical Examiners Office.

(i) Parole Board.

(j) Kentucky State Corrections Commission.

(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

(x) Kentucky Tobacco Settlement Trust Corporation.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 3. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

(1) State Property and Buildings Commission;

(2) Kentucky Pollution Abatement Authority;

(3) Kentucky Savings Bond Authority;

(4) County Officials Compensation Board;

(5) Kentucky Turnpike Authority;

(6) State Investment Commission;

(7) Kentucky Housing Corporation;~~[and]~~

(8) Governmental Services Center***; and***

(9) Kentucky Tobacco Settlement Trust Corporation.

Section 4. The initial citizen members of the Kentucky Tobacco Settlement Trust Corporation Board shall be those appointed in accordance with, and for the terms specified in, Executive Order 99-1000.

Section 5. The General Assembly hereby confirms Executive Order 99-1000, issued by the Governor on July 15, 1999, to the extent that it is not otherwise confirmed by this Act.

Approved March 29, 2000

CHAPTER 222

(HB 120)

AN ACT relating to underground facility damage prevention.

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

Section 1. KRS 367.4903 is amended to read as follows:

As used in KRS 367.4903 to 367.4917:

(1) "Underground facility" means ***an underground***~~[a]~~ line or system used for producing, storing, conveying, transmitting, or distributing telecommunications, electricity, gas, petroleum, petroleum products, cable television, hazardous liquids, water, steam, or sewerage, including storm drainage.

(2) "Damage" means weakening of structural or lateral support or penetration of a facility coating, housing, or other protective device. It also means the partial or complete dislocation or severance of underground facilities.

(3) "Demolition" means any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of mechanized equipment, or discharge of explosives.

(4)~~["Mechanized equipment" means any equipment or tool energized by other than human or animal power.~~

~~(5)]~~ "Excavator" means any entity or individual***, other than those exempted by Section 5 of this Act,*** engaged in~~[a trade or business or government service which includes]~~ excavation or demolition.~~["Excavator" does not mean a utility operator or utility operator subcontractor performing work to provide or repair utility customer service.]~~

(5)~~[(6)]~~ "Operator" means any entity or individual owning underground facilities to serve the public.

(6)~~[(7)]~~ "Excavation" means any activity that results in the movement, placement, probing, ***boring,*** or removal of earth, rock, or other material in or on the ground by the use of ***any tools or***~~[mechanized]~~ equipment***,*** or by the discharge of explosives.

(7)~~[(8)]~~ "Emergency" means there exists substantial likelihood that loss of life, property, or utility service will result before procedures required under KRS 367.4909 to 367.4913 can be completed.

(8)~~[(9)]~~ "Protection notification center" means an operator-provided notification center through which an excavator can contact the operator to enable the operator to provide the excavator with the approximate location of underground facilities.

(9)~~[(10)]~~ "One-call center" means a private sector, multimember protection notification center providing a single telephone contact number through which an excavator may contact all operator one-call center members and all affected operators may receive information to enable them to provide the excavator with the approximate location of underground facilities.

(10)~~[(11)]~~ "Routine road maintenance" means preservation, including road repairs and resurfacing, but not construction at the subgrade level; and surface ditch grading, but not grading below the original surface ditch depth.

(11)[~~(12)~~] "Approximate location***,*** "***when referring to an underground facility,*** means:

(a) For underground metallic facilities and underground nonmetallic facilities with metallic tracer wire, a distance not to exceed the combined width of the underground facility plus eighteen (18) inches measured from the outer edge of each side of the underground facility; or

(b) For nonmetallic facilities without metallic tracer wire, the underground facility shall be located as accurately as possible from field location records.

(12)[~~(13)~~] "Business day" means from 8 a.m. to 5 p.m. every day except Saturday, Sunday, and holidays established by federal or state statute.

Section 2. KRS 367.4909 is amended to read as follows:

(1) Each operator shall provide protection notification center access to excavators.

(2) Voluntary operator membership in a one-call protection notification center shall satisfy the requirement of subsection (1) of this section.

(3) Each operator member of a one-call center shall provide and update as needed to the one-call center the general location of its facilities, the operator identity and business address, and emergency notification telephone numbers.

(4) An operator shall, within two (2) business days after receiving notification from an excavator:

(a) Inform the excavator of the approximate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition;

(b) Inform the excavator of any other information that would assist in locating and avoiding contact with or damage to ***underground***[~~operator~~] facilities;[~~ and~~]

(c) Unless permanent facility markers are provided,[~~ the operator shall~~] provide temporary markings to inform the excavator of the ***ownership and*** approximate location of the underground facility***; and***

(d) Notify the requesting party if underground facilities are not in conflict with the excavation or demolition.

(5) Temporary underground facility markers shall consist of paint, chalk, flags, stakes, or any combination thereof and shall conform to the following ***standards of the American Public Works Association uniform*** color code:

(a)	Electric power distribution and transmission	Safety Red
(b)	Municipal electric systems	Safety Red
(c)	Gas distribution and transmission	High visibility safety yellow
(d)	Oil distribution and transmission	High visibility safety yellow
(e)	Dangerous materials, product lines	High visibility safety yellow
(f)	Telecommunication systems ***and cable television***	Safety alert orange

(g)	***Temporary survey markings***~~[Cable television]~~	***Safety pink***~~[Purple]~~
(h)	Police and fire communications	Safety alert orange
(i)	Water systems	Safety precaution blue
(j)	Sewer and storm drainage systems	Safety green
(k)	Proposed excavation or construction boundaries	White
(l)	***Reclaimed water, slurry, and irrigation facilities***	***Purple***

(6) If extraordinary circumstances exist, an operator shall notify the excavator of the operator's inability to comply with this section. Extraordinary circumstances include extreme weather conditions, disasters, or civil unrest that make timely response difficult or impossible.

Section 3. KRS 367.4911 is amended to read as follows:

(1) Each excavator planning excavation or demolition work shall, not less than two (2) business days nor more than ten (10) business days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

(2) Each excavator shall provide each applicable protection notification center with adequate information regarding:

(a) The name of the individual making the notification;

(b) The ***excavator's***~~[complete company]~~ name, address, and ***a***~~[business]~~ telephone number;

(c) The ***excavation or demolition***~~[work]~~ site location ***or locations, each of which shall not exceed two thousand (2,000) feet in length unless the excavator and operator agree to a larger area, the city or community, county and*** street address, including the ***nearest*** cross street~~[where applicable]~~;

(d) The type ***and***~~[,]~~ extent~~[, duration, and scheduled starting date and time]~~ of ***excavation or demolition***~~[work]~~ to be performed;

(e) A contact name and telephone number of the person responsible for the work to be performed.

(3) ***If more than one excavator will operate at the same site, each excavator shall notify the protection notification centers individually. Notification by an excavator will serve as notification for any of that excavator's employees. Failure by an excavator to notify the protection notification center does not relieve individual employees of responsibility.***

(4) The excavator shall inform and provide to ***excavation or demolition***~~[each work]~~ site ***employees***~~[employee]~~***:***

(a) The ***underground*** facility location~~[and safety information]~~ provided by each operator***;***

(b) Any related safety information provided by each operator; and

(c) The locate request identification number assigned by the protection notification center.

(5)~~[(4)]~~ The excavator shall protect and preserve temporary underground facility markers until the scheduled ***excavation or demolition***~~[work]~~ is completed.

(6) If, after the two (2) day period provided by subsection (4) of Section 2 of this Act, the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification center.

(7) The excavator shall contact the protection notification center to request remarking every twenty-one (21) days while excavation or demolition continues or if:

(a) The markings of any underground facility have been removed or are no longer visible; or

(b) The excavator has changed the work plan or location previously filed[

~~(5) Each excavator shall request each operator to remark its facilities if the temporary facility markers become nonfunctional or the excavator materially alters his work plan or location~~].

(8)[~~(6)~~] Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage[~~ or which causes concern for public or workplace safety~~] shall[~~, immediately upon discovery of same,~~] cease excavation ***or***[~~and~~] demolition activities and notify all affected operators of the location and nature of the[~~ safety concern or~~] underground facility damage. ***If the underground facility damage causes concern for public or workplace safety, the excavator shall notify appropriate public safety agencies of the location and nature of the safety concern.***

(9) When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

(10)[~~(7)~~] Upon request by an operator, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in KRS 367.4909(5). This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

Section 4. KRS 367.4913 is amended to read as follows:

Each protection notification center shall:

(1) Operate the protection notification center during all business days.

(2) ***Provide a locate request identification number to the excavator for each excavation or demolition location request.***

(3) Promptly[~~Immediately~~] after receiving an excavation or demolition work notification from an excavator, provide to each of its affected operator members the excavator information required by KRS 367.4911(2).

(4)[~~(3)~~] Maintain a list of all its operator member's identities, business address and business and emergency telephone numbers and record this information in accordance with KRS 64.012 with the county clerk of each county where the operator member has underground facilities. The county clerk shall provide this information upon request for the actual cost of providing a copy, to be paid by the requesting party to the county clerk. The county clerk shall assume no liability associated with the receipt of this information from the protection notification center or for subsequent provision of this same information to the requesting party.

(5)[~~(4)~~] Make the operator members information list available to any person for inspection at its place of business without charge or provide a copy of the list to any person for any county upon request for a fee not to exceed the actual cost of providing a copy.

Section 5. KRS 367.4915 is amended to read as follows:

The requirements of KRS 367.4905 to 367.4917 shall not apply to the following:

(1)[~~Excavation after all involved excavators and operators have completed joint working agreements and documented that all proposed excavation and demolition was reviewed and notification provided.~~

~~(2)~~] Excavation by an operator on its own easement except where that easement is crossed by another operator's facilities.

(2)[~~(3)~~] Routine road maintenance ***or railroad maintenance or repairs***.

[~~(4) Excavation using only nonpowered hand tools or animal power.~~]

(3)[~~(5)~~] Tilling of soil for agricultural purposes.

(4)[~~(6)~~] ***Excavators***[~~Persons, other than those in the excavation business for hire,~~] excavating on ***private***[~~residential~~] property***, using nonmechanized equipment, if there is no encroachment on any operator's right-of-way or easement***.

(5)[~~(7)~~] The opening of a grave in a cemetery.

(6)[~~(8)~~] A solid waste disposal site which is properly permitted.

(7)[~~(9)~~] Coal mining operations which are currently regulated under KRS Chapter 350.

(8) A utility operator or utility operator subcontractor performing work to provide or repair utility customer service.

Section 6. KRS 367.4917 is amended to read as follows:

(1) An excavator who fails to comply with any provision of Section 3 of this Act, or an operator who fails to comply with any provision of Section 2 of this Act, shall be guilty of endangering underground facilities and may be subject to a fine of no more than two hundred and fifty dollars ($250) for the first offense, no more than one thousand dollars ($1000) for the second offense within one (1) year, and no more than three thousand dollars ($3,000) for the third and any subsequent offense.

(2) A protection notification center that fails to comply with any provision of Section 4 of this Act shall be subject to a fine not to exceed one thousand dollars ($1,000) for each offense[~~

~~Any person who violates any provision of KRS 367.4905 to 367.4913 shall be subject to a civil penalty of one thousand dollars ($1,000) for each violation, except that the civil penalty shall be two hundred and fifty dollars ($250) for the first violation and five hundred dollars ($500) for the second violation. This penalty shall not apply for persons or acts excluded under KRS 367.4903(5), 367.4907, and 367.4915. Action to recover the penalty provided for in this section may be brought by the Attorney General at the request of the injured party in the county in which the cause arose or in which the defendant has its principal in-state place of business or residence. The Attorney General may engage the assistance of the county attorney or Commonwealth attorney in the appropriate jurisdiction. Each involved enforcement authority may recover its enforcement cost incurred under this section. Reimbursement of enforcement authority costs shall~~

~~be administered by the Attorney General. All penalties recovered in an action under this section shall be paid to the Attorney General, who shall deduct enforcement costs from the recovered penalties and remit the remainder to the general fund. If enforcement costs exceed recovered penalties, the violator may be held responsible for any remaining enforcement costs~~].

Approved March 29, 2000

CHAPTER 223

(HB 127)

AN ACT relating to the disposition of real and personal property by counties.

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

Section 1. KRS 67.080 is amended to read as follows:

(1) The fiscal court may:

(a) Appropriate county funds according to the provisions of KRS 68.210 through 68.360 for lawful purposes;

(b) Sell and convey any real estate ***or personal property*** belonging to the county, and buy land for the use of the county, when necessary, for the lawful purposes of the county as provided for in this section and KRS 67.083. The fiscal court may appoint one (1) or more commissioners to sell or buy real estate under this subsection, subject to the approval of the fiscal court, and convey it to the purchaser, under the direction of the court, or have it conveyed to the court, by deed properly executed and recorded.

1. When real property is purchased, the county shall pay no more than the highest appraised value, as determined by a Kentucky certified real property appraiser as defined in KRS 324A.010, or the price determined through exercising the power of eminent domain, if that power is used. A valuation of the ***real*** property shall not be required if the purchase price is forty thousand dollars ($40,000) or less;

2. When real property is conveyed or sold, the county shall convey or sell it in accordance with Section 2 of this Act; and

3. When personal property is conveyed or sold, the county shall convey or sell it in accordance with Section 2 of this Act.

(c) Regulate and control the fiscal affairs of the county;

(d) Cause correct accounts and records to be kept of all receipts and disbursements of the public funds of the county, employ a competent person to keep such accounts and records, pay such person a reasonable compensation for such services, and have the accounts of the county and all county officers audited, when necessary and in accordance with the provisions of KRS 43.070 and 64.810;

(e) Exercise all the corporate powers of the county unless otherwise provided by law;

(f) Establish all appointive offices, set the duties of those offices, and approve all appointments to those offices; and

(g) Investigate all activities of the county government.

(2) The fiscal court shall:

(a) Appropriate county funds, according to the provisions of KRS 68.210 to 68.360, for purposes required by law;

(b) As needed, cause the construction, operation, and maintenance of all county buildings and other structures, grounds, roads and other property;

(c) Adopt an administrative code for the county; and

(d) Provide for the incarceration of prisoners according to the provisions of KRS Chapter 441.

(3) The fiscal court shall not exercise executive authority except as specifically assigned by statute.

SECTION 2. A NEW SECTION OF KRS CHAPTER 67 IS CREATED TO READ AS FOLLOWS:

(1) A county may sell or otherwise dispose of any of its real or personal property.

(2) Before selling or otherwise disposing of any real or personal property, the county shall make a written determination setting forth and fully describing:

(a) The real or personal property;

(b) Its intended use at the time of acquisition;

(c) The reasons why it is in the public interest to dispose of it; and

(d) The method of disposition to be used.

(3) Real or personal property may be:

(a) Transferred, with or without compensation, to another governmental agency,

(b) Sold at public auction following publication of the auction in accordance with KRS 424.130(1)(b);

(c) Sold by electronic auction following publication of the auction, including the uniform resource link (URL) for the site of the electronic auction, in accordance with KRS 424.130(1)(b); or

(d) Sold by sealed bids in accordance with the procedure for sealed bids under subsections (3) and (4) of KRS 45A.365.

(4) If a county receives no bids for the real or personal property, either at public auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the county. In those instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of this real or personal property shall be transferred to the general fund of the county.

Approved March 29, 2000

CHAPTER 224

(HB 143)

AN ACT relating to relocated cities.

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

Section 1. KRS 81.380 is amended to read as follows:

(1) Any city, located in a county containing a city of the first class, which is located within an area which is adversely affected by a public project that has been initiated by a city of the first class, or by action of a joint agency of a city of the first class and the county, after June 30, 1998, or upon the expiration of the initial twelve (12) year term provided in KRS 79.310(2) of a cooperative compact which is in effect in the county pursuant to KRS 79.310 to 79.330, may by ordinance relocate the corporate boundaries of the city to an unincorporated area of the county. The ordinance shall set out by metes and bounds that unincorporated area of the county where the city will be relocated. The area designated for relocation shall not exceed the acreage within the then existing boundaries of the relocating city.

(2) All financial assets and legal obligations of the city shall not be altered or interrupted by a relocation.

(3) A city of the first class shall relinquish all priority rights or any rights pursuant to the terms of a cooperative compact for annexation to that unincorporated area which is designated for the relocation of a city as provided for in subsection (1) of this section. Any priority rights or any rights pursuant to the terms of a cooperative compact for annexation which are relinquished for the relocation of a city shall then be attached in the name of the city of the first class to that area which has been abandoned by the relocating city pursuant to subsection (5) of this section. The relocating city shall forward a copy of the ordinance adopted pursuant to subsection (1) of this section to the mayor of the city of the first class and the county judge/executive of the county.

(4) The right of a city to relocate is in no way meant to amend any provision of the statutes which govern the formation and operation of a cooperative compact created pursuant to KRS 79.310 to 79.330.

(5) Upon the relocation of a city, the city clerk shall forward to the Secretary of State within one (1) year from the date of the relocation, a document listing the name of the city, the date of the relocation, the present classification of the city, and a certified copy of the ordinance adopted pursuant to subsection (1) of this section. If a city fails to comply with this ***subsection***~~[section]~~, it shall be barred from receiving state moneys until the city complies.

(6) Until ninety percent (90%) of the residential properties located within the relocating city's boundaries are acquired for the public project, the boundaries of the city shall include both the old city site and the area designated for the location of the new site of the city.

(7) After ninety percent (90%) of the residential properties have been acquired as set forth in subsection (6) of this section, the boundaries of the city shall no longer include the area where the city existed before relocation.

(8) A city that has been relocated according to the provisions of this section may change the name of the city by the adoption of an ordinance by the city legislative body. Any person objecting to renaming the relocated city under this section may present a petition objecting to the renaming of the city by submitting the petition to the county clerk of the county in which the city is located. The petition shall be in the following form: "The registered voters living within (provide the name of the existing relocated city) hereby object to the question of the renaming of the city." If the petition is signed and dated by at least twenty-five percent (25%) of the registered voters residing in the relocated city, an election shall be held on the question of renaming the city. The county clerk shall examine the petition and verify the validity of the signatures. If a petition containing at least twenty-five percent (25%) of the registered voters residing in the relocated city is submitted to the county clerk, and certified by the county clerk as sufficient, by the second Tuesday in August, the question of renaming the relocated city shall be placed on the ballot for the next general election. The ballot shall contain at least two (2) but no more than four (4) names as potential new names for the relocated city.

(9) Upon the act of renaming a city, the city clerk shall forward to the Secretary of State, within one (1) year from the date of the renaming, a document listing the new name of the city, the date of the renaming, the present classification of the city, and a certified copy of the ordinance adopted in accordance with KRS 83A.060. If a city fails to comply with the provisions of this subsection, it shall be barred from receiving state moneys until the city complies.

Approved March 29, 2000

CHAPTER 225

(HB 249)

AN ACT relating to procurement authority.

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

Section 1. KRS 45A.100 is amended to read as follows:

(1) Procurements may be made in accordance with small purchase administrative regulations promulgated by the secretary of the Finance and Administration Cabinet, pursuant to KRS Chapter 13A, as follows:

(a) Up to ten thousand dollars ($10,000) per project for construction and one thousand dollars ($1,000) for purchases by any state governmental body, except for those state administrative bodies specified in paragraphs (b) and (c) of this subsection; and

(b) Up to ***forty***~~[twenty]~~ thousand dollars ***($40,000)***~~[($20,000)]~~ per project for construction or purchases by the Finance and Administration Cabinet, state institutions of higher education, and the legislative branch of government.

(2) Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. At least every two (2) years, the secretary shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current maximum small purchase amount as justified by intervening changes in the cost of labor and materials.

(3) The secretary of the Finance and Administration Cabinet may grant to any state agency with a justifiable need a delegation of small purchasing authority which exceeds the agency's small purchase limit provided in subsection (1) of this section. Delegations of small purchasing authority shall be granted or revoked by the secretary of the Finance and Administration Cabinet, in accordance with administrative regulations promulgated by the cabinet pursuant to KRS Chapter 13A. These administrative regulations shall establish, at a minimum, the criteria for granting and revoking delegations of small purchasing authority, including the requesting agency's past compliance with purchasing regulations, the level of training of the agency's purchasing staff, and the extent to which the agency utilizes the Kentucky Automated Purchasing System. The administrative regulations may permit the secretary of the Finance and Administration Cabinet to delegate small purchase procurements up to the maximum amount specified in subsection (1)(b) of this section.

Section 2. KRS 56.491 is amended to read as follows:

(1) No state agency shall have power or authority to make plans and specifications, provide public notice of invitations for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than ***two***~~[one]~~ hundred~~[and twenty-five]~~ thousand dollars ***($200,000)***~~[($125,000)]~~ without first securing the approval of the Finance and Administration Cabinet.

(2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Department of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

(3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.

(4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed ***two***~~[one]~~ hundred~~[and twenty-five]~~ thousand dollars ***($200,000)***~~[($125,000)]~~, shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, provide public notice of invitations for bids, award the contracts, supervise the construction, and handle the financial

negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.

(5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed ***two***~~[one]~~ hundred~~[and twenty-five]~~ thousand dollars ***($200,000)***~~[($125,000)]~~, may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.

(6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.

(7) This section shall not apply to capital outlays by the Justice Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

Section 3. KRS 424.260 is amended to read as follows:

(1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than ***twenty***~~[ten]~~ thousand dollars ***($20,000)***~~[($10,000)]~~ without first making newspaper advertisement for bids.

(2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than ***twenty***~~[ten]~~ thousand dollars ***($20,000)***~~[($10,000)]~~, the fiscal court requirement shall prevail.

(3) (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of Purchases or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.

(b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.

(4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.

Section 4. KRS 154.47-045 is amended to read as follows:

(1) Notwithstanding the provisions of KRS Chapter 45A, each state agency that has the responsibility for the expenditure of funds in excess of fifty thousand dollars ($50,000) for secondary wood products to be used in state capital construction or renovation projects, including state park renovations, as determined by the secretary of Finance and Administration Cabinet, shall[~~ contract with the Kentucky Wood Products Competitiveness Corporation to~~]:

(a) Provide the Kentucky Wood Products Competitiveness Corporation with a monthly list of proposed projects, which are in excess of fifty thousand dollars ($50,000) in construction, or renovation of state facilities. This list shall include, but shall not be limited to:

1. Name and location of the project;

2. Status of the project;

3. Scope of the work;

4. Funds allocated to the project; and

5. Projected time lines for the project;

(b) Include in the request for proposals, language which requests that bidders contact the Kentucky Wood Products Competitiveness Corporation for suggested vendors of Kentucky secondary wood products; and

(c) Request a list of suggested vendors from the Kentucky Wood Products Competitiveness Corporation when the secondary wood products are in excess of fifty thousand dollars ($50,000) and on multivendor commodity price contracts or are one time commodity purchases.

(2) The Kentucky Wood Products Competitiveness Corporation may:

(a)[~~(1)~~] ***Assist in the solicitation of***[~~Solicit~~] bids from Kentucky secondary wood products firms;

(b)[~~(2)~~] Assist firms in preparing and submitting bids;

(c)[~~(3)~~] Assist firms to form networks for the purpose of competing for bids on state capital construction and renovation projects; and

(d)[~~(4)~~] Assist firms in training workers, designing products, developing product lines, and otherwise as necessary to perform under state contracts.

Approved March 29, 2000

CHAPTER 226

(HB 314)

AN ACT relating to motor vehicle emission inspection programs.

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

Section 1. KRS 224.20-710 is amended to read as follows:

As used in KRS 224.20-710 to 224.20-765, unless the context clearly indicates otherwise:

(1) "Compliance certificate" means an official emission inspection certificate issued by the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle has been tested in accordance with KRS 224.20-710 to 224.20-765 and complies with all applicable emission standards;

(2) "Independent contractor" means any person, business firm, partnership, or corporation with whom the cabinet or a fiscal court may negotiate an agreement providing for construction, equipment, maintenance, personnel, management, and operation of an official emission inspection station;

(3) "Control system" means equipment designed for installation or installed on a motor vehicle for the purpose of reducing the air contaminants emitted from the vehicle or a system or engine adjustment or modification which causes a reduction of air contaminants emitted from the vehicle;

(4) "Exemption certificate" means an official exemption certificate issued by the cabinet or a county, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle is exempt from certain requirements of KRS 224.20-710 to 224.20-765;

(5) "Inspection station" means an official vehicle emission inspection facility whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this Commonwealth, to conduct emission inspections of vehicles required to be inspected pursuant to KRS 224.20-710 to 224.20-765;

(6) ***"Reciprocal certificate" means an official certificate issued by the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, honoring an out-of-state certificate that indicates the vehicle was tested and either successfully passed the inspection or was exempt from the inspection in a state that is required to conduct vehicle emission testing by the Federal Environmental Protection Agency. A reciprocal certificate shall be valid for one (1) year from the date it is issued.***

(7) "Vehicle" means any automobile or truck registered in this Commonwealth having a combined manufacturer's weight of vehicle and maximum load to be carried of up to eighteen thousand (18,000) pounds, which is equivalent to eight thousand one hundred eighty-two (8,182) kilograms, or less and used upon the public highways of the Commonwealth for the purpose of transporting persons or property; and

(8)~~[(7)]~~ "Vehicle emission control program" means a program developed by the cabinet pursuant to KRS 224.20-710 to 224.20-765 which provides for the control of vehicle emissions of any air contaminant.

SECTION 2. A NEW SECTION OF KRS 224.20-710 TO 224.20-765 IS CREATED TO READ AS FOLLOWS:

(1) A person registering a motor vehicle in a county required to conduct vehicle emission testing under this chapter, who is transferring the registration of the vehicle from another state that is also required to conduct vehicle emission testing by the Federal Environmental Protection Agency, shall be issued a reciprocal certificate upon presenting to the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, a valid certificate issued by the other state indicating the vehicle was tested and either successfully passed the inspection or was exempt from the inspection.

(2) An out-of-state certificate shall be deemed to be valid in the Commonwealth for a period not to exceed one (1) year from the date it was issued and shall be presented to the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, to conduct vehicle emission testing under this chapter.

(3) A person issued a reciprocal certificate shall not be required to have the vehicle inspected under the provisions of this chapter until the reciprocal certificate expires.

Section 3. KRS 224.20-755 is amended to read as follows:

(1) A county fiscal court may apply to the cabinet for authority to operate a vehicle emission control program. The cabinet may delegate authority when it has found that the applicant:

(a) Has obtained approved machinery, tools, and equipment approved by the cabinet and adequate to conduct the required emission inspections;

(b) Has provided for a sufficient number of facilities to ensure minimum waiting time for vehicles to be inspected;

(c) Employs properly trained personnel with whom to perform the necessary inspections;

(d) Has adopted minimum emission standards for vehicles at least as stringent as those adopted by the cabinet; and

(e) Agrees to provide information prescribed by the cabinet concerning the implementation, administration, and operation of the vehicle emission control program.

(2) ***Any county that has received authority to operate a vehicle emission control program shall honor and issue reciprocal certificates as required under Section 2 of this Act. The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motor vehicles under a vehicle emission control program administered by a county. All counties, cities, special districts, and other units of local government shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***

(3) Any county which has received authority to operate a vehicle emission control program may charge an inspection fee. There shall be established an emission inspection account in the county. Unless an independent contractor is authorized pursuant to KRS 224.20-740 to collect inspection fees, the county clerk shall collect the fee at the time of registration renewal in the manner provided for cabinet programs. The inspection fees collected by the county clerk shall be immediately transferred to the county emission inspection account, except for a sum of no more than twenty-five cents ($0.25) per vehicle which the county clerk may retain.

(4)~~[(3)]~~ A county which has received authority to operate a vehicle emission control program shall transmit to the cabinet's vehicle emission control fund two percent (2%) of the funds received from inspection fees or from the independent contractor authorized pursuant to KRS 224.20-740.

(5)~~[(4)]~~ The county may use the county's emission inspection fund to acquire any special equipment, tools, employees, material, or facilities needed to adequately administer, investigate, or enforce the provisions of KRS 224.20-710 to 224.20-765.

(6)~~[(5)]~~ The county may enter into a contract with the cabinet and receive state funds charged to the cabinet's vehicle emission control fund to start a vehicle emission control program.

(7)~~[(6)]~~ A county applying for delegation pursuant to this section may enter into a contract with one (1) or more independent contractors subject to the provisions of KRS 224.20-740 to provide for construction, equipment, establishment, maintenance and operation of inspection stations for the purpose of obtaining delegation pursuant to KRS 224.20-710 to 224.20-765.

(8)~~[(7)]~~ If the cabinet determines, after a hearing with notice, that a delegated vehicle emission control program is not being administered in accordance with KRS 224.20-710 to 224.20-765, the delegation of authority may be revoked by order of the cabinet and all unexpended money, equipment and facilities acquired by the county with funds granted by the cabinet shall be transferred to the cabinet.

Section 4. KRS 224.20-760 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section,*** the provisions of KRS 224.20-710 to 224.20-765 shall not detract from the authority provided air pollution control districts in KRS Chapters 77 and 224.

(2) ***Any air pollution control district that has received authority to operate a vehicle emission control program shall honor and issue reciprocal certificates as required under Section 2 of this Act. The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motor vehicles under a vehicle emission control program administered by an air pollution control district. All counties, cities, special districts, and other units of local government shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***

(3) The authority in KRS 224.20-720 is provided to air pollution control districts provided:

(a) The air pollution control district may function and exercise its powers pursuant to resolution or ordinance as provided in ***this section and*** KRS Chapter 77; and

(b) The air pollution control district has been granted concurrent jurisdiction by the cabinet pursuant to KRS 224.20-130.

(4)~~[(3)]~~ Actions taken by an air pollution control district for violations of KRS 224.20-710 to 224.20-765 shall be enforced in accordance with the provisions of KRS 224.20-130(5).

Section 5. KRS 224.20-720 is amended to read as follows:

(1) A compliance certificate shall be issued for each vehicle which meets and passes the annual inspection requirements. An exemption certificate may be issued under conditions adopted by the issuing authority***, except that vehicles registered to military personnel on active duty whose duty station is outside of a county where a vehicle exhaust testing program is implemented shall receive an exemption certificate***. A certificate shall be issued to a

vehicle only at an official emissions inspection station established and operated under a valid permit issued by the cabinet. All certificates shall be serially numbered or otherwise identified. Certificates shall be strictly accounted for by the issuing authority.

(2) No vehicle registered in counties required by the cabinet to have a vehicle emission control program shall have its registration renewed pursuant to KRS Chapter 186 without a valid compliance certificate or exemption certificate issued pursuant to KRS 224.20-710 to 224.20-765. Vehicles with state or official registration routinely operating in these counties shall be inspected at least once within each twelve (12) month period following the original registration.

Section 6. KRS 77.115 is amended to read as follows:

(1) The air pollution control board is hereby declared to be the governing body of an air pollution control district, and shall manage and control all the affairs and property of such district, and shall exercise all the powers of such district not otherwise delegated by this chapter. In a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board shall assume all of the duties and responsibilities of the hearing board appointed under KRS 77.105, and the hearing board shall be abolished.

(2) Notwithstanding any provision of this chapter to the contrary, in a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board shall have regulatory authority for the district, and the city or county, as appropriate, shall exercise funding and administrative control of the district.

(3) In a county where the air pollution control board makes a finding of the need for and requires the implementation of a vehicle exhaust testing program, the board shall exempt from the program vehicles registered to military personnel on active duty whose duty station is outside of the county.

Section 7. KRS 77.170 is amended to read as follows:

(1) The General Assembly does not, by the provisions of this chapter, intend to occupy the field ***except for requiring a county air pollution control board to exempt from the requirements of a vehicle exhaust testing program vehicles registered to military personnel on active duty whose duty station is outside of a county***. The provisions of this chapter do not prohibit the enactment or enforcement of any local ordinance stricter than the provisions of KRS 77.150 to 77.180 and stricter than the rules and regulations adopted pursuant to KRS 77.180 to 77.240, which local ordinance prohibits, regulates, or controls air pollution.

(2) ***Except for requiring a county air pollution control board to exempt from the requirements of a vehicle exhaust testing program vehicles registered to military personnel on active duty whose duty station is outside of a county,*** the provisions of this chapter do not supersede any such local ordinance. If it should be held that the provisions of this chapter supersede the provisions of any local ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance, was in full force and effect.

Section 8. All counties and air pollution control districts that have authority to operate a vehicle emission control program under the provisions of KRS 224.20-710 to 224.20-765 shall be required to begin issuing reciprocal certificates upon the effective date of this Act. Any county, city, special district, or other unit of local government, including an air pollution control district,

that currently has an ordinance requiring the inspection of motor vehicles under a locally administered vehicle emission control program, shall amend the ordinance within thirty (30) days of the effective date of this Act to require the issuance of reciprocal certificates. Any local government that fails to amend an ordinance to issue reciprocal certificates in violation of this section shall have the local government's authority to administer a vehicle emission control program immediately suspended until the offending ordinance is amended.

Approved March 29, 2000

CHAPTER 227

(HB 356)

AN ACT relating to the Flood Control Advisory Commission.

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

Section 1. KRS 151.560 is amended to read as follows:

(1) There is hereby created the Flood Control Advisory Commission, which shall be composed of sixteen (16) members appointed by the Governor as follows:

(a) Two (2) state legislators, one (1) from the Senate and one (1) from the House of Representatives; two (2) mayors; and two (2) county judges/executive; and

(b) One (1) member from each of the following river basins: Big Sandy; Licking; Kentucky; Salt; Green; Ohio River Main Stem; Tennessee; Mississippi; and Upper Cumberland; and

(c) The commissioner of the Department for Local Government or commissioner's designee.

(2) Except for the commissioner of the Department for Local Government, each member shall serve a four (4) year term, except the first commission members were appointed by the Legislative Research Commission to serve terms as follows:

(a) Three (3) members to serve for terms of two (2) years from the date of appointment;

(b) Three (3) members to serve for terms of three (3) years from the date of appointment; and

(c) Three (3) members to serve for terms of four (4) years from the date of appointment.

(3) Commission members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.

(4) Any member who misses three (3) consecutive meetings of the commission shall be deemed to have vacated the office. The commission shall declare the office vacant, and the office shall be filled as provided by subsection (3) of this section.

(5) Two (2) of the commission members shall be elected by the commission to serve on the Water Resources Authority of Kentucky, which service shall cease with the expiration of the term of appointment on the commission, if not sooner.

(6) The commission shall annually elect one (1) of its members as chairperson. The commission shall meet quarterly or more often if necessary. A quorum for the transaction of business

shall be nine (9) members, and a majority of the members present at a meeting may take action on any matter legally before it.

(7) Members shall be paid their necessary expenses incurred in attending meetings and in the performance of their official duties***, and shall receive a one hundred dollar ($100) stipend per meeting attended***.

(8) The commission shall be attached for administrative purposes to the Department for Local Government which shall provide the staff services and resources necessary to support the commission in the performance of its statutory duties through the Division of Flood Control established by KRS 147A.009.

(9) The commission shall promulgate administrative regulations as necessary to control internal procedures. The commission shall promulgate by administrative regulation the boundary for each river basin referred to in subsection (1)(b) of this section.

Approved March 29, 2000

CHAPTER 228

(HB 317)

AN ACT relating to reorganization.

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

Section 1. KRS 154.12-203 is amended to read as follows:

(1) There is created the Kentucky Commission on Military Affairs. The commission shall be a separate administrative body of state government within the meaning of KRS Chapter 12.

(2) It shall be the purpose of the Kentucky Commission on Military Affairs to:

(a) Address matters of military significance to Kentucky;

(b) Maintain a cooperative and constructive relationship between state agencies and the military entities in Kentucky, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, the military;

(c) Advise the Governor, the General Assembly, the Kentucky congressional delegation, and other appropriate government officials on all matters in which the military services and the Commonwealth have mutual interests, needs, and concerns;

(d) Take action to promote and optimize state and Department of Defense initiatives that will improve the military value of Kentucky's National Guard, active, and reserve military force structure and installations, and improve the quality of life for military personnel residing in the Commonwealth;

(e) Coordinate, as necessary, the state's interest in future Department of Defense base closure and restructuring activities;

(f) Recommend state, federal, and local economic development projects which would promote, foster, and support economic progress through military presence in the Commonwealth;

(g) Promote and assist the private sector in developing spin-off investments, employment, and educational opportunities associated with high-technology programs and activities at Kentucky's military installations;

(h) Recommend to the Kentucky Economic Development Partnership the long-range options and potential for the defense facilities located in Kentucky; and

(i) Develop strategies to encourage military personnel to retire and relocate in Kentucky and promote those leaving the military as a viable quality workforce for economic development and industrial recruitment; and

(j) Allocate available grant money to qualified applicants to further the purposes of paragraphs (a) to (i) of this subsection.

(3) The Kentucky Commission on Military Affairs shall consist of:

(a) The Governor, or his designated representative;

(b) The secretary of the Cabinet for Economic Development, or his designated representative;

(c) The adjutant general of the Commonwealth, or his designated representative;

(d) The executive director of the Kentucky Long-Term Policy Research Center, or his designated representative;

(e) The secretaries of the following cabinets, or their designees:

1. Finance and Administration;

2. Families and Children;

3. Justice;

4. Natural Resources and Environmental Protection;

5. Transportation;

6. Workforce Development;~~[and]~~

7. Education, Arts, and Humanities;

8. Health Services;

9. Revenue; and

10. Labor;

(f) The Attorney General, or his designee;

(g) ***The commissioner of the Department of Veterans' Affairs or a designee;***

(h) The executive director of the Kentucky Commission on Military Affairs or a designee;

(i) Kentucky's Civilian Aide to the Secretary of the United States Army;

(j) Two (2) members of the Kentucky General Assembly, with experience in or an interest in military and defense-related issues, one (1) member to be appointed by the President of the Senate, and one (1) member to be appointed by the Speaker of the House;

(k)[~~(h)~~] The commander or ***the***[~~his~~] designee of ***the commander of*** each of the following as nonvoting, ex officio members:

1. Fort Campbell;
2. Fort Knox;
3. United States Army Recruiting Command;
4. Bluegrass Army Depot;
5. Louisville District of the United States Army Corps of Engineers;
6. The One Hundredth Training Division;
7. ***Technology Park of Greater Louisville***[~~Louisville/Jefferson County Redevelopment Authority~~]; and
8. Any other installation or organization***, including but not limited to the United States Coast Guard, Air Force, Navy, and Marine Corps,*** with a[~~ major~~] military mission in the Commonwealth; and

(l)[~~(i)~~] Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.

(4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.

(5) (a) The commission shall establish an executive committee consisting of the secretary of the Cabinet for Economic Development, the adjutant general of the Commonwealth, ***the commissioner of the Department of Veterans' Affairs, the executive director of the Kentucky Commission on Military Affairs,*** and the five (5) at-large members. ***The chair and vice chair of the Kentucky Commission on Military Affairs shall be appointed by the Governor from among the members of the executive committee.***[~~The Governor shall appoint the chair and vice chair of the commission from the five (5) at-large members, by September 30, 1996. The chair shall call a meeting of the commission by October 31, 1996, for the purpose of creating an executive committee.~~]

(b) The chair and vice chair of the commission shall ***also*** serve as chair and vice chair of the executive committee.

(c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.

(6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business. Members' designees shall have voting privileges at commission meetings.

(7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.

(8) The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.

(9) The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.

(10) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.

(11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission~~[with approval of the executive committee]~~.

(12) The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

Section 2. The General Assembly hereby confirms Executive Order 99-1592, dated December 3, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

Approved March 29, 2000

CHAPTER 229

(HB 386)

AN ACT relating to farm milk.

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

Section 1. KRS 260.775 is amended to read as follows:

As used in KRS 260.775 to 260.845, unless the context requires otherwise:

(1) ***"Board" means the Kentucky Milk Handlers Advisory Board***~~["Buyer" shall include any person, partnership, corporation, association, organization, company, firm, bargaining agent, receiving station, milk plant, or agent thereof who receives milk or cream from producers and pays the producers for it on basis of volume, or weight, and test, except that it does not include persons who buy milk or cream for their own consumption]~~;

(2) "Buy~~[,]~~" ***means***~~["buying," or "bought" shall mean]~~ the receiving of milk~~[or cream]~~ from producers or their agents and paying for ***the milk***~~[it]~~ on ***the*** basis of volume ***and test***, or weight and test;

(3) ***"Director" means the director of the Agricultural Experiment Station, College of Agriculture, University of Kentucky, or his or her designee***~~["Milk tester" shall include any person who tests milk or cream, bought by buyers from producers, to determine the constituents or quality of such milk or cream and uses, or submits for use, these tests in determining the price paid for it]~~;

(4) ***"Handler" means any person who receives, bargains, brokers, or issues payment for or purchases milk from Kentucky permitted producers or the permitted producers agents***~~["Sampler-weigher" shall include any person who samples, weighs, or measures milk~~

~~or cream received by buyers from producers and uses or submits for use, these tests or weights in determining the price paid for it~~];

(5) ***"Laboratory" means the location or work area where milk analysis or testing takes place***[~~"License to buy" means the license issued to buyers of milk or cream purchased from producers or their agents on basis of its volume, or weight and tests~~];

(6) ***"Laboratory license" means the license issued to a milk laboratory***[~~"License to test" means the license issued to milk testers~~];

(7) ***"License to handle" means the license is issued to a handler of milk;***

(8) "License to sample and weigh" means the license issued to a milk sampler-weigher;

[~~(8) "Board" means the creamery license board;~~]

(9) ***"License to test" means the license issued to a milk tester***[~~"Director" means the director of the Agricultural Experiment Station, College of Agriculture, University of Kentucky, or his designee~~];

(10) ***"Location" means each separate business place where permitted producers' milk or milk samples are received, stored, or processed, or where records pertaining to permitted producers' milk tests or payments are kept***[~~"Producer" means any person, partnership, corporation, association, organization, or concern keeping milk cows for the production of milk or cream for sale to a milk buyer~~];

(11) ***"Milk" means the lacteal secretion and all of its components, obtained by the milking of animals***[~~"Buying location" means each separate business place where nonpackaged milk or cream is received by buyers such as milk receiving stations, and milk plants; transfer stations are not considered buying locations~~];

(12) ***"Milk importer" means any person who delivers milk from producers outside the Commonwealth of Kentucky to processors in this state***[~~"Nonpackaged milk" means milk as it is usually received from the farm before it is processed and put in bottles, cartons or other containers for consumer use~~];

(13) ***"Milk processor" means any location where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution by a milk handler***[~~"Standard testware" means all testing equipment inspected and approved by the director for use in Kentucky and meeting all specifications of the National Bureau of Standards~~];

(14) ***"Milk receiving station" means any location where producers' raw farm milk is collected, handled, or stored by a milk handler***[~~"Transfer station" means any place, premise, or establishment where farm bulk milk is transferred directly from one transport tank to another and producers' bulk tank milk samples are collected, handled, stored, and transported to a laboratory for analysis~~];

(15) ***"Permitted producer" means any producer issued a permit by the Kentucky Cabinet for Health Services to offer milk for sale***[~~"Milk equivalent" means the amount of whole milk required to make other dairy products; thus, to convert milkfat to milk equivalent, multiply the pounds of milkfat by twenty-five (25), for four percent (4%) milk~~];

(16) ***"Person" shall mean any individual, bargaining agent, broker, processor, milk plant operator, partnership, cooperation, concern, corporation, organization, company, firm, trustee, association, or agent thereof***[~~"Milk receiving station" means any place, premise, or establishment where producers' raw farm milk is collected, handled, and stored by a milk buyer~~];

(17) ***"Producer" means any person keeping animals for the production of milk***[~~"Milk plant" means any place, premise, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution by a milk buyer~~];

(18) ***"Record" means any information relating to milk weights, tests, transfers, purchases, receipts, and sales***[~~"Transfer station license" means the license issued to operate a transfer station~~];

(19) ***"Sampler-weigher" means any person who samples, weighs, or measures milk from producers and submits these samples, weights, or measurements for use in determining the price paid for milk;***

(20) "Test" means to analyze a milk sample to determine the amount of a milk component or to determine milk quality;

(21) "Tester" means any person who tests milk from permitted producers to determine its components or quality, or submits these tests for use in determining the price paid for milk;

(22) "Transfer station" means any location where farm bulk milk is transferred directly from one (1) tank to another and producers' milk samples are collected, handled, stored, and transported to a laboratory for analysis; and

(23) "Transfer station license" means the license issued to operate a transfer station[~~"Person" shall mean any individual, milk plant operator, partnership, corporation, company, firm, trustee, or association~~].

SECTION 2. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

(1) The requirements and prohibitions of KRS 260.775 to 260.845 shall not apply to persons who buy milk for their own consumption.

(2) It is unlawful for any person who is not licensed under KRS 260.775 to 260.845 to transact business with a permitted producer of this state.

SECTION 3. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

Each laboratory location where permitted producers' milk is tested shall be licensed. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address.

SECTION 4. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

All milk importers who deliver milk to processors in this state shall be licensed or permitted to sample and weigh milk by the state from which the milk originated and shall comply with KRS 260.775 to 260.845.

SECTION 5. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

Each transfer station location where permitted producers' milk is handled shall be licensed. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address.

Section 6. KRS 260.795 is amended to read as follows:

Each location that handles permitted producers' milk in accordance with KRS 260.775 to 260.845 shall obtain a license to handle from the director. Application for a license to handle shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address[~~Every milk plant, milk receiving station or other milk processing or manufacturing plant or person, or agent, firm, company, association or corporation buying milk or cream from producers or their agents shall secure and hold a license to buy for each buying location where such milk and cream is received. Application for a license shall be made to the director, the application to be accompanied by the license fee provided for in KRS 260.815. Upon receipt of the application and fee, the director shall issue to the buyer a license to buy milk or cream provided the buyer is in compliance with the provisions of KRS 260.775 to 260.845 and the regulations relating to the sampling, weighing, testing or buying of milk or cream and the handling, storage, and transportation of producers' milk samples as may be issued by the director~~].

Section 7. KRS 260.800 is amended to read as follows:

Each person who tests milk from permitted producers shall obtain a license to test. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. All applicants shall demonstrate their proficiency in testing by satisfactorily passing an examination prescribed by the director. Prior to taking an examination for a license, an applicant shall obtain a temporary license. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address[~~(1) All persons who test milk or cream bought by buyers from producers shall secure and hold a license to test.~~

~~(2) Any applicant who tests milk or cream bought by buyers from producers shall demonstrate his proficiency in testing by satisfactorily passing an examination prescribed by the director.~~

~~(3) Prior to taking an examination for a license an applicant may apply for and secure a temporary license. Application for a temporary license to test shall be on a form prescribed by the director and accompanied by the license fee provided for in KRS 260.815~~].

Section 8. KRS 260.805 is amended to read as follows:

Each person who samples and weighs milk from permitted producers shall obtain a license to sample and weigh. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Applicants who sample and weigh milk from permitted producers shall attend formal training and satisfactorily pass an examination prescribed by the director. Prior to taking an examination for a license, an applicant shall obtain a temporary license. Each licensee shall notify the director, in writing,

within thirty (30) days of a change of address[~~(1) All persons who weigh, measure and sample milk or cream bought by buyers from producers shall secure and hold a license to sample and weigh. Application for such license shall be made on a form prescribed by the director and accompanied by the license fee provided for in KRS 260.815. Upon receipt of the application and fee, the director may issue to the sampler-weigher a temporary license to sample and weigh; then after the applicant has attended formal training and successfully passed a written examination, a license to sample and weigh milk and cream may be issued, provided that the sampler-weigher is in compliance with the provisions of KRS 260.775 to 260.845 and such regulations relating to weighing, measuring, and sampling of milk and cream as may be issued by the director.~~

~~(2) All persons who transfer milk from farm bulk milk tanks to bulk tank trucks for transporting to a buying location, such as a milk plant or receiving station or to a transfer station, shall secure and hold a license to sample and weigh~~].

SECTION 9. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

It shall be unlawful for any owner or operator of any laboratory to;

(1) Operate a laboratory without having a laboratory license;

(2) Fail to comply with administrative regulations promulgated by the director for the proper transporting, handling, storage, and testing of permitted producers' milk samples;

(3) Manipulate, substitute, or falsify any producer's milk samples, test results, or records,

(4) Test milk samples from permitted producers that were not obtained by licensed sampler-weighers;

(5) Employ, engage, or obtain the services of a person to test permitted producers' milk samples who does not have a license to test; or

(6) Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to KRS 260.845.

Section 10. KRS 260.780 is amended to read as follows:

It shall be unlawful for ***a handler***[~~any buyer~~] of milk[~~ or cream~~] in this state to:

(1) Receive ***or***[~~and~~] buy milk[~~ or cream~~] from ***permitted*** producers or their agents without obtaining a license for each[~~ buying~~] location where[~~ such~~] milk[~~ or cream~~] is received ***or handled***;

(2) Receive milk ***that***[~~ or cream which~~] is paid for on the basis of weight or volume without having it sampled and weighed or measured by a licensed sampler-weigher;

(3) Manipulate weights, measurements***,*** or tests ***that are to be used as a basis to purchase milk***[~~, that is, to pay for milk or cream on the basis of any weight or measurement or test that is not the true and legal weight or test~~];

(4) [~~Manipulate or falsify records or to~~]Use ***false or incorrect*** records of weights or tests as ***a*** basis for payment[~~ that are not correct and legal weights, measurements or tests~~];

(5) Receive milk[~~ or cream~~] purchased from ***permitted*** producers by a milk ***handler***[~~receiving station or milk plant~~] that does not have a license to ***handle***[~~buy~~];

(6) Use weighing, mixing, sampling, or testing equipment which is inaccurate or nonstandard;

(7) Fail to comply with ***administrative***~~[such]~~ regulations for weighing, measuring, sampling***,*** and testing milk~~[or cream as may be]~~ issued by the director;

(8) Fail to keep records of weights and tests as required by ***administrative*** regulation or ***fail*** to make such records available for inspection by the director~~[or his representative]~~;~~[or]~~

(9) Receive milk which is paid for on the basis of tests without having it tested by a licensed tester***;***

(10) Fail to notify the director in writing of any knowledge of an inaccurately calibrated bulk milk tank; or

(11) Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to 260.845.

Section 11. KRS 260.785 is amended to read as follows:

It shall be unlawful for any milk sampler-weigher~~[either for himself, or as officer, servant, agent, or employee of any person, firm, company, association, or corporation in this state]~~ to:

(1) Sample, weigh, or measure milk~~[or cream]~~ from~~[farm]~~ bulk ***milk*** tanks without obtaining a license to sample and weigh;

(2) Inaccurately sample, weigh, or measure milk~~[or cream]~~;

(3) Fail to comply with ***administrative***~~[such]~~ regulations ***promulgated by the director*** for the ***proper*** sampling, weighing***,*** or measuring of milk~~[or cream]~~ and handling, storage, and transportation of ***permitted*** producers' milk samples~~[as may be issued by the director]~~;

(4) Employ, engage, or obtain the services of a person who does not have a sampler-weigher license to~~[weigh and]~~ sample ***and weigh***~~[farm bulk]~~ milk;

(5) Manipulate or falsify any producer weights, records, or samples for testing***;***

(6) Fail to notify the director in writing of any knowledge of inaccurately calibrated bulk milk tanks; or

(7) Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to 260.845.

Section 12. KRS 260.790 is amended to read as follows:

It shall be unlawful for any milk tester~~[in this state]~~ to:

(1) Test milk~~[or cream]~~ bought from ***permitted*** producers without obtaining a license to test;

(2) Inaccurately test producers' milk~~[or cream]~~ samples;

(3) Use inaccurate, nonstandard***,*** or improperly calibrated equipment in testing~~[of]~~ milk~~[or cream]~~;

(4) Manipulate or falsify tests or records;

(5) Fail to comply with ***administrative***~~[such]~~ regulations ***promulgated by the director*** for ***proper sampling, weighing, or*** testing ***of milk; or***~~[, weighing and sampling as may be issued by the director]~~

(6) Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to 260.845.

Section 13. KRS 260.793 is amended to read as follows:

It shall be unlawful for any owner or operator of any transfer station to:

(1) Operate a transfer station without having a transfer station~~[operator's]~~ license;

(2) Fail to comply with ***administrative*** regulations ***promulgated***~~[issued]~~ by the director for the proper storage, handling, and ***transport***~~[transporting]~~ of producers' milk samples while at the transfer station and en route to the testing laboratory;

(3) Manipulate, substitute***,*** or falsify any producer milk weights or milk samples;

(4) Transfer milk, samples, or records at a transfer station without having a current sampler-weigher's license;

(5) Transfer milk that has not been~~[weighed and]~~ sampled ***and weighed*** at the farm by a licensed sampler-weigher***;***

(6) Fail to notify the director in writing of any knowledge of an inaccurately calibrated bulk milk tank; or

(7) Hinder or obstruct any authorized person in the performance of his or her duties under KRS 260.775 to 260.845.

SECTION 14. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

(1) Every licensee shall keep complete records, as defined in Section 1 of this Act, for a period of two (2) years.

(2) Each licensed location shall keep records of all its transactions at the location.

(3) All records shall be accessible for inspection by the director during customary business hours.

SECTION 15. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

(1) Each milk handler and laboratory shall, as required by the director, make and file reports for all matters of which a record is required to be kept.

(2) No information furnished to the director under this section shall be disclosed in a way to divulge the operation of any person.

(3) It shall be unlawful for any person to use to his own advantage, or reveal to a person other than the director, officers of the Kentucky Agricultural Experiment Station, or the courts when relevant in any judicial proceedings, any information acquired under the authority of KRS 260.775 to 260.845, concerning any method, records, formulations, processes, or financial information which as a trade secret is entitled to protection.

(4) This prohibition shall not be deemed as prohibiting the director, or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States Government, or of other states, who are similarly prohibited by law from revealing this information.

SECTION 16. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

Permitted producers' bulk milk tanks shall be accurately calibrated upon installation. Bulk milk tank calibrations shall be evaluated for accuracy after the effective date of this Act by the Kentucky Department of Agriculture or at the request of the director or the permitted producer.

SECTION 17. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

(1) For the financing of the producer's share of this program, all handlers who issue payments to Kentucky permitted producers shall deduct an inspection fee at the rate of one-half cent ($0.005) per hundredweight from the producer's payment and shall transfer these funds to the director.

(a) The deduction shall be identified as "Inspection Fee".

(b) Each handler shall file on forms approved by the director, not later than the last day of January, April, July, and October of each year, a quarterly statement, setting forth the pounds of milk on which payment was issued to permitted producers during the preceding calendar quarter, and upon filing the statement shall transfer the inspection fee payment.

(c) Each handler shall keep the records required by the director to accurately indicate the amount of milk for which payments were issued to permitted producers.

(2) For the financing of the processors' share of this program, handlers shall pay to the director an inspection fee at the rate of one-half cent ($0.005) per hundredweight on all milk received by processor locations in Kentucky.

(a) Each handler shall file on forms approved by the director, not later than the last day of January, April, July, and October of each year, a quarterly statement, setting forth the pounds of all milk received by processor locations in Kentucky during the preceding calendar quarter, and upon filing the statement shall make the inspection fee payment.

(b) Each handler shall keep the records required by the director to accurately indicate the amount of milk delivered to or received by processor locations in Kentucky.

(c) This fee shall not in any way be passed back to producers. If the fee is found to have been passed back to producers, violators may be penalized as set forth in Section 24 of this Act, along with other actions that may be taken by the director under KRS 260.775 to 260.845.

(3) Inspection fees that are due and have not been remitted to the director within fifteen (15) days following the due date shall be assessed a penalty fee as set forth in KRS 260.992. Assessment of this penalty fee shall not prevent the director from taking other actions under KRS 260.775 to 260.845.

(4) Fees collected shall be used to help pay for a portion of the costs of inspection, analysis, and other expenses necessary for the administration of KRS 260.775 to 260.845.

Section 18. KRS 260.815 is amended to read as follows:

The license fees to be paid for respective licenses provided for in KRS 260.795, 260.800, and 260.805 shall be per year or any portion of a year with the license year commencing July 1 and ending June 30. No license may be transferred or assigned. The license fees shall be as follows:

(1) ***License to handle***~~[Buyers, milk plants and receiving stations]~~: For each ***location***~~[milk plant, milk receiving station, person, agent, firm, company, association, or corporation an amount determined according to the following schedule]~~:

(a) One hundred twenty-five dollars ($125) per license for those ***handling***~~[buying]~~ less than ***ten***~~[one]~~ million ***(10,000,000)***~~[(1,000,000)]~~ pounds of milk~~[or milk equivalent]~~ during the past year; ***or***

(b) Three hundred fifty dollars ($350) per license for those ***handling***~~[buying]~~ more than ***ten***~~[one]~~ million ***(10,000,000)***~~[(1,000,000)]~~ pounds of milk~~[or milk equivalent]~~ during the past year.

(2) ~~[Testers:]~~License to test***: fifteen dollars ($15) per person***~~[- seven dollars ($7)]~~ for ***a*** temporary license ***or an annual***~~[and seven dollars ($7) for yearly]~~ license.~~[Temporary fee to be deducted from annual fee if in the same fiscal year.]~~

(3) ***Licensed to sample and weigh***~~[Sampler-weigher]~~: ***fifteen dollars ($15) per person***~~[Seven dollars ($7)]~~ for ***a*** temporary license ***or an annual***~~[and seven dollars ($7) for yearly]~~ license.~~[Temporary fee to be deducted from annual fee if in the same fiscal year.]~~

(4) Transfer ***station license***~~[stations]~~:~~[License to operate a transfer station for transferring producers' raw farm milk from one transport tank to another -]~~ twenty-five dollars ($25) ***annually***~~[per year]~~.

(5) Laboratory license: twenty-five dollars ($25) annually.

(6) License fees for renewal of licenses that are due and have not been remitted to the director within thirty (30) days following the expiration date shall be assessed a penalty fee prescribed in Section 24 of this Act. Assessment of this penalty fee shall not prevent the director from taking other actions under KRS 260.775 to 260.845.

Section 19. KRS 260.825 is amended to read as follows:

(1) The director ***shall enforce, administer, and implement the provisions of KRS 260.775 to 260.845 through the promulgation of administrative regulations in accordance with KRS Chapter 13A.***

(2) For the purpose of the enforcement of KRS 260.775 to 260.845 , the director is authorized during normal business hours to enter any public or private premises, including any vehicle of transport, for the purpose of obtaining samples, gaining access to milk, milk samples, and records pertaining to milk handling, milk weights, milk test results, and milk payments. The director may:

(a) Collect samples obtained by sampler-weighers or testers for inspection purposes;

(b) Inspect equipment and other devices used in testing or sampling and weighing milk to determine the accuracy of this equipment and devices. Accuracy may be determined by requiring sampler-weighers and testers to operate equipment and devices to determine the accuracy of equipment, devices and procedures;

(c) Condemn inaccurate or improperly operating equipment; and

(d) Examine and copy records and take testimony for the purpose of ascertaining facts necessary to administer KRS 260.775 to 260.845.

(3) At the request of producers, processors, handlers, sampler-weighers, or testers, the director may test for milk components or other tests of milk quality.

(4) The director shall employ qualified persons to assist in the enforcement of KRS 260.775 to 260.845.

(5) The director shall establish and maintain milk-testing facilities to determine if milk has been sampled, weighed, and tested correctly. The testing facility established shall be officially named the "Division of Regulatory Services Dairy Laboratory." The director shall, with approval of the Board of Trustees of the University of Kentucky, fix the salaries of the analysts, inspectors, and supporting staff.

(6) The director shall cooperate with other federal, state, and local enforcement agencies[~~is charged with the enforcement of KRS 260.775 to 260.845 and may, subject to recommendation of the board, employ all proper means to aid and assist in the enforcement of its provisions, including the revocation or suspension of a license as provided in KRS 260.830. The director may delegate the administration of his responsibility, and may employ such personnel as may be necessary to assist him in the enforcement of KRS 260.775 to 260.845. Personnel engaged in the enforcement of KRS 260.775 to 260.845 and duly authorized by the director may inspect testing equipment and scales, take samples, make tests and retests, and may examine records of weights, tests and payments of fees required in KRS 260.820, of milk and cream at all reasonable hours at licensed places or other locations where pertinent records are held. Subject to recommendations of the board, the director shall promulgate reasonable regulations necessary to supplement KRS 260.775 to 260.845 relating to the buying of milk and cream and test weights used in testing milk and cream to assure accuracy, the definition of standard testware and test weights and may make other regulations reasonably calculated to promote the purposes of KRS 260.775 to 260.845~~].

Section 20. KRS 260.840 is amended to read as follows:

(1) The ***Kentucky Milk Handlers Advisory Board shall consist of:***

(a) The coordinator of the dairy section of the Animal Science Department at the University of Kentucky, College of Agriculture;

(b) The chair of the dairy committee of the Kentucky Farm Bureau Federation;

(c) The branch manager of the Milk Safety Branch of the Cabinet for Health Services;

(d) Three (3) permitted producers or permitted producer representatives;

(e) Two (2) processors or processor representatives;

(f) One (1) sampler-weigher or sampler-weigher representative; and

(g) One (1) tester or tester representative.

The coordinator of the dairy section of the Animal Science Department at the University of Kentucky, College of Agriculture shall act as chair of the board.

(2) The director, or his designated representative, shall be an ex-officio member and secretary to the board.

(3) (a) Each permitted producer shall be appointed by the director from a list of two (2) persons nominated by the dairy committee of the Kentucky Farm Bureau Federation. If a permitted producer becomes chair of the dairy committee of the Kentucky Farm Bureau Federation during his or her term, the dairy committee

shall appoint an alternate to serve the remainder of the term of the permitted producer.

(b) Each processor shall be appointed by the director from a list of two (2) persons nominated by the executive committee of the Dairy Products Association of Kentucky. If a processor becomes president of the Dairy Products Association of Kentucky during his or her term, the executive committee shall appoint an alternate to serve the remainder of the term of the processor.

(c) The sampler-weigher and tester shall be at-large appointees and shall be appointed by the director.

(4) Appointments to the board shall be for a term of three (3) years, or until their successors are appointed, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, two (2) members shall be appointed for two (2) years, and three (3) members shall be appointed for three (3) years. The respective terms of the first members shall be designated by the director at the time of their appointment. No appointed board member shall serve more than two (2) consecutive terms.

(5) Board members not already employed by the state shall be compensated at the rate of one hundred dollars ($100) per day for board service and be reimbursed for any actual expense incurred while[~~ responsibility for advising the director concerning enforcement of KRS 260.775 to 260.845, for reporting violations, for conducting investigations and hearings pursuant to recommending revocation or suspension of a license, and for recommending rules and regulations to be issued by the director, is vested in the Creamery License Board. The board shall be composed of the coordinator of the dairy section of the Animal Science Department, University of Kentucky, who shall be chairman, and three (3) members appointed by the director. Two (2) of the three (3) appointed members shall be appointed from a list of four (4) persons nominated by the dairy committee of the Kentucky Farm Bureau Federation and the third appointed member shall be appointed from a list of two (2) persons nominated by the executive committee of the Dairy Products Association of Kentucky. The appointed members shall serve for a term of three (3) years and until their successors are appointed and qualified; except that the first appointments made under KRS 260.775 to 260.845 shall be for terms of one (1), two (2), and three (3) years respectively as the director shall designate. The board shall meet at such a time and place as the chairman shall designate. Three (3) members present at any meeting shall constitute a quorum, and upon the written request of any two (2) members, the chairman shall call a meeting at the time and place requested. Board members not already employed by the state shall be compensated at the rate of thirty dollars ($30) per day for board service and all members shall be reimbursed for any actual expense incurred in~~] performing board duties.

SECTION 21. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

(1) The board shall meet once annually, or when called into session by the chair, or upon the request of the director, or upon the request of any two (2) or more members of the board. Six (6) members present at a meeting shall constitute a quorum.

(2) The board shall advise the director concerning policy and programs necessary to implement or improve implementation of KRS 260.775 to 260.845.

Section 22. KRS 260.830 is amended to read as follows:

(1) The director may ***refuse,*** revoke***,***~~[or]~~ suspend***, or probate*** any license ***or temporary license*** issued under authority of KRS 260.775 to 260.845; provided, however, that any ***refusal,*** revocation***,***~~[or]~~ suspension***, or probation*** shall occur only when the licensee has failed to comply with the provisions of KRS 260.775 to 260.845 or the administrative regulations issued thereunder, and provided that any ***refusal,*** revocation***,***~~[or]~~ suspension***, or probation*** shall occur only after the licensee has had an opportunity, upon due notice, for an informal hearing before the director, to show cause why ***the***~~[his]~~ license ***or temporary license*** should not be ***refused,*** revoked***,***~~[or]~~ suspended***, or probated***.

(2) ***The director may refuse, revoke, suspend, or probate any license or temporary license of a person who has plead guilty to or been convicted of a felony.***

(3) If a license is ***refused,***~~[suspended or]~~ revoked***, suspended, or probated*** as the result of an informal hearing, the decision may be appealed and upon appeal an administrative hearing shall be conducted before the board in accordance with KRS Chapter 13B.

(4)~~[(3)]~~ ~~[Upon the revocation of any license,]~~The licensee may appeal the final order of the ***director***~~[board]~~ by filing a petition in the ***Fayette***~~[Franklin]~~ Circuit Court in accordance with KRS Chapter 13B.

Section 23. KRS 260.845 is amended to read as follows:

(1) All ***funds***~~[moneys]~~ resulting from the payment of license fees, inspection ***fees, fines, penalty fees,*** or other charges provided for in KRS 260.775 to 260.845 shall be paid to the director and shall~~[constitute a special and separate fund which shall not lapse and which shall]~~ be expended by the director under authority of the board of trustees of the University of Kentucky~~[on proper and separate vouchers]~~.

(2) This ***money***~~[fund]~~ shall be used primarily for discharging expenses incurred in enforcing KRS 260.775 to 260.845 and any portion of the ***money***~~[fund]~~ not necessary ***for***~~[to]~~ this purpose shall be used to support research pertaining to methods and equipment for sampling and testing dairy products or such other dairy research work as the director may recommend.

Section 24. KRS 260.992 is amended to read as follows:

(1) Any ***person who violates any provision of Section 4 of this Act,***~~[tester or sampler-weigher or transfer station violating, or failing, or refusing to comply with]~~ KRS 260.785, 260.790, 260.800, or~~[and]~~ 260.805, shall~~[upon conviction,]~~ be fined one hundred dollars ($100) for the first ***violation***~~[offense]~~ and not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each subsequent ***violation***~~[offense]~~.

(2) Any~~[milk plant, milk receiving station or]~~ person ***who violates any provision of Sections 2, 3, 5, 9, and 13 of this Act, subparagraph (c) of subsection (2) of Section 17 of this Act***,~~[or agent, firm, company, association or corporation violating, or failing, or refusing to comply with]~~ KRS 260.780, 260.795***, or***~~[and]~~ 260.820~~[shall be guilty of a misdemeanor and upon conviction,]~~ shall be fined not more than five hundred dollars ($500), ***nor more than seven hundred fifty dollars ($750) for each subsequent violation***~~[or imprisoned for not more than one (1) year, or both]~~.

(3) Any person who violates any provision of Section 18 of this Act shall be assessed a penalty fee of a minimum of fifteen dollars ($15) or ten percent (10%) of the amount due, whichever is greater, when payment is made.

(4) Any person who violates any provision of subsection (3) of Section 17 of this Act shall be assessed a penalty fee of a minimum of twenty-five dollars ($25) or ten percent (10%) of the amount due, whichever is greater, when payment is made.

SECTION 25. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

KRS 260.775 to 260.845 shall be known as the "Kentucky Farm Milk Handlers Law."

Section 26. This Act takes effect January 1, 2001.

Section 27. The following KRS sections are repealed:

260.810 Inspection of test equipment and measuring or calibrating devices.

260.820 Assessment of milk or cream purchases during month of May.

Approved March 29, 2000

CHAPTER 230

(HB 443)

AN ACT relating to motor vehicle titles.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

(1) The provisions of KRS 186A.500 to 186A.550 notwithstanding, the owner of a motor vehicle that has been damaged solely by hail shall have the regular title of the vehicle branded as follows "Hail Damage" if:

(a) The vehicle is in a condition that it can be legally operated on the highway;

(b) The total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its pre-hail condition exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide; and

(c) The owner intends to retain ownership of the vehicle.

(2) A person seeking to have the title of a vehicle branded for hail damage under subsection (1) of this section shall present the sheriff with a statement from the person's insurance company that the damage exceeds seventy-five percent (75%) of the retail value of the vehicle and is solely the result of hail damage, and shall have the vehicle inspected by the sheriff of the county in which the vehicle is registered. Upon completion of inspection of the vehicle, the sheriff shall indicate on the vehicle transaction record form if he or she has received a statement from the person's insurance company that the damage to the vehicle is the result of hail damage and if the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its pre-hail condition exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide. The sheriff shall be paid a fee of five dollars ($5) to conduct an inspection under this subsection.

(3) Upon completion of the inspection required under subsection (2) of this section, a person shall take the vehicle transaction record form and the title to the vehicle to the office of the county clerk in the county in which the vehicle is registered. If the sheriff has certified on the vehicle transaction record form that the damage to the vehicle is the result of hail damage and if the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its pre-hail condition exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide, the title shall not be surrendered to the clerk, but the clerk shall stamp on the face of the title "Hail Damage". The clerk shall also enter into the Automated Motor Vehicle Registration System (AVIS) the information that the title has been branded in the clerk's office "Hail Damage". The county clerk shall be paid a fee of three dollars ($3) to carry out the provisions of this subsection.

(4) A title branded "Hail Damage" under the provisions of subsection (3) of this section shall retain the brand for as long as the person holds title to the vehicle, and upon the sale or transfer of the vehicle, the new title issued shall continue to carry the brand "Hail Damage".

(5) An insurance company shall not render payment on a vehicle damaged solely by hail in excess of seventy-five percent (75%) of the retail value of the vehicle until the title has been branded "Hail Damage".

Section 2. KRS 186A.520 is amended to read as follows:

(1) ***Except as provided in Section 1 of this Act,*** a salvage title shall be obtained by the owner of a motor vehicle that meets the following definition of a salvage vehicle:

(a) A vehicle which has been wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its preaccident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide.

(b) The value of repair parts for purposes of this definition shall be determined by using the current published retail cost of the parts equal in kind and quality to the parts to be replaced or the actual retail cost of the repair parts used in repair.

(c) The labor costs of repairs for purposes of this section shall be computed by using the hourly labor rate and time allocations which are reasonable and customary in the automobile repair industry in the community where the repairs are performed.

(2) The owner or an authorized agent of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of this section shall, within fifteen (15) days from the loss or settlement of the loss, submit an application to the county clerk, on a form prescribed by the Department of Vehicle Regulation, for a salvage title, accompanied by a properly endorsed certificate of title and any lien satisfactions, if any appear, as may be required.

(3) The county clerk shall retain a copy of each salvage title application received and shall forward the original and its supporting documents to the Department of Vehicle Regulation in a manner similar to that for handling of an application for a title.

(4) The Department of Vehicle Regulation shall process the salvage title application in a manner similar to that used in processing a title application and the salvage title shall be

delivered in a like manner of a title. Salvage titles shall be construed as proof of ownership of a vehicle in a state as to be unusable upon the highways of the Commonwealth. A vehicle shall not be issued a registration for highway use as long as a salvage title is in force.

(5) The only time a vehicle with a salvage title may be operated upon the highways of the Commonwealth is when it is in route to or from an inspection by the certified inspector prior to obtaining a certificate of title after having been rebuilt as per KRS 186.115.

Section 3. KRS 186A.530 is amended to read as follows:

(1) The owner of a motor vehicle that meets the definition of a salvage vehicle as set forth in KRS 186A.520(1) and has been issued a salvage certificate of title in Kentucky, or the equivalent thereof by another licensing jurisdiction, and has been rebuilt, may make application for a new certificate of title pursuant to KRS 186.115. The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A governing the form of application.

(2) Upon receipt of a salvage certificate of title issued pursuant to KRS 186A.520 or subsection (5) of this section, or similar title issued by another state, and proof of passing the inspection required by KRS 186A.115, the cabinet shall issue a new certificate of title with the words "rebuilt vehicle" printed on the face of the title. The brand shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for that motor vehicle.

(3) If ownership of a motor vehicle has been transferred to an insurance company through payment of damages, the insurance company making the payment of damages shall be deemed the owner of the vehicle.

(4) The owner of a water damaged vehicle shall make application to the cabinet for a salvage certificate of title as provided for in KRS 186A.520. The owner of a vehicle with a brand from another jurisdiction identifying the vehicle as water damaged or other similar designation who is making application for a Kentucky title shall be issued a title with the words "water damaged" printed on the face of the title.

(5) A Kentucky salvage certificate of title may be issued from an out-of-state junking certificate or other ownership document bearing a designation of "junk," "unrebuildable," or other similar classification with the following provisions:

(a) The out-of-state junking certificate of title or other ownership certificate shall be an original, secure document.

(b) The applicant shall submit a minimum of two (2) photographs of the motor vehicle showing the damage to the motor vehicle. The photographs shall be included in the application for a salvage certificate of title.

(c) The applicant shall submit a minimum of two (2) estimates of damage verifying that the condition of the vehicle which has been issued the junking certificate constitutes less than seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Auto Dealers' Association N.A.D.A. price guide.

(6) (a) When an insurance company makes a claim settlement on a vehicle that has been stolen and recovered, if the vehicle meets the definition of a salvage vehicle as set forth in KRS 186A.520, the company shall apply for a salvage certificate of title as provided for in KRS 186A.520. Upon receipt of this information, the cabinet shall

issue the company a certificate of title to replace a salvage certificate of title. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A regarding the forms and any additional information which insurance companies shall be required to obtain and submit when seeking a certificate of title to replace a salvage certificate of title.

(b) In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in KRS 186A.520. The owner shall apply for a salvage certificate of title within three (3) working days of the agreed settlement. ***This subsection shall not apply to hail-damaged vehicles under Section 1 of this Act.***

(c) An insurance company shall not refuse coverage to, and shall not reclassify coverage of, a vehicle that has been issued a rebuilt title pursuant to the provisions of this section.

(7) A motor vehicle owner or a motor vehicle dealer licensed in this state who offers for sale, trade, or transfer a motor vehicle which carries a title brand, as set forth in subsection (2) of this section, shall disclose the nature of the brand to any prospective buyer or transferee, prior to the sale, and according to the following:

(a) Dealer disclosure shall be located on the previous consumer-owner sticker provided for in KRS 190.080. The sticker notification shall appear in a color different from that of the previous consumer-owner sticker and shall be set apart from other information required by KRS 190.080. The sticker wording shall be printed in at least ten (10) point, bold face type, on a background of obviously different color, and shall include the following: "THIS IS A REBUILT VEHICLE." This disclosure information shall not appear on previous consumer-owner stickers for vehicles that do not have a branded title. Dealer disclosure shall also be located on a buyer's notification form to be approved by the Transportation Cabinet. The form shall inform the buyer that the vehicle is a rebuilt vehicle and may include any other information the cabinet deems necessary.

(b) Nondealer disclosure shall be made in accordance with the procedures provided for in KRS 186A.060. The Department of Vehicle Regulation shall ensure that disclosure information appears near the beginning of the application for title and informs the buyer that the vehicle is a rebuilt vehicle.

(8) Failure of a dealer to procure the buyer's acknowledgment signature on the buyer's notification form or failure of any person other than a dealer to procure the buyer's acknowledgment signature on the vehicle transaction record form shall render the sale voidable at the election of the buyer. The election to render the sale voidable shall be limited to forty-five (45) days after issuance of the title. This provision shall not bar any other remedies otherwise available to the purchaser.

(9) The notification provisions of this section shall not apply to motor vehicles more than ten (10) model years old.

(10) The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from July 15, 1994. The administrative regulations may include designation of additional brands which provide significant information to the owner.

Approved March 29, 2000

CHAPTER 231

(HB 471)

AN ACT providing for the reclassification of cities.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of White Plains, in Hopkins County, is such as to justify its being classified as a city of the fifth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Albany, in Clinton County, is such as to justify its being classified as a city of the fourth class;

NOW, THEREFORE,

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

Section 1. The City of White Plains, in Hopkins County, is transferred from the sixth to the fifth class of cities.

Section 2. The City of Albany, in Clinton County, is transferred from the fifth to the fourth class of cities.

Approved March 29, 2000

CHAPTER 232

(HB 483)

AN ACT relating to state traffic school.

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

Section 1. KRS 186.574 is amended to read as follows:

(1) The Transportation Cabinet shall establish a state traffic school for new drivers and for traffic offenders. The school shall be composed of uniform education and training elements designed to create a lasting influence on new drivers and a corrective influence on traffic offenders. District Courts may in lieu of assessing penalties for traffic offenses, other than for KRS 189A.010, sentence offenders to state traffic school and no other. The Transportation Cabinet shall enroll a person in state traffic school who fails to complete a driver's education course pursuant to KRS 186.410(5).

(2) If a District Court stipulates in its judgment of conviction that a person attend state traffic school, the court shall indicate this in the space provided on the abstract of conviction filed with the Transportation Cabinet. Upon receipt of an abstract, the Transportation Cabinet, or its representative, shall schedule the person to attend state traffic school. Failure of the

person to attend and satisfactorily complete state traffic school in compliance with the court order, may be punished as contempt of the sentencing court.

(3) The Transportation Cabinet shall supervise, operate, and administer state traffic school, and shall promulgate administrative regulations pursuant to KRS Chapter 13A governing facilities, equipment, courses of instruction, instructors, and records of the program. In the event a person sentenced under subsection (1) of this section does not attend or satisfactorily complete state traffic school, the Transportation Cabinet may deny that person a license or suspend the license of that person until he reschedules attendance or completes state traffic school, at which time a denial or suspension shall be rescinded.

(4) Persons participating in the state traffic school as provided in this section shall pay a fee of fifteen dollars ($15) to defray the cost of operating the school, except that if enrollment in state traffic school is to satisfy the requirement of KRS 186.410(4)(c), a fee shall not be assessed. Any funds collected pursuant to KRS 186.535(1) that are dedicated to the road fund for use in the state driver education program may be used for the purposes of state traffic school.

(5) The following procedures shall govern persons attending state traffic school pursuant to this section:

(a) A person convicted of any violation of traffic codes set forth in KRS Chapters 177, 186, or 189, and who is otherwise eligible, may in the sole discretion of the trial judge, be sentenced to attend state traffic school. Upon payment of the fee required by subsection (4) of this section, and upon successful completion of state traffic school, the sentence to state traffic school shall be the person's penalty in lieu of any other penalty, except for the payment of court costs;

(b) Except as provided in KRS 189.990(28), a person shall not be eligible to attend state traffic school who has been cited for a violation of KRS Chapters 177, 186, or 189 that has a penalty of mandatory revocation or suspension of an offender's driver's license;

(c) Except as provided in KRS 189.990(28), a person shall not be eligible to attend state traffic school for any violation if, at the time of the violation, the person did not have a valid driver's license or the person's driver's license was suspended or revoked by the cabinet;

(d) Except as provided in KRS 189.990(28), a person shall not be eligible to attend state traffic school more than once in any ***one (1)***[~~two (2)~~] year period, unless the person wants to attend state traffic school to comply with the driver education requirements of KRS 186.410; and

(e) The cabinet shall notify the sentencing court regarding any person who was sentenced to attend state traffic school who was ineligible to attend state traffic school. A court notified by the cabinet pursuant to this paragraph shall return the person's case to an active calendar for a hearing on the matter. The court shall issue a summons for the person to appear and the person shall demonstrate to the court why an alternative sentence should not be imposed.

Approved March 29, 2000

CHAPTER 233

(HB 501)

AN ACT relating to anhydrous ammonia.

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

Section 1. KRS 250.482 is amended to read as follows:

As used in KRS 250.483 to 250.488:

(1) "Department" means the Department of Insurance;

(2) "Division" means the Division of Fire Prevention in the Department of Housing, Buildings and Construction.

(3) "Anhydrous ammonia" refers to the compound formed by the combination of the two (2) gaseous elements, nitrogen and hydrogen, in the proportion of one (1) part nitrogen to three (3) parts of hydrogen by volume. Anhydrous ammonia is ammonia gas in compressed or liquefied form, and is not aqueous ammonia.

(4) "Approved container" means a container for anhydrous ammonia which meets or exceeds the requirements of the Federal law or regulation for the storage and handling of anhydrous ammonia.

Section 2. KRS 250.483 is amended to read as follows:

The Division of Fire Prevention in the Department of ***Housing, Buildings and Construction***~~[Insurance]~~ shall make, promulgate, and enforce ***administrative*** regulations setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing anhydrous ammonia. ***The administrative***~~[Said]~~ regulations shall be such as are reasonably necessary for the protection and safety of the public and persons using such materials, and shall be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter.~~[Such regulations shall be adopted by the division after a public hearing thereon.]~~ ***Administrative*** regulations in substantial conformity with the published standards of the ***Fertilizer***~~[Agricultural Ammonia]~~ Institute and the Compressed Gas Association for the design, installation, and construction of containers and equipment for the storage and handling of anhydrous ammonia shall be deemed to be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter.

Section 3. KRS 250.486 is amended to read as follows:

No person, firm or corporation other than the owner of the facility and those authorized by the owner so to do, shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any anhydrous ammonia container or receptacle for any gas, compound, for any other purpose whatsoever. Any wholesaler, dealer, or handler of anhydrous ammonia or pressure liquid fertilizers that have a vapor pressure in excess of fifty (50) pounds at one hundred (100) degrees Fahrenheit shall ***be registered***~~[register annually]~~ with the division~~[, and shall pay an annual license fee based on the volume of the previous year's business. The license fee shall be at least thirty-five dollars ($35); operators who have handled more than two hundred and fifty (250) tons during the previous year shall pay an additional amount equal to fifteen cents ($0.15) for each ton handled in excess of two hundred and fifty (250). The application for license shall be~~

~~accompanied by an affidavit stating the applicant's volume of business. The division or its representative shall have the privilege of checking the validity of the information contained in the affidavit]~~.

SECTION 4. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person to knowingly possess anhydrous ammonia in any container other than an approved container.

(2) The provisions of this section shall not apply to trained chemists working in properly equipped research laboratories in education, government, or corporate settings.

(3) It shall be an affirmative defense to prosecution under this section that the anhydrous ammonia is possessed for the sole purpose of agricultural use.

SECTION 5. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person to tamper with equipment, containers, or facilities used for the storage, handling, transporting, or application of anhydrous ammonia.

(2) Tampering occurs when any person who, having no right to do so, or any reasonable ground to believe that he has the right for a legitimate or legal purpose, transfers or attempts to transfer anhydrous ammonia to another container, or intentionally or wantonly defaces, destroys, or damages the equipment, container, or facility containing anhydrous ammonia.

SECTION 6. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

Any person tampering with anhydrous ammonia equipment, containers or storage facilities in violation of Section 5 of this Act shall not have a cause of action against the owner of the equipment, container, or facility; any person responsible for the installation, maintenance, or operation of the equipment, container or facility; any person lawfully selling anhydrous ammonia; or any person lawfully purchasing anhydrous ammonia for agricultural purposes for damages arising out of the tampering.

Section 7. KRS 250.991 is amended to read as follows:

(1) Except as provided in Section 4 or Section 5 of this Act, any person who violates any provision of KRS 250.482 to 250.488 shall be fined not more than five hundred dollars ($500).

(2) Any person who knowingly possesses anhydrous ammonia in a container other than an approved container in violation of Section 4 of this Act is guilty of a Class D felony unless it is proven that the person violated Section 4 of this Act with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.

(3) A violation of Section 5 of this Act is a Class D felony unless it is proven that the person violated Section 5 of this Act with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.

Section 8. KRS 514.030 is amended to read as follows:

(1) Except as otherwise provided in KRS 217.181 or 218A.1418, a person is guilty of theft by unlawful taking or disposition when he unlawfully:

(a) Takes or exercises control over movable property of another with intent to deprive him thereof; or

(b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

(2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars ($300) or more,~~[or unless the property is a firearm (regardless of the value of the firearm),]~~ in which case it is a Class D felony***; or unless:***

(a) The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony; or

(b) The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.

Section 9. KRS 514.110 is amended to read as follows:

(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.

(2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.

(3) Receiving stolen property is a Class A misdemeanor unless the value of the property is three hundred dollars ($300) or more,~~[or unless the property is a firearm (regardless of the value of the firearm),]~~ in which case it is a Class D felony***; or unless:***

(a) The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony; or

(b) The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432 in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.

Section 10. The following KRS sections are repealed:

250.487 Disposition of license fees.

250.488 Order to correct violation -- Injunctive remedies.

Approved March 29, 2000

CHAPTER 234

(HB 540)

AN ACT relating to reorganization.

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

Section 1. KRS 15.280 is amended to read as follows:

(1) A Criminal Justice Statistical Analysis Center is hereby created as part of the ***Kentucky Justice Cabinet***~~[office of the Attorney General of Kentucky]~~.

(2) ~~[The Attorney General of Kentucky may, by memorandum of agreement, provide for the operation of a Criminal Justice Statistical Analysis Center by the Urban Studies Center of the College of Urban and Public Affairs, University of Louisville, under the authority of the Attorney General.]~~The Criminal Justice Statistical Analysis Center shall provide its reports and recommendations to the Governor ***and the General Assembly*** through the ***Kentucky Criminal Justice Council***~~[Office of the Attorney General]~~.

(3) The Criminal Justice Statistical Analysis Center shall:

(a) Improve the quality and usefulness of criminal justice statistics and research results that are disseminated to citizens, public agencies, and private agencies in Kentucky by:

1. Conducting periodic needs assessments of criminal justice agencies;

2. Analyzing offender-based tracking data;~~[and]~~

3. Conducting specialized studies that use statistical data which are presently maintained by state and local agencies in Kentucky; ***and***

4. Supporting the implementation of a statewide Unified Criminal Justice Information System through the Unified Criminal Justice Information System Committee of the Kentucky Criminal Justice Council.

(b)~~[Increase storage capacity and enhance accessibility of criminal justice statistical data by:~~

~~1. Assisting in establishing a statewide computerized database; and~~

~~2. Maintaining selective criminal justice data sets at the University of Louisville for ongoing analysis and dissemination;~~

~~(c)]~~ Increase the ability of statistical users to translate data and research results into practice by:

1. Publishing research results and statistical data that are requested by criminal justice agencies; ***and***

2. Conducting conferences and workshops on the use of statistical information;~~[and~~

~~3. Establishing a statewide statistical association;]~~

(c)[~~(d)~~] Improve the relationship between citizens and criminal justice agencies of Kentucky by conducting citizen surveys of the needs, attitudes, and behavior relating to crime and justice; and

(d)[~~(e)~~] Strengthen the relationship between the Kentucky criminal justice agencies and the National Bureau of Justice Statistics, United States Department of Justice, by:

1. Providing justice statistics to the Bureau of Justice Statistics as required; and

2. Serving as a clearinghouse for Bureau of Justice Statistics materials.

(4) The ***Kentucky Justice Cabinet***[~~Office of the Attorney General~~] may expend any federal grants or federal funds provided for carrying out the functions and authority as assigned in this section. Further, the ***Kentucky Justice Cabinet through the Kentucky Criminal Justice Council***[~~Office of the Attorney General~~] may employ such employees as may be necessary to fulfill the duties, responsibilities, and functions assigned by this section.

Approved March 29, 2000

CHAPTER 235

(HB 506)

AN ACT relating to elementary and secondary schools.

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

Section 1. KRS 158.175 is amended to read as follows:

(1) As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, the board of education of a local school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, including the freedom of religion symbolized by the recitation of the Lord's prayer.

(2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in the pledge of allegiance to the flag of the United States at the commencement of each school day.

(3) The Kentucky Board of Education shall develop a program of instruction relating to the flag of the United States of America, including instruction in etiquette, the correct use and display of the flag, and other patriotic exercises as may be related. This program of instruction shall be provided to each public school for use in its course of instruction. The program of instruction, at a minimum, shall include the provisions of 4 U.S.C. secs. 1 to 3, and 4 U.S.C. secs. 5 to 9.

(4)[~~The policy shall include a plan for incorporating instruction concerning the proper display of and respect for the flag of the United States and the flag of Kentucky into the social studies curriculum.~~

~~(3)]~~ The board of education of each local school district may purchase or otherwise acquire and provide for display in each classroom copies of the Declaration of Independence, the Gettysburg Address, and other documents the local board deems significant to the history of Kentucky and the United States.

(5)~~[(4)]~~ At the commencement of the first class of each day in all public schools, the teacher in charge of the room may announce that a moment of silence or reflection not to exceed one (1) minute in duration shall be observed.

Approved March 29, 2000

CHAPTER 236

(HB 620)

AN ACT relating to private employment agencies.

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

Section 1. The following KRS sections are repealed:

340.010 Definitions.

340.020 Permit to operate employment agency.

340.030 Application for permit -- Fees -- Refusal or cancellation.

340.040 Place of business to be stated in permit -- Records and reports -- Permit and law to be posted.

340.043 Surety bond required -- Action on bond.

340.050 Restrictions on operation -- Sample copy of contract forms to be filed.

340.053 Restriction on fees and deposits -- Prohibited operations -- Advertising restrictions.

340.070 Enforcement of law -- Inspections -- Access to records -- Administrative regulations -- Hearings.

340.170 Kentucky Employment Advisory Council -- Membership -- Meetings -- Powers and duties.

340.990 Penalties.

Approved March 29, 2000

CHAPTER 237

(HB 662)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Because the posting of the Ten Commandments in a public school building is a lawful posting of a historical document under KRS 158.195, no liability insurer shall refuse to pay under the terms of the policy an insured who is sued for posting the Ten Commandments in compliance with KRS 158.195 in a public school building on the grounds that this act by the insured constitutes an illegal act for which the insurer is not liable to pay under the terms of the policy.

Approved March 29, 2000

CHAPTER 238

(HB 733)

AN ACT relating to professional engineers and land surveyors.

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

Section 1. 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 the Franklin Circuit Court to enjoin any person, business entity, or combination thereof in violation of KRS 322.020 or KRS 322.060; and

(15)~~[(14)]~~ 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.

Section 2. KRS 322.340 is amended to read as follows:

(1) Each professional engineer or professional land surveyor shall, upon licensure, obtain a seal or stamp of the design authorized by the board, bearing his or her name, license number, and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor."

(2) ***Use of the stamp, seal, or signature in an electronic transaction shall be conducted in accordance with administrative regulations promulgated by the board under subsection (13) of Section 1 of this Act.***

(3) The seal or stamp, signature, and the date shall be used to provide certification for all reports, specifications, drawings, and plans, if presented to a client or any public or governmental agency. Reproduction of original signatures shall be adequate to meet the requirements of this subsection.

~~[(3) No report, specification, drawing, or plan furnished on electronic media shall include, or have affixed thereto, an electronic reproduction of the stamp, seal, or signature.~~

~~(a) An original seal or stamp, signature, and the date shall be placed on a printed copy produced by electronic media for all reports, specifications, drawings, and plans.~~

~~(b) The copy produced by electronic media shall have the following inserted in lieu of an original seal or stamp, signature, and date: "This shall not be considered a certified document. This document, originally issued, sealed, and signed by (name of sealer), Kentucky Professional (Engineer or Land Surveyor), No. (License Number), on (date of sealing or stamping), shall not be used in lieu of a certified document."]~~

(4) The seal or stamp and signature shall be used by licensees only if the work being stamped was under the licensee's complete direction and control.

(5) Every survey plat and physical description prepared by a professional land surveyor and submitted to a client or any public or governmental agency shall display the certification by the professional land surveyor under whose supervision the plat or description was prepared.

(6) It shall be unlawful for a licensee to affix, or permit to be affixed, his or her seal, stamp, or signature to any document described in subsections (2), (3), or (5) of this section:

(a) After the expiration of a license; or

(b) For the purpose of aiding or abetting any other person to evade or attempt to evade any provisions of this chapter.

(7) A professional engineer shall check and have complete dominion and control of the design and engineering work of any engineer not licensed to practice in this state. Complete dominion and control shall include possession of the sealed and signed reproducible construction documents with all supporting design calculations, indicating all changes in the design.

Approved March 29, 2000

CHAPTER 239

(HB 696)

AN ACT relating to marketing of agricultural products.

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

Section 1. KRS 260.015 is amended to read as follows:

(1) The Commissioner shall establish, if an appropriation is made for the purpose, a logo or labeling statement for use in identifying agricultural products that have been grown, processed, or manufactured in this state. The Commissioner may develop labeling statements that apply to specific marketing or promotional needs. One (1) version of the labeling statement may identify food products certified by the department as organically grown in this state. The agriculture logo or labeling statement may be used on processed or manufactured products produced in this state.

(2) The logo or labeling statement shall not be used without a license from the Commissioner, except that wholesalers and retailers may use the logo or labeling statement for displaying and advertising products that qualify for use of the logo or labeling statement.

(3) The logo or labeling statement shall not supersede or replace any federal or state label or grade statement that is required by law.

(4) A person shall not use the agricultural logo or labeling statement without an annual license from the Commissioner.~~[The Commissioner shall issue a license for a fee of five dollars ($5), and the Commissioner may charge a late fee of ten dollars ($10) for renewal of a license that has expired thirty (30) days after the date of renewal. The logo fund account is established within the department. All license fees, receipts, and penalties collected under the provisions of this section shall be credited to the fund for use in implementing and enforcing this section and to advertise and promote the agriculture logo.~~

~~(5) With the concurrence of a majority of program licensees, a fee equivalent to one-tenth of one percent (.001%) of the wholesale or retail value of all products marketed with the~~

~~benefit of the logo or labeling statement may be assessed all users of the logo or labeling statement, and the proceeds shall be used by the department exclusively for the purpose of advertising and promoting the logo or labeling statement. The assessed fee shall be payable on a quarterly basis and shall be delinquent if not paid within thirty (30) days following a particular quarter. Chronic delinquency or nonpayment shall be just cause for removal from the program.]~~

(5)~~[(6)]~~ In order to accomplish the purposes of this section, the Commissioner may participate jointly with private persons in appropriate logo programs and projects and may enter into contracts necessary to carry out those programs and projects.

(6)~~[(7)]~~ If the logo program is undertaken, the Department of Agriculture shall provide assistance to those persons or businesses that wish to use the Kentucky logo.

(7)~~[(8)]~~ The Commissioner may promulgate administrative regulations as may be necessary to authorize the use and licensing of the agriculture logo or labeling statement.

(8)~~[(9)]~~ It shall be the duty of the department, or upon the request of the Commissioner of Agriculture, of the Attorney General, to bring an action for the recovery of the penalties provided in this section, and to bring an action for an injunction against any person, corporation, enterprise, or business entity violating or threatening to violate any of the provisions of this section or the administrative regulations promulgated pursuant to this section.

(9)~~[(10)]~~ A person who is required to have a license to use the Kentucky agricultural pride logo or labeling statement and uses the logo or labeling statement without a license after being notified by the Commissioner that a license is required shall be liable to a civil penalty not to exceed the sum of one hundred dollars ($100) for the violation, and an additional civil penalty not to exceed one hundred dollars ($100) for each day during which the violation continues. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request, by the Attorney General.

Approved March 29, 2000

CHAPTER 240

(HB 758)

AN ACT relating to the licensing of veterinarians.

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

Section 1. KRS 321.193 is amended to read as follows:

(1) The board shall issue a license as a "veterinarian" to an applicant who meets the following requirements:

(a) Has paid the application fee and the appropriate examination fee~~[to the board]~~;

(b) Is a person of good moral character;

(c) Has received a degree from a veterinary college approved by the board; ***and***

(d) Has achieved a passing score, as set by the board, on~~[all portions of the]~~ examinations required by ***administrative regulation promulgated by*** the board~~[; and~~

~~(e) Has attended a board sponsored orientation program and oral interview]~~.

(2) The application fee for licensure and examination fee shall be promulgated by administrative regulation of the board.

~~[(3) The examination shall consist of the following parts:~~

~~(a) The National Board Examination for Veterinary Medical Licensing;~~

~~(b) The Clinical Competency Test in Veterinary Medicine; and~~

~~(c) A state examination which covers applicable state and federal law and administrative regulations relative to the practice of veterinary medicine in the Commonwealth of Kentucky.~~

~~(4) All candidates for licensure shall pass all portions of the examination before being issued a license to practice. Candidates who fail to achieve a passing score in one (1) or more areas shall be required to retake and achieve a passing score on only those portions of the examination on which they have previously failed to achieve a passing score.]~~

Approved March 29, 2000

CHAPTER 241

(HB 768)

AN ACT relating to household goods certificates.

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

Section 1. KRS 281.624 is amended to read as follows:

(1) The term "household goods certificate" means a certificate granting authority to operate as an irregular route common carrier transporting personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is:

(a)~~[(1)]~~ Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or

(b)~~[(2)]~~ Arranged and paid for by another party.

(2) The department, in granting a motor carrier authority under KRS 281.630(1), shall have the right to designate the situs of the motor carrier's office and terminal facilities from which the carrier may operate. A designation shall not deny the motor carrier the use of its offices and terminal facilities in existence at the time of the grant of the authority. Any subsequent change of situs or additional situs shall only be granted after application by the motor carrier to the department in the same manner as other applications made under KRS 281.625.

Approved March 29, 2000

CHAPTER 242

(HB 780)

AN ACT relating to designation of Kentucky National Guard Day.

WHEREAS, the members of the Kentucky National Guard have unhesitatingly answered the call to serve in conflicts such as the War of 1812, the Mexican War, in both the Union and Confederate armies in the Civil War, the Spanish-American War, the Mexican border wars, World War I, World War II, the Korean War, Vietnam, the Persian Gulf, Somalia, Rwanda, and Bosnia-Herzegovina; and

WHEREAS, the Kentucky National Guard continues to train and maintain readiness for war, as well as answering the call of the people of the Commonwealth by responding to disasters as a result of tornadoes, snow storms, and floods; and

WHEREAS, the Kentucky National Guard keeps peace during times of civil conflict, assisting the state's law enforcement agencies engaged in the war on drugs; and

WHEREAS, on June 24, 1792, the Militia Act was signed into law by Governor Isaac Shelby, which recognized the formation of a Kentucky Militia;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

The twenty-fourth day of June of each year is designated as Kentucky National Guard Day in the Commonwealth of Kentucky.

Approved March 29, 2000

CHAPTER 243

(HB 957)

AN ACT relating to floodplains and declaring an emergency.

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

Section 1. KRS 151.230 is amended to read as follows:

(1) The cabinet may establish minimum standards by administrative regulation for floodplain management. Except in local governments containing a city of the first class, local governments may establish their own standards by ordinance.

(2) In counties containing a city of the first class that have adopted a floodplain ordinance, standards relating to substantial improvements to a structure damaged by flood waters shall not be more restrictive than that prescribed by the cabinet.

(3) For purposes of county administrative regulations and ordinances relating to floodplain management, "substantial improvement" as used in subsection (2) of this section shall mean any combination of repairs, reconstruction, alteration, or improvements to a

structure taking place during a one (1) year period in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure.

(4) On the effective date of this Act, for purposes of floodplain management, all property shall be assessed by the property valuation administrator at one hundred percent (100%) of its fair market value with no loss of value to land or structures incurred as a result of any previous flood damage prior to the effective date of this Act. The fair market value of a structure shall be reestablished as that value calculated by the property valuation administrator on or before December 30 of each year.~~[Whenever the cabinet prescribes a standard by rule or regulation, such rule or regulation shall establish a minimum requirement concerning the matter covered thereby and shall be construed in relation to a local law, rule or regulation.]~~

(5) The provisions of subsections (3) and (4) of this section shall expire on December 31, 2002, unless reenacted by the local governing body. Nothing in this section, shall prohibit a county containing a city of the first class from amending its own floodplain ordinance at any time.

Section 2. Whereas recent flood damage combined with restrictive floodplain management practices are making it nearly impossible for citizens of the Commonwealth to make necessary and affordable improvements to their homes, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 29, 2000

CHAPTER 244

(HCR 7)

A CONCURRENT RESOLUTION confirming the appointment of Helen W. Mountjoy to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has reappointed Helen W. Mountjoy to represent the 2nd Supreme Court District on the Kentucky Board of Education for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Helen W. Mountjoy's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Helen W. Mountjoy meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Helen W. Mountjoy to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Helen W. Mountjoy, 449 Browns Valley Road, Utica, Kentucky 42376, in writing, of the General Assembly's action.

Approved March 29, 2000

CHAPTER 245

(HCR 20)

A CONCURRENT RESOLUTION confirming the reappointment of Laken Cosby, Jr., to the Kentucky Board of Education.

WHEREAS, in accordance with KRS 156.029, the Governor has reappointed Laken Cosby, Jr., as a member of the Kentucky Board of Education representing the Fourth Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Laken Cosby, Jr.'s name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Laken Cosby, Jr., meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Laken Cosby, Jr., to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, in accordance with KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Laken Cosby, Jr., 2629 Algonquin Parkway, Louisville, Kentucky 40210, in writing, of the General Assembly's action.

Approved March 29, 2000

CHAPTER 246

(HCR 108)

A CONCURRENT RESOLUTION urging the President of the United States and the Congress to support Kentucky Senator Jim Bunning in his effort to direct additional federal cleanup funding to Kentucky and obtain passage of the Clean the Land and Environment of Appalachia Now (CLEAN) Act.

WHEREAS, abandoned mines are a serious environmental hazard in Kentucky and many other states; and

WHEREAS, the United States Environmental Protection Agency (EPA) has identified drainage from abandoned coal mines as the number-one water quality problem in Appalachia; and

WHEREAS, an estimated ten percent (10%) of Kentucky residents do not have safe drinking water due to contamination from abandoned mine runoff; and

WHEREAS, the Surface Mining Control and Reclamation Act of 1977 authorized the Abandoned Mine Reclamation Fund to pay the reclamation costs of abandoned coal mines; and

WHEREAS, the Abandoned Mine Land (AML) Reclamation Fund has incurred a $1,200,000,000 surplus; and

WHEREAS, it is estimated that if the AML fund is distributed directly to Kentucky and the other mining states, Kentucky will receive over $90,000,000 for land and water reclamation, as compared to the $17,000,000 that is currently received; and

WHEREAS, the AML fund has been used in the past to offset the federal budget deficit, and now we have a federal surplus; and

WHEREAS, United States Senator Jim Bunning of Kentucky introduced the Clean the Land and Environment of Appalachia Now (CLEAN) Act that would grant the full amount of the AML fund to the coal-producing states to assist with the costs associated with the cleanup of abandoned coal mines; and

WHEREAS, the CLEAN Act would address the environmental problems associated with abandoned coal mines, improve the quality of water in mining areas including Kentucky, and restore the natural beauty of the area;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The President of the United States and the Congress are urged to support United States Senator Jim Bunning in his efforts to gain passage of the Clean the Land and Environment of Appalachia Now (CLEAN) Act.

Section 2. A copy of this Concurrent Resolution is hereby directed to be transmitted to the President of the United States and to each member of the Congressional delegation representing the people of the Commonwealth of Kentucky.

Approved March 29, 2000

CHAPTER 247

(HJR 61)

A JOINT RESOLUTION authorizing and directing the University of Kentucky, the Bluegrass Area Development District, and the Lake Cumberland Area Development District to conduct a study relating to the feasibility of establishing a state park and the cost of constructing state lodges at Lake Herrington and at General Burnside Island State Park.

WHEREAS, Lake Herrington, stretching across portions of Mercer, Garrard, and Boyle Counties, was created in the 1920's by damming up the Dix River. The lake is 3600 acres, 32 miles long and almost 400 feet deep; and

WHEREAS; General Burnside State Park is a 430-acre island surrounded by 50,250-acre Lake Cumberland, named for the sideburn-whiskered Civil War general Ambrose Burnside and has the unique distinction of being the only island park in the Kentucky State Park's system; and

WHEREAS, Lake Herrington and General Burnside Island are outstanding and untapped natural resources in the state of Kentucky; and

WHEREAS, the natural resources and beauty found in the Lake Herrington and General Burnside Island areas are unique treasures in the Commonwealth and should be shared and celebrated by all citizens of the state; and

WHEREAS, there is potential for tourism in the counties of Jessamine, Mercer, Garrard, and Boyle Counties in the Lake Herrington area because not only of the lake but also cultural, historical, recreational, and other events in Danville, Harrodsburg, and other nearby communities; and

WHEREAS, there is also potential for additional tourism in the General Burnside Island area of Lake Cumberland, Pulaski and Wayne Counties and the city of Burnside and surrounding communities; and

WHEREAS, the General Assembly needs information on the feasibility and cost of establishing Lake Herrington as a Kentucky State Park and constructing state park lodges at Lake Herrington and General Burnside Island State Park in order to objectively and responsibly determine whether to proceed;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The University of Kentucky, jointly with the Bluegrass Area Development District and the Lake Cumberland Area Development District shall conduct a comprehensive study of:

(1) The feasibility and cost of purchasing land and establishing a new state park at Lake Herrington;

(2) The feasibility and cost of constructing a state park lodge at Lake Herrington;

(3) The feasibility and cost of constructing a state park lodge at General Burnside Island State Park;

(4) The feasibility and cost of constructing a state park lodge at Nolin State Park; and

(5) The feasibility and cost of purchasing land and establishing a state park in the Barren River Area Development District.

Section 2. The study shall begin not later than August 1, 2000, and the report and recommendations shall be submitted to the Interim Joint Committee on Economic Development and Tourism not later than the interim committee's regularly scheduled meeting in September, 2001.

Approved March 29, 2000

CHAPTER 248

(SB 101)

AN ACT relating to county budgets.

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

Section 1. KRS 68.260 is amended to read as follows:

(1) The proposed county budget, tentatively approved by the fiscal court and approved by the state local finance officer as to form and classification shall be submitted to the fiscal court for adoption not later than July 1 of each year~~[or within ten (10) days after receipt of the certified assessment from the Revenue Cabinet, as provided in KRS 133.180, whichever shall be later]~~. The budget as presented and amended shall be adopted as of July 1. The county judge/executive shall cause a copy of the proposed budget to be posted in a conspicuous place in the courthouse near the front door, and be published pursuant to KRS Chapter 424, at least seven (7) days before final adoption by the fiscal court.

(2) Any taxpayer or group of taxpayers may petition the fiscal court in respect to the budget or any part thereof before final adoption.

(3) If the fiscal court rejects any part of the proposed budget, it shall make the changes in the nature and amount of funds a majority of the court considers desirable; but it has no power to make any change in the form or classification of the budget units or subdivisions of units.

(4) The fiscal court may amend the budget on the basis of the assessment from the Revenue Cabinet. The fiscal court shall finalize the budget within thirty (30) days of the receipt of the certified assessment.

Approved March 30, 2000

CHAPTER 249

(HB 308)

AN ACT relating to public utilities.

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

Section 1. KRS 278.495 is amended to read as follows:

(1) As used in this section, "master meter system" means a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.

(2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:

(a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail; or

(b) Comprising a master meter system.

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce ***any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. sec. 60101 et. seq., or any amendments thereto***~~[the Natural Gas Pipeline Safety Act of 1968]~~, and may promulgate administrative regulations consistent with ***federal pipeline safety laws***~~[that Act]~~ in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth. In exercising this authority, however, the commission shall consider the impact of any action it takes on small businesses engaged in the installation and servicing of gas lines, master meter systems, or related equipment and shall act so as to assure that no unfair competitive advantage is given to utilities over such small businesses.

Approved March 30, 2000

CHAPTER 250

(HB 259)

AN ACT relating to mechanics' liens.

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

Section 1. KRS 376.250 is amended to read as follows:

(1) When an attested copy of the lien statement and proof of the delivery of an attested copy as provided in KRS 376.240 is delivered to any public authority which has contracted for the construction or improvement of any bridge, public highway, or other public property owned by the state, a subdivision or agency thereof, or by any city, county, urban-county, or charter county government, the public authority shall endorse on the attested copy the date of its receipt, file the copy and deduct and withhold the amount thereof, plus $1.25 to cover the fee of the county clerk for filing the statement and attesting a copy, from any amount then due the contractor, and if a sufficient amount is not then due the contractor from the next payments which become due.

(2) Unless the contractor, within thirty (30) days from the date of the delivery of the attested copy, files with the public authority a written protest putting in issue the correctness of the amount due the lien claimant or the liability of the fund for payment thereof, the amount withheld shall be paid by the public authority to the lien claimant and charged to the account of the contractor, which payment shall operate as a pro tanto release of the public authority from any claim of the contractor under the contract for the amount so paid. The filing in the county clerk's office of the statement of lien provided for in subsection (2) of KRS 376.230 shall be constructive notice to the contractor of the filing of the claim.

(3) If the contractor files a written protest as provided in subsection (2) of this section, the public authority with whom the protest is filed shall endorse thereon the date of its receipt**.** ***The public authority shall promptly send written notice of the protest to the lien claimant by certified mail, return receipt requested***~~[,]~~ and shall not pay over to the lien claimant any of the money withheld from the contractor until authorized to do so by the contractor or until directed to do so by an order or judgment of court.

(4) If suit is not instituted by the lien claimant for the enforcement of the lien and summons in the suit is not served on the public authority or its chairman within thirty (30) days after the

written notice of the protest is mailed to the claimant[~~filing by the contractor of the protest~~], then the lien shall automatically be released and the funds withheld pursuant to the filing of the lien statement shall be released and promptly paid to the contractor. If suit is filed and summons served within the time provided, the payment of the funds shall be withheld until ordered to be released or paid over by an order or judgment of the court, and then paid as directed by the order or judgment.

(5) All suits for the enforcement of these liens on public funds shall be instituted in the Circuit Court of the county in which is located the property on which the improvement is made, except where the property is owned by a public university. Where the property is owned by a public university, the suit shall be instituted in the Circuit Court of the county in which is located the main campus of the public university. This court shall have exclusive jurisdiction for the enforcement of liens asserted against the public funds due the contractors, subject to the same rights of appeal as in other civil cases.

SECTION 2. A NEW SECTION OF KRS 376.195 TO 376.260 IS CREATED TO READ AS FOLLOWS:

(1) Any person contracting with the public authority for the furnishing of any improvements or services for which a lien is created by KRS 376.210 may, at any time before a judgment is rendered enforcing the lien, execute before the county clerk in the county in which the lien was filed a bond for double the amount of the lien claimed.

(2) The bond executed under subsection (1) of this section shall be subject to the following conditions:

(a) The bond shall be approved by the clerk only if the bond is secured by:

1. Cash;

2. A letter of credit from a bank; or

3. Surety insurance as defined by KRS 304.5-060 that is issued by a licensed insurer; and

(b) The bond shall require that the obligor satisfy any judgment that may be rendered in favor of the person asserting the lien.

(3) The bond shall be preserved by the clerk, and upon its execution, the lien provided by KRS 376.210 shall be discharged.

(4) The person asserting the lien may make the obligors in the bond parties to any action to enforce his claim, and any judgment received may be against any of the obligors on the bond.

Approved March 31, 2000

CHAPTER 251

(HB 78)

AN ACT relating to reorganization.

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

Section 1. The General Assembly confirms Executive Order 98-1377, dated October 14, 1998, but this confirmation shall only extend until December 9, 2003, and thereafter the terms of that order shall expire and be without effect.

Approved March 31, 2000

CHAPTER 252

(HB 290)

AN ACT relating to certified professional counselors.

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

Section 1. 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 certification.

(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 may conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the function of KRS 335.500 to 335.599.

(5) The board may issue certificates to qualified candidates.

(6) The board may renew certificates and may require up to ten (10) continuing education hours as a condition for renewal each year.

(7) The board may suspend or revoke certificates, 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 Franklin Circuit Court to enjoin violation of KRS 335.505(1).

(9) The board may grant retired status or inactive status to a certificate 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 person's duties and fix their compensation.

(11) The board shall promulgate by administrative regulation a code of ethics for and standards of practice of certified professional counselors.

(12) The board may enter into reciprocal agreements with certified professional counseling boards ***or licensed professional counseling boards***[~~in other states with certification qualifications and requirements as high as Kentucky's~~].

SECTION 2. A NEW SECTION OF KRS 335.500 TO 335.599 IS CREATED TO READ AS FOLLOWS:

(1) The board shall certify an applicant for endorsement who:

(a) Has received a master's, specialist, or doctoral degree in counseling or a related field from a regionally accredited institution with graduate coursework in the following:

1. The helping relationship, including counseling theory and practice;

2. Human growth and development;

3. Lifestyle and career development;

4. Group dynamics, process, counseling, and consulting;

5. Assessment, appraisal, and testing of individuals;

6. Social and cultural foundations, including multicultural issues;

7. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

8. Research and evaluation; and

9. Professional orientation and ethics;

(b) Holds an active valid license or certificate from another state to practice as a professional counselor;

(c) Is in good standing with the certifying or licensing board of that state;

(d) Is of good moral character;

(e) Has paid the application fee to the board; and

(f) Has provided the board with evidence of a minimum of three (3) years experience as a certified or licensed professional counselor.

(2) The applicant shall be exempt from:

(a) The required hours of supervised experience in the practice of counseling set out in KRS 335.525(1)(e); and

(b) The examination requirement set out in KRS 335.525(1)(f).

Section 3. KRS 335.525 is amended to read as follows:

(1) The board shall issue a "professional counselor" certificate to an applicant who:

(a) Has paid the application fee and the appropriate examination fee to the board;

(b) Is of good moral character;

(c) Has received a master's***, specialist,*** or doctoral degree in counseling ***or a related field*** from a regionally-accredited institution;

(d) Has completed a minimum of sixty (60) graduate semester hours in the following:

1. The helping relationship, including counseling theory and practice;

2. Human growth and development;

3. Lifestyle and career development;

4. Group dynamics, process, counseling, and consulting;

5. Assessment, appraisal, and testing of individuals;

6. Social and cultural foundations, including multicultural issues;

7. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

8. Research and evaluation; and

9. Professional orientation and ethics;

(e) Has completed a minimum of three thousand (3,000) hours of experience in the practice of counseling, two thousand (2,000) hours of which must have been obtained since obtaining the master's degree and must be under approved supervision. The experience shall have been performed under the general supervision of an approved supervisor and shall include, but not be limited to, a minimum of one thousand two hundred (1,200) hours of direct counseling with individuals, couples, families, or groups and a minimum of one hundred (100) hours of individual, face-to-face weekly clinical supervision with an approved supervisor. Up to one thousand (1,000) hours of the supervised experience may be obtained from a supervised practicum or internship. After January 1, 1998, all previously uncertified applicants shall complete an organized practicum or internship consisting of at least four hundred (400) hours; and

(f) Has achieved passing scores on all portions of the examinations required by the board.

(2) The application fee for certification and the examination fee shall be established pursuant to administrative regulation promulgated by the board.

Approved March 31, 2000

CHAPTER 253

(HB 300)

AN ACT relating to insurance fraud.

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

SECTION 1. A NEW SECTION OF SUBTITLE 47 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, and who knowingly engages or participates in the business of insurance in this Commonwealth, shall be guilty of a Class D felony.

(2) Any insurer that knowingly permits the participation in the business of insurance in this Commonwealth by a person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, shall be guilty of a criminal violation.

(3) Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, may engage in the business of insurance in this Commonwealth if he or she has received written consent from the commissioner, and that consent specifically refers to this subsection.

SECTION 2. A NEW SECTION OF SUBTITLE 47 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Documents, materials, or other information in the possession or control of the commissioner that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to KRS 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, unless, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsections (1) and (2) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;

(b) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, or information received with notice or the understanding that it is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information;

(c) May enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this subtitle or as a result of sharing as authorized in subsection (3) of this section.

Section 3. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

(1) "Insurer" means any person, entity, organization, or reinsurer, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation by or registration with the Department of Insurance under this chapter, and any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.

(2) "Insurance policy" or "policy" means any individual or group policy, including those defined by KRS Chapter 342, certificate, or contract of an insurer as defined in subsection (1) of this section including reinsurance affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.

(3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself to be an insured or beneficiary.

(4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.

(5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report, X-ray, test result, or other evidence of loss, injury, or expense. ***A statement may be in any form, including oral, written, and electronic transmissions.***

(6) "Division" means the Division of Insurance Fraud Investigation of the Kentucky Department of Insurance, its employees, or authorized representatives.

(7) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any fraudulent insurance act, as set forth in KRS 304.47-020(1), on a continuing basis.

Section 4. KRS 304.47-020 is amended to read as follows:

(1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he ***or she engages in any of the following, including, but not limited to, matters relating to workers' compensation***:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any~~[written or oral]~~ statement as part of, or in support of, an application for an insurance policy, ***for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium,*** knowing that ***the***~~[this]~~ statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;

(c) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;

(d) ***Knowingly and with intent to defraud or deceive,*** receives money for the purpose of purchasing insurance***,*** and ***fails to obtain insurance***~~[converts the money to the person's own benefit]~~;

(e) ***Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;***

(f) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards,~~[or]~~ insurance binders***, or any other documents that purport to evidence insurance***;

(g)~~[(f)]~~ Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(h)~~[(g)]~~ Engages in unauthorized insurance, as defined in KRS 304.11-030;

~~[(h) Knowingly and with intent to defraud or deceive, receives temporary total disability benefits while being employed in work as defined in KRS 342.0011;]~~

(i) Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or ***to the commissioner***~~[any agent thereof]~~, any~~[written or oral]~~ statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:

1. The rating of an insurance policy;

2. The financial condition of an insurer;

3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or

4. A document filed with the commissioner;

(j) Knowingly and with intent to defraud or deceive, engages in any of the following:

1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or

2. Removal, concealment, alteration, tampering, or destruction of ***money, records, or any other property or assets***~~[the assets or records]~~ of an insurer; or

(k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.

(2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars ($300), and shall be punished by:

1. Imprisonment for not more than one (1) year;

2. A fine, per occurrence, of 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; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph;

(b) Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars ($300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:

1. Imprisonment for not less than one (1) nor more than five (5) years;

2. A fine, per occurrence, of not more than ten thousand dollars ($10,000) per individual nor one hundred thousand dollars ($100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:

1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;

2. A fine, per occurrence, of not more than ten thousand dollars ($10,000) per individual nor one hundred thousand dollars ($100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or

3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.

(d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss ***due to any actions by that person***~~[under the person's actions]~~ which resulted in the adjudication of guilt***, and to the division for the cost of any investigation***. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

(3) Any ***person***~~[insurer]~~ damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover

compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

Section 5. KRS 304.47-040 is amended to read as follows:

(1) There is created within the Department of Insurance a Division of Insurance Fraud Investigation, which shall include a Workers' Compensation Branch.

(2) (a) The commissioner shall appoint qualified persons to serve as special investigators for the Division of Insurance Fraud Investigation who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.

(b) The commissioner shall appoint appropriate staff for the Workers' Compensation Branch which shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The appointments authorized by this paragraph shall be in addition to the staff employed by the division as of December 12, 1996.

(3) The special investigator may:

(a) Administer oaths and affirmations;

(b) Order the attendance of witnesses or proffering of information and documentation;

(c) Collect evidence; and

(d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:

1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;

2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and

3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.

(4) The division may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.

(5) If the information the division seeks to obtain is located outside the state, the person so requested may make it available to the division or its representative to examine at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the information on the division's behalf, and it may respond to similar requests from officials of other states.

(6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the commissioner under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.

(7) The commissioner may obtain any evidence for use in criminal investigations according to KRS 304.2-340.

Section 6. KRS 304.47-050 is amended to read as follows:

(1) Any person, other than ***those specified in subsection (2) of this section***[~~an insurer, agent, or other person licensed under this chapter, or an employee thereof~~], having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the division[~~ of Insurance Fraud Investigation~~] a report of information pertinent to this knowledge of or belief and any additional relevant information the commissioner may request.

(2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the division[~~ of Insurance Fraud Investigation~~] a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:

(a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;

(b) Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;

(c) Any private medical review committee;

(d) Any insurer, agent, or other person licensed under this chapter; and

(e) Any employee of the persons named in paragraphs (a) to (d) of this subsection.

(3) The division[~~ of Insurance Fraud Investigation~~] or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.

(4) The Department of Workers' Claims shall provide the division access to all relevant information the commissioner may request.

(5) The division[~~ of Insurance Fraud Investigation~~] shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the division of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place

of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.

(6) Notwithstanding the provisions of subsections (1) to (5) of this section, ***any person having knowledge or believing that a fraudulent insurance act or any other act that may be prohibited under this subtitle is being or has been committed,***~~[when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured]~~ may notify ***any***~~[a]~~ law enforcement agency of their knowledge or~~[reasonable]~~ belief and provide information relevant to the~~[fraudulent insurance]~~ act, ***as may be requested by that agency,*** including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss. ***Reporting to any other agency does not relieve those listed in subsection (2) of this section of their mandatory duty to report to the division.***

(7) If the information referred to in~~[subsection (6) of]~~ this section is specifically requested by ***the division, any other***~~[a]~~ law enforcement agency***,*** or ***a*** prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.

(8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 7. KRS 304.47-060 is amended to read as follows:

(1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the division~~[of Insurance Fraud Investigation]~~ or its authorized representative. No civil cause of action of any nature shall arise against the person:

(a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;

(b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle, including those designated by KRS 304.47-080;

(c) For any information furnished to or received from the Department of Workers' Claims, its agents, or employees; or

(d) For any information furnished in reports to the commissioner or the National Association of Insurance Commissioners.

(2) The commissioner or any employee or agent of the Department of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of

the commissioner or the division or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.

(3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

[~~(4) The papers, documents, reports, or evidence relative to the subject of an investigation under this subtitle, shall not be subject to public inspection for so long as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to the investigations shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of fraudulent insurance acts.~~]

Section 8. KRS 304.47-070 is amended to read as follows:

All costs of administration and operation of the ***division***[~~Insurance Fraud Unit~~] shall be borne by the Department of Insurance. Any money or other property that is awarded to the ***division***[~~Insurance Fraud Unit~~] as costs of investigation or as a fine shall be credited to the Department of Insurance, and the money shall be used to help finance the ***division***[~~Insurance Fraud Unit~~].

Section 9. KRS 304.47-080 is amended to read as follows:

(1) Every insurer admitted to do business in the Commonwealth shall maintain ***effective procedures and resources to deter and investigate fraudulent insurance acts prohibited by this subtitle, including*** a unit ***that will***[~~to~~] investigate ***suspected***[~~possible~~] fraudulent ***insurance acts***[~~claims by insureds or by persons making claims for services or repairs against policies held by insureds~~]. For the purpose of this section, "insurer" does not include reinsurers or reinsurance as defined in KRS 304.5-130.

(2) Insurers may maintain the unit required by subsection (1) of this section, using its employees or by contracting with others for that purpose.

(3) Insurers shall establish the unit required by this section no later than July 15, 1995.

(4) The unit may include the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit, hires additional employees, or contracts with another entity to fulfill the requirements of this article, the additional cost incurred shall be included as an administrative expense.

Approved March 31, 2000

CHAPTER 254

(SB 232)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, to the extent authorized by the commissioner by administrative regulation, a licensed agent, producer, broker, or insurer has the power to engage in any insurance activity that financial institutions chartered by or otherwise subject to the jurisdiction of the federal government are authorized to engage in according to federal law or regulation or by a court of competent jurisdiction.

SECTION 2. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner may enter into interstate compacts for issuing certificates of authority to insurers if the commissioner determines that :

(a) Each state participating in the compact has requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle; or

(b) The interstate compact contains requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle.

(2) In lieu of the documents required in KRS 304.3-150(1) to (14) to be filed with an application for certificate of authority, the commissioner may accept documentation in accordance with the terms of the interstate compact.

(3) The commissioner may issue certificates of authority to insurers in accordance with the terms of the interstate compact.

Approved March 31, 2000

CHAPTER 255

(SB 331)

AN ACT relating to health maintenance organizations.

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

Section 1. KRS 304.32-140 is amended to read as follows:

(1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars ($2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars ($2,000,000) but not exceeding ten million dollars ($10,000,000), plus one percent (1%) of income exceeding

ten million dollars ($10,000,000); but in no event shall reserves be less than five hundred thousand dollars ($500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the custodian of insurance securities a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars ($500,000) nor more than one million five hundred thousand dollars ($1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars ($1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that such a corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the commissioner. ***A corporation subject to the provisions of this subtitle shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.***

(2) The cash or securities representing the guarantee fund required by this section shall be acceptable to the custodian of insurance securities and such securities shall be negotiable securities.

(3) The investments of a corporation subject to the provisions of this subtitle shall be the same kind of investments which life insurance companies are authorized to have.

Section 2. KRS 304.38-070 is amended to read as follows:

(1) This subsection applies to a corporation ***or limited liability corporation*** applying for and holding a certificate of authority as a health maintenance organization:

(a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation ***or limited liability corporation*** shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars ($1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars ($2,000,000);

(b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and

(c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars ($250,000) ***and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner***. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the

date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.

(2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:

(a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars ($3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars ($1,250,000) in its capital accounts ***and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the commissioner***;

(b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.

SECTION 3. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Any health maintenance organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The health maintenance organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the department for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.

(2) If a health maintenance organization transfers risk to a provider:

(a) Not in compliance with the standards listed in its approved plan; or

(b) Prior to filing or receiving approval of its plan;

the commissioner may require the health maintenance organization to retain additional reserves to cover the risk transferred.

Section 4. KRS 304.33-430 is amended to read as follows:

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first fifty dollars ($50) of the amount allowed on each claim in the classes under subsections ***(3)***~~[(2)]~~ to ***(7)***~~[(6)]~~, inclusive, of this section, shall be deducted from the claim and included in the class under subsection ***(9)***~~[(8)]~~ of this section. Claims may not be cumulated by assignment to avoid application of the fifty dollars ($50) deductible provision. Subject to the fifty dollars ($50) deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

(1) Administration costs. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

(2) ***Health maintenance organization out-of-network claims. In a liquidation of a health maintenance organization, any claims for health plan benefits for out-of-network claims that would have otherwise been covered.***

(3) Loss and unearned premium claims. Claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of guaranty associations or foreign guaranty associations. Notwithstanding the foregoing, the following claims shall be excluded from Class 2 priority:

(a) Obligations of the insolvent insurer arising out of reinsurance contracts;

(b) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this chapter. Notwithstanding this subsection, earned premium claims on policies, other than reinsurance agreements, shall not be excluded;

(c) Obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise;

(d) Any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;

(e) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and

(f) Tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.

(4)[~~(3)~~] Claims of the federal government other than those claims included in Class 2.

(5)[~~(4)~~] Wages.

(a) Debts due to employees for services performed, not to exceed one thousand dollars ($1,000) to each employee which have been earned within one (1) year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

(b) This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(6)[~~(5)~~] Residual classification. All other claims including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby.

The remainder of such claims shall be postponed to the class of claims under subsection ***(9)***~~[(8)]~~ of this section.

(7)~~[(6)]~~ Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

(8)~~[(7)]~~ Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections (1) to ***(7)***~~[(6)]~~ of this section, inclusive, from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

(9)~~[(8)]~~ Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection ***(8)***~~[(7)]~~ of this section:

(a) The first fifty dollars ($50) of each claim in the classes under subsections (2) to ***(7)***~~[(6)]~~, inclusive, of this section, subordinated under this section;

(b) Claims under subsection (2) of KRS 304.33-380;

(c) Claims subordinated by KRS 304.33-600;

(d) Claims filed late;

(e) Portions of claims subordinated under subsection ***(6)***~~[(5)]~~ of this section; and

(f) Claims or portions of claims, payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

(10)~~[(9)]~~ Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections ***(8)***~~[(7)]~~ and ***(9)***~~[(8)]~~ of this section.

(11)~~[(10)]~~ Proprietary claims. The claims of shareholders or other owners.

Section 5. KRS 304.33-360 is amended to read as follows:

(1) Deadline for filing. Proof of all claims must be filed with the court in the form required by KRS 304.33-370 on or before the last day for filing specified in the notice required under KRS 304.33-250, except that proof of preferred ownership claims and proprietary claims under subsections ***(9)***~~[(8)]~~ and ***(10)***~~[(9)]~~ of KRS 304.33-430, need not be filed at all, and proof of claims for unearned premiums and claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

(2) Excused late filings. For good cause shown, the liquidator shall recommend, and the court shall permit, a claimant making a late filing to share in dividends, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause includes but is not limited to the following:

(a) That existence of a claim was not known to the claimant and that he filed within thirty (30) days after he learned of it;

(b) That a claim for unearned premiums or for cash surrender values or other investment values in life insurance or annuities which was not required to be filed was omitted from the liquidator's recommendations to the court under KRS 304.33-440, and that it was filed within thirty (30) days after the claimant learned of the omission;

(c) That a transfer to a creditor was avoided under KRS 304.33-290 to 304.33-330, inclusive, or was voluntarily surrendered under KRS 304.33-320 and that the filing satisfies the conditions of KRS 304.33-320;

(d) That valuation under KRS 304.33-420 of security held by a secured creditor shows a deficiency, which is filed within thirty (30) days after the valuation; and

(e) That a claim was contingent and became absolute, and was filed within thirty (30) days after it became absolute.

(3) Unexcused late filings. The liquidator may consider any claim filed late which is not covered by subsection (2) of this section, and permit it to receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

Section 6. KRS 304.33-380 is amended to read as follows:

(1) Claims contingent on judgments. The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) Claims under terminated policies. Any claim that would have become absolute if there had been no termination of coverage under KRS 304.33-120, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten (10) days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to him as prescribed by subsection (1) of KRS 304.33-250, or subsection (1) of KRS 304.33-260. If allowed, the claim shall share in distributions under subsection ***(9)***~~[(8)]~~ of KRS 304.33-430.

(3) Other contingent claims. A claim may be allowed even if contingent, if it is filed in accordance with subsection (2) of KRS 304.33-360. It may be allowed and may participate in all dividends declared after it is filed, to the extent that it does not prejudice the orderly administration of the liquidation.

(4) Immature claims. Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that where justice requires the court may order them discounted at the legal rate of interest.

Section 7. KRS 304.33-440 is amended to read as follows:

(1) Immediate Access. Within one hundred twenty (120) days of a final determination of insolvency of a company by a court of competent jurisdiction of this state, the liquidator

shall make application to the court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to guaranty associations or foreign guaranty associations having obligations because of the insolvency. Such proposal shall at least include provision for:

(a) Reserving amounts for the payment of the expenses of administration and claims falling within the priorities established in KRS 304.33-430(1) and ***(3)***[~~(2)~~];

(b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(c) Equitable allocation of disbursements to each of the associations entitled thereto; and

(d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to paragraph (e) of an agreement to return to the liquidator such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in KRS 304.33-430(1), ***(3)***[~~(2)~~] and ***(4)***[~~(3)~~] in accordance with such priorities. No bond shall be required of any such association.

(e) The liquidator's proposal shall also provide for disbursements to the associations in amounts at least equal to the payments made or to be made thereby for which associations could assert claims against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such payments made or to be made by the association then disbursements shall be in the amount of available assets.

(f) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states in which the company did business. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty (30) days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with this subsection.

(2) Recommended claims. The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he deems necessary. He may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under KRS 304.33-400. As often as practicable, he shall present to the court reports of claims against the insurer with his recommendations. The reports shall include the name and address of each claimant, the particulars of the claim and the amount of the claim finally recommended if any. As soon as reasonably possible after the last day for filing claims, he shall present a list of all claims not already reported. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment values and the amounts owed. If the insurer has issued policies on the advance premium plan, the liquidator shall report the persons to whom, according to the records of the insurer, unearned premiums are owed and the amounts owed.

(3) Allowance of claims. The court may approve, disapprove, or modify any report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court on claims settled for $500 or less. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Section 8. KRS 304.33-600 is amended to read as follows:

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under subsection ***(8)***[~~(7)~~] of KRS 304.33-430.

Approved March 31, 2000

CHAPTER 256

(HB 5)

AN ACT relating to special agricultural license plates.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) The owner or lessee of a motor vehicle registered under KRS 186.050(1), (3)(a), or (4)(a) may apply for a special agricultural license plate. The owner or lessee shall apply for the special agricultural license plate in the office of the county clerk in the county where the person lives. When the owner or lessee applies for a special agricultural license plate, the county clerk shall inform the owner or lessee that the person's application and state fee shall be sent to Frankfort to the Transportation Cabinet where it will be held for a period not to exceed one (1) year while the cabinet is waiting to receive a total of one thousand eight hundred (1,800) applications under subsection (2) of this section.

(2) The Transportation Cabinet shall print special agricultural license plates if the cabinet has received one thousand eight hundred (1,800) applications and the accompanying state fee of twenty-two dollars ($22) within a one (1) year period. If the cabinet has not received one thousand eight hundred (1,800) applications within one (1) year from the date the cabinet receives the first application for a special agricultural license plate, the cabinet shall refund the twenty-two dollar ($22) state fee to the appropriate applicants.

(3) Subject to the provisions of subsection (2) of this section, the initial application fee for the first one thousand eight hundred (1,800) special agricultural license plates printed by the Transportation Cabinet shall be twenty-five dollars ($25). The twenty-five dollar ($25) fee shall be divided as follows:

(a) The Transportation Cabinet shall receive a fee of twenty-two dollars ($22) which includes the state fee to reflectorize the license plate under KRS 186.240(2)(c); and

(b) The county clerk shall receive a fee of three dollars ($3).

(4) The initial application fee for every special agricultural license plate printed by the Transportation Cabinet in excess of one thousand eight hundred (1,800) shall be twenty-five dollars ($25). The twenty-five dollar ($25) fee shall be divided as follows:

(a) The Transportation Cabinet shall receive a fee of twelve dollars ($12);

(b) The county clerk shall receive a fee of three dollars ($3); and

(c) The county clerk shall remit a fee of ten dollars ($10) to the Division of Marketing within the Kentucky Department of Agriculture, or its successor, which shall use the fee exclusively to carry out the provisions of subsection (9) of this section.

(5) A special agricultural license plate shall annually be issued a renewal registration decal during the owner's or lessee's birth month. The annual renewal fee shall be twenty dollars ($20) and shall be divided as follows:

(a) The Transportation Cabinet shall receive a fee of twelve dollars ($12), which includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);

(b) The county clerk shall receive a fee of three dollars ($3); and

(c) The county clerk shall remit a fee of five dollars ($5) to the Division of Marketing within the Kentucky Department of Agriculture, or its successor, which shall use the fee exclusively to carry out the provisions of subsection (9) of this section.

(6) Except as provided in this subsection, the special agricultural license plate shall be replaced on the same schedule that regular license plates are replaced by the Transportation Cabinet under KRS 186.240. A special agricultural license plate shall be replaced free of charge if:

(a) The metal plate:

1. Is destroyed in an accident;

2. Deteriorates to a point that the lettering, numbering, or images on the face of the plate are not legible; or

3. Is stolen; and

(b) The owner or lessee has not transferred the vehicle issued the plate during the current licensing period.

(7) A person seeking a special agricultural license plate for a vehicle provided as part of his or her occupation shall conform to the requirements of KRS 186.050(14).

(8) Upon the sale, transfer, or termination of a lease of a vehicle licensed under this section, the owner or lessee shall remove the special agricultural license plate and return it and the certificate of registration to the county clerk of the county where the owner or lessee lives. The county clerk shall reissue the owner or lessee a regular license plate and certificate of registration upon payment of a twelve dollar ($12) state fee, which includes the state fee to reflectorize the license plate under KRS 186.240(2)(c), and a three dollar ($3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special agricultural license plate free of charge for use on any other vehicle of the same classification and category owned by the person during the current licensing period. If the owner or lessee has the special agricultural license plate reissued to another vehicle, the regular license plate that is being replaced shall be returned to the county clerk, who shall forward the plate to Frankfort.

(9) The Division of Marketing within the Kentucky Department of Agriculture, or its successor, shall deposit all funds received from the sale of special agricultural license plates issued under subsections (4) and (5) of this section into a special trust and agency account. The account shall be used exclusively for marketing development to promote Kentucky agricultural products in both domestic and international markets.

(10) License plates shall be the color and design selected by the Kentucky Commissioner of Agriculture. The commissioner may select up to three (3) designs of three (3) colors each. The name "Kentucky" shall appear on the special agricultural license plate. The cabinet may use any combination of letters or numerals as needed in the design.

Approved March 31, 2000

CHAPTER 257

(HB 25)

AN ACT relating to teachers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds that:

(a) Student achievement is directly related to the competency levels of the teachers and the teachers' ability to nurture student learning;

(b) All students are entitled to have teachers who know the subjects they teach and who demonstrate skill for managing and monitoring student learning;

(c) Teachers who meet entry-level standards need support and opportunities to develop higher-level skills throughout their teaching careers;

(d) Certification through the National Board for Professional Teaching Standards is based on high and rigorous standards and provides a process of development and assessment of teachers' knowledge, skills and abilities embedded in classroom practices in the certificate field; and

(e) Teachers who successfully meet the certification requirements through the National Board for Professional Teaching Standards can help strengthen the teaching profession within their schools and school districts by advising, assisting, and mentoring new teachers; by serving as role models and master teachers to student teachers; and by assisting other experienced teachers who seek national board certification.

(2) The General Assembly establishes, on behalf of the public school teachers and students in the Commonwealth, a goal that by the year 2020 there will be at least one (1) national board certified teacher in every public school in Kentucky.

SECTION 2. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the context otherwise requires:

(1) "Mentor" means a highly skilled, experienced teacher who provides systematic and on-going support and assistance to other teachers in a school or school district to help them improve their teaching skills and practices;

(2) "National Board for Professional Teaching Standards" and "national board" means a nonpartisan, independent, and nonprofit board composed of teachers and others that has

developed a set of high and rigorous standards for accomplished teachers and that operates a national voluntary system to assess and certify teachers who meet their standards; and

(3) "National board certification" means a demonstration by an experienced teacher of his or her teaching practice as measured against high and rigorous standards through a comprehensive assessment process administered by the National Board for Professional Teaching Standards.

SECTION 3. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established a "Teachers' National Certification Incentive Trust Fund" in the State Treasury for the purposes of:

(a) Funding stipends for teachers to prepare for certification by the National Board for Professional Teaching Standards;

(b) Reimbursing a portion of the certification fee to each teacher who is awarded national board certification;

(c) Reimbursing local boards of education for persons who serve as substitute teachers for national board certification candidates; and

(d) Funding stipends for national board certified teachers who serve as mentors to other teachers within the school district.

(2) Appropriations by the General Assembly in each biennial budget for the purpose of supporting national board certification shall be credited to the fund and invested until needed. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for the purposes of this section. Funds appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.

(3) The Education Professional Standards Board shall promulgate administrative regulations that establish the procedures for the administration of the funds as described in this section and the requirements for participating teachers and local boards of education.

(4) Money in the fund shall be distributed to local boards of education and teachers by the Kentucky Department of Education in compliance with the administrative regulations promulgated by the board.

SECTION 4. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) (a) A teacher pursuing national board certification shall receive from the fund established under Section 3 of this Act a stipend of two hundred dollars ($200) per day for two (2) days beyond the school contract year to prepare for the certification assessments.

(b) A local board of education shall provide five (5) days' released time during the school year for a teacher pursuing national board certification. The local board of education shall request reimbursement from the fund established under Section 3 of this Act for substitute teacher pay based on the local board of education salary schedule for substitute teachers and for stipends paid to a teacher described in

subsection (3) of this section. A local board of education may, at its own expense, provide additional released time for teachers pursuing national board certification.

(c) If a teacher does not successfully complete all assessments required for national board certification during a school year, the provisions in this subsection may be applied to a second school year.

(2) As of the effective date of this Act, a teacher who attains national board certification shall be reimbursed seventy-five percent (75%) of the certification fee for the initial ten (10) year certificate. Fees for renewal of the national board certificate shall be at the teacher's expense.

(3) A national board certified teacher may receive a stipend in addition to his or her annual compensation for serving as a mentor to teachers within his or her school or school district. The Education Professional Standards Board shall promulgate administrative regulations by January 1, 2001, under which a local board of education, in cooperation with the school-based decision making council, may establish a mentoring program within a school to utilize national board certified teachers. The administrative regulations shall specify the conditions for the mentoring program as well as the amount of the stipend that will be provided to a teacher serving as a mentor.

SECTION 5. A NEW SECTION OF KRS 157.310 TO 157.440 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other statute to the contrary, a local board of education shall provide a public school teacher who has attained certification from the National Board for Professional Teaching Standards at the effective date of this Act or thereafter with an annual national board certification salary supplement of two thousand dollars ($2,000) for the life of the certificate. The supplement shall be added to the teacher's base salary on the local board's single salary schedule and shall be considered in the calculation for contributions to the Kentucky Teachers' Retirement System. If a nationally certified teacher becomes no longer employed as a classroom teacher or a teacher mentor in the field of his or her national certification, the supplement shall cease. A local board of education shall request reimbursement for these purposes from the fund to support education excellence described in KRS 157.330.

SECTION 6. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other statute to the contrary, an experienced, out-of-state teacher shall qualify for a regular provisional certificate if the applicant:

(1) Completes the application process;

(2) Holds a valid certificate issued by the state where the applicant most recently taught; and

(3) Holds a valid certificate issued by the National Board of Professional Teaching Standards.

Section 7. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

(1) "Average daily attendance" means the aggregate days attended by pupils in a public school, adjusted for weather-related low attendance days if applicable, divided by the actual number

of days the school is in session, after the five (5) days with the lowest attendance have been deducted.

(a) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was suspended during a school year, the number of days the pupil was suspended, not to exceed ten (10) days in total for the school year; and

(b) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was expelled for behavioral problems, the number of days the pupil was expelled up to a total of one hundred seventy-five (175) days. This total may extend into the next school year and shall be counted in the average daily attendance for the next year;

(2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;

(3) "Board" means the board of education of any county or independent school district;

(4) "District" means any school district as defined by law;

(5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;

(6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;

(7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session after the five (5) days with the lowest attendance have been deducted. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;

(8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;

(9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;

(10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days

during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year;

(11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;

(12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

(13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

(14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;

(15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year;

(16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board;~~[and]~~

(17) ***"National board certification salary supplement" means an annual supplement added for the life of the certificate to the base salary of a teacher who attains national board certification; and***

(18) "Weather-related low attendance day" means a school day on which the district's attendance falls below the percentage of average daily attendance for the prior year due to inclement weather. The district shall submit a request to substitute the prior year's average daily attendance for its attendance on up to ten (10) designated days, along with documentation that the low attendance was due to inclement weather, for approval by the Kentucky Board of Education in accordance with its administrative regulations.

Approved March 31, 2000

CHAPTER 258

(HB 178)

AN ACT relating to early mathematics placement testing.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 and 2 of this Act, unless the context otherwise requires:

(1) "Program" means the Kentucky Early Mathematics Testing Program; and

(2) "Participating colleges or universities" means all public postsecondary education institutions in Kentucky and any private college or university in Kentucky that chooses to participate in the Kentucky Early Mathematics Testing Program.

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Early Mathematics Testing Program is created to lower the number of high school graduates in Kentucky who require remediation in mathematics upon enrollment in postsecondary education institutions by providing information to primarily high school sophomores and juniors statewide regarding their level of mathematics knowledge in relation to standards required for community and technical colleges and university level mathematics courses early enough for students to address deficiencies while still in high school.

(2) The testing program shall be a computer website-based program that incorporates a variety of diagnostic mathematics tests to identify knowledge and skills needed for postsecondary education courses.

(3) The testing program shall be developed and conducted by a public university. The Council on Postsecondary Education, with the advice of the Department of Education, shall develop a process to solicit, review, and select a proposal for the development and implementation of the computer website-based testing program. The council shall approve the location of the program at a public university no later than September 1, 2000. The university shall be the fiscal agent for the testing program and shall receive the funds appropriated by the General Assembly.

(4) The program shall be available to all interested Kentucky public and private high school students in grades ten (10) and eleven (11). Student participation in the program shall be voluntary, and program test scores shall not be:

(a) Placed on a student's high school transcript; or

(b) Used by postsecondary education institutions in the admissions process.

(5) The computer website testing program shall be available to all Kentuckians for evaluation of an individual's mathematics knowledge and skills.

(6) The program shall encourage the active participation of all public and private high schools in Kentucky.

(7) The computer website testing program shall:

(a) Develop or adopt appropriate tests to determine the level of mathematics knowledge of high school students in relation to the standards of placement tests given at the community and technical colleges and undergraduate public universities. In the development or adoption of the tests, consideration shall be given to the program of studies and the minimum requirements for high school graduation established in KRS 156.160 and the alignment of these standards with postsecondary course standards;

(b) Develop a structure to permit each participating student the opportunity to take the computer-based test at school in the presence of school personnel or at the student's home in the presence of his or her parents or guardian;

(c) Score the completed tests and provide the test scores and diagnostic information on a student's knowledge and skills electronically to the student and the high school upon completion of the test in the form of electronic mail or printable files or screens.

(d) Provide the following information for up to three (3) participating postsecondary education institutions specified by the student as a possible college choice:

1. The student's test score;

2. A list of mathematics courses required for the student's intended major at a postsecondary education institution;

3. A list of any remedial courses the student might be required to take based on the student's current level of mathematics knowledge as demonstrated on the test;

4. The estimated cost of the remedial courses the student might be required to take; and

5. The high school courses and the specific mathematical concepts or functions a student should consider studying in order to address any deficiencies;

(e) Encourage the chair of the mathematics department or the academic dean at each of the participating postsecondary education institutions specified by the student as a possible college choice to send a personalized letter to the student that:

1. Encourages the student to take additional high school mathematics courses to address deficiencies in mathematics knowledge; or

2. Congratulates the student who does well on the test for his or her achievement and encourages continued study in mathematics; and

(f) Develop and implement a strategy to raise awareness and encourage participation in the program, targeting high school students, parents, high school faculty and administrators, mathematics departments or faculty at postsecondary education institutions, and the general public.

(8) The Kentucky Department of Education shall provide assistance as necessary to the Kentucky Early Mathematics Testing Program to implement the provisions of Sections 1 and 2 of this Act.

(9) The public university that conducts the testing program shall submit an annual report to the Kentucky Board of Education and the Council on Postsecondary Education regarding its activities, and the effects of the program on levels of remediation required by participating students.

Approved March 31, 2000

CHAPTER 259

(HB 254)

AN ACT relating to geography education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds that:

(a) The decline in geographic literacy has been widely recognized;

(b) Geographic knowledge is essential to social, political, and environmental leadership potential and civic involvement; and

(c) Support should be given to local efforts to restore geography education to the school curriculum, train teachers, prepare teaching materials, and raise public awareness of the importance of geography education.

(2) The General Assembly establishes, on behalf of the citizens of the Commonwealth, a goal that the next generation of students in Kentucky will graduate with the geographic skills and knowledge that will guarantee their readiness to meet the economic, environmental, and civic challenges of the future.

SECTION 2. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Geographic Education Board is established to provide leadership and planning for geography education for the population of Kentucky through the efforts of elementary, secondary, and postsecondary educators, government agencies, and public interests. The board shall be an independent agency and be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.

(2) The twelve (12) member board shall be appointed to two (2) year terms, initially appointed by the Governor, and composed of the following members:

(a) Three (3) representatives from postsecondary institutions;

(b) One (1) representative from the Council for Social Sciences;

(c) Six (6) representatives from elementary and secondary schools;

(d) One (1) representative of the Department of Education; and

(e) One (1) representative of the Council on Postsecondary Education.

(3) The board shall select from its membership a chair and establish bylaws, including bylaws governing board membership and length of terms. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the

board, the board shall be self-perpetuating, and the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies that occur before the expiration of the initial appointments shall be filled by the Governor for the remaining term of the vacancy.

(4) The board members shall receive no compensation but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

SECTION 3. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

The functions of the board shall be to:

(1) Create an annual plan to improve assessment, curriculums, outreach, and professional development related to geography education in Kentucky;

(2) Establish a competitive system for awarding grants for programs to encourage and support geography education;

(3) Seek and receive private support to fund state programs to encourage and support geography education;

(4) Prepare an annual report of its activities and annual plan, forward copies of the report to the Governor, the Legislative Research Commission, the Kentucky Board of Education, and the Council on Postsecondary Education, and make copies available to citizens of the Commonwealth; and

(5) Make recommendations and seek changes through administrative regulations, legislation, and other means to promote geography education in Kentucky.

SECTION 4. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky geography education trust fund is established in the State Treasury to award grants for programs that encourage and support geography education in Kentucky. Funds appropriated by the General Assembly in each biennial budget for the purpose of supporting geography education shall be credited to the fund and invested until needed. The fund may also receive gifts, grants from private and public sources, and federal funds. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for geography education purposes as defined by the Kentucky Geographic Education Board.

(2) Money appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.

Approved March 31, 2000

CHAPTER 260

(HB 282)

AN ACT relating to special YMCA license plates.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) The owner or lessee of a motor vehicle registered under the provisions of KRS 186.050(1) or (3)(a) may apply for a special YMCA license plate in the office of the county clerk in the county where the person lives. At the time the owner or lessee applies for a special YMCA license plate, the person shall include with the application the initial state fee of fifty dollars ($50). The county clerk shall inform the owner or lessee that the person's application and state fee shall be sent to Frankfort to the Transportation Cabinet where it may be held for a period not to exceed one (1) year while the cabinet is waiting to receive sufficient applications subject to the provisions of subsection (2) of this section.

(2) The Transportation Cabinet shall be required to begin designing and printing special YMCA license plates after the cabinet has received nine hundred (900) applications accompanied by a fifty dollar ($50) state fee within a one (1) year period. The purpose of the fifty dollar ($50) state fee is to offset computer programming costs incurred by the cabinet. Unless the cabinet is requested in writing to the contrary, if the cabinet has not received nine hundred (900) applications within one (1) year from the date the cabinet receives the first application for a special YMCA license plate, the cabinet shall refund the fifty dollar ($50) state fee to the appropriate applicants.

(3) Subject to the provisions of subsection (2) of this section, the total initial application fee for the first nine hundred (900) special YMCA license plates printed by the Transportation Cabinet shall be sixty-three dollars ($63). The sixty-three dollar ($63) fee shall be divided as follows:

(a) The Transportation Cabinet shall receive a fee of fifty dollars ($50) that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);

(b) The county clerk shall receive a fee of three dollars ($3); and

(c) The remaining ten dollar ($10) fee collected from the applicant shall be remitted to the Transportation Cabinet to be used for YMCAs across the Commonwealth subject to the provisions of subsection (9) of this section.

(4) The initial application fee for each special YMCA license plate printed by the Transportation Cabinet in excess of nine hundred (900) shall be twenty-five dollars ($25). The twenty-five dollar ($25) fee shall be divided as follows:

(a) The Transportation Cabinet shall receive a fee of twelve dollars ($12) that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);

(b) The county clerk shall receive a fee of three dollars ($3); and

(c) The remaining ten dollar ($10) fee collected from the applicant shall be remitted to the Transportation Cabinet to be used for YMCAs across the Commonwealth subject to the provisions of subsection (9) of this section.

(5) A special YMCA license plate shall annually be issued a renewal registration decal during the owner's or lessee's birthmonth. The annual renewal fee shall be twenty dollars ($20) and shall be divided as follows:

(a) The Transportation Cabinet shall receive a fee of twelve dollars ($12) that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);

(b) The county clerk shall receive a fee of three dollars ($3); and

(c) The remaining five dollar ($5) fee collected from an applicant renewing an annual registration shall be remitted to the Transportation Cabinet to be used for YMCAs across the Commonwealth subject to the provisions of subsection (9) of this section.

(6) Except as provided in this subsection, the special YMCA license plate shall be replaced on the same schedule that regular license plates are replaced by the Transportation Cabinet under KRS 186.240. A special YMCA license plate shall be replaced free of charge if the metal plate is destroyed in an accident, deteriorates to a point that the lettering, numbering, or images on the face of the plate are not legible, or the plate is stolen, if the owner or lessee has not transferred the vehicle issued the plate during the current licensing period.

(7) A person seeking a special YMCA license plate for a vehicle provided as part of the person's occupation shall conform to the requirements of KRS 186.050(14).

(8) Upon the sale, transfer, or termination of a lease of a vehicle licensed under this section, the owner or lessee shall remove the special YMCA license plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and certificate of registration upon payment of a twelve dollar ($12) state fee that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c) and a three dollar ($3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special YMCA license plate free of charge for use on any other vehicle of the same classification and category owned by the person during the current licensing period. If the owner or lessee has the special YMCA license plate reissued to another vehicle, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to Frankfort.

(9) All funds received by the Transportation Cabinet under subsection (3)(c), (4)(c), and (5)(c) of this section shall be deposited into a YMCA program fund that is established in the state road fund. Money in the YMCA program fund shall be used as provided in this subsection. If at the end of a fiscal year money remains in the YMCA program fund, it shall be retained in the fund and used as provided in this subsection and shall not revert to the road fund. All interest and income earned on money in the YMCA program fund shall be retained by the Transportation Cabinet to help offset the costs associated with administering this subsection.

(a) At the end of each fiscal year the cabinet shall, after deducting interest and income earned during the year, disburse all funds remaining in the YMCA program fund to the YMCA in each county where a YMCA is located. If a county has more than one (1) YMCA branch, the cabinet shall disburse the funds to the YMCA association representing all branches in the county. The YMCA association shall be responsible for equally distributing funds under this subsection to all YMCA branch offices within the county.

(b) The amount of money each county YMCA shall receive under this subsection shall be proportionate to the amount of money contributed to the YMCA program fund from sales of the special YMCA license plates in the county.

(c) A person wishing to purchase a special YMCA license plate who lives in a county that does not have a YMCA shall be permitted on the application form to designate a county with a YMCA where the proceeds from the person's purchase shall be

credited for purposes of distribution under this subsection. The plate issued under this paragraph shall designate the county where the person's motor vehicle is registered, not the county designated on the application form to receive the proceeds from the person's purchase of the YMCA plate.

(10) Special YMCA license plates shall be printed in the following manner:

(a) Each plate shall be designed with the word "Kentucky" printed in black and centered at the top of the plate;

(b) The annual registration decal shall be placed in the upper right hand corner of the plate;

(c) Centered in the middle of the plate below the word "Kentucky" shall be a series of four (4) numbers beginning with "0001" printed in black;

(d) To the left of the four (4) numbers shall be the YMCA registered trademark logo printed in PMS 185 red and black;

(e) Centered under the logo shall be the letters "YMCA" and centered under "YMCA" shall be the phrase "We build strong kids, strong families, strong communities."; and

(f) Centered under the four (4) numbers shall be the county name.

Approved March 31, 2000

CHAPTER 261

(HB 347)

AN ACT relating to public school calendars.

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

Section 1. KRS 158.070 is amended to read as follows:

(1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.

(2) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the chief state school officer, which regulations must be in conformity with the following criteria:

(a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;

(b) A pupil's required attendance in school shall be for at least the minimum instructional term; and

(c) No teacher shall be required to teach more than the minimum term during the school year.

(3) (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095.

(b) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred and eighty-five (185) days that a teacher shall be employed. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.

(c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.

(d) Each local board may use two (2) days for planning activities without the presence of pupils.

(e) Each local board may use the number of days deemed necessary for:

1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;

2. Local disaster which would endanger the health or safety of children; and

3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the chief state school officer.

(4) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in of subsection (3)(e)2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

(5) ***(a)*** In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the chief state school officer may designate alternate dates. The chief state school officer shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election, and that day may be used for professional development activities, professional meetings, or parent-teacher conferences.

(b) All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:

1. Designate the day as one (1) of the four (4) holidays permitted under subsection (3)(c) of this section; or

2. Not include the day in the minimum school term specified in subsection (1) of this section.

(6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.

(7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.

(8) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.

Section 2. KRS 118.025 is amended to read as follows:

(1) Except as otherwise provided by law, voting in all elections shall be by secret ballot on voting machines.

(2) The general laws applying to regular, special, primary, and runoff primary elections shall apply to elections conducted with the use of voting machines, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting machine.

(3) Primary elections for the nomination of candidates or slates of candidates to be voted for at the next regular election shall be held on the first Tuesday after the fourth Monday in May of each year.

(4) A runoff primary shall be held thirty-five (35) days after the date of the May primary, if it shall be necessary, pursuant to KRS 118.245, unless that date falls on a holiday; in that case, a runoff primary shall be held on the succeeding Tuesday. However, if either a primary election is contested or a recount of the votes cast in a primary is requested, a runoff primary shall be held on the first Tuesday following the thirty-fifth day following the conclusion of any contest proceeding or recount, if it shall be necessary, unless that date falls on a holiday; in that case, a runoff primary shall be held on the succeeding Tuesday. The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.

(5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.

(6) If the law requires that a special election be held within a period of time during which the voting machines must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting machines are locked.

~~[(7) All public schools shall be closed on the day of any regular election.]~~

Section 3. KRS 158.060 is amended to read as follows:

(1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools.~~[School shall be closed on the day of a regular election. The legal holiday designated by the Kentucky Board of Education to be observed may include the first Tuesday after the first Monday in November of each year and shall be counted as a school day.]~~

(2) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's instructional day, or the time teachers are required to remain at school after the students are dismissed.

(3) Except for children with disabilities and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the commissioner of education and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.

(4) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

Approved March 31, 2000

CHAPTER 262

(HB 390)

AN ACT relating to health insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 17 of this Act:

(1) (a) "Adverse determination" means a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are:

1. Not medically necessary, as determined by the insurer, or its designee or experimental or investigational, as determined by the insurer, or its designee; and

2. Benefit coverage is therefore denied, reduced, or terminated.

(b) "Adverse determination" does not mean a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are specifically limited or excluded in the covered person's health benefit plan;

(2) "Authorized person" means a parent, guardian, or other person authorized to act on behalf of a covered person with respect to health care decisions;

(3) "Concurrent review" means utilization review conducted during a covered person's course of treatment or hospital stay;

(4) "Covered person" means a person covered under a health benefit plan;

(5) "External review" means a review that is conducted by an independent review entity which meets specified criteria as established in Sections 12, 13, and 14 of this Act;

(6) "Health benefit plan" means the document evidencing and setting forth the terms and conditions of coverage of any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network policy or certificate; a self-insured policy or certificate or a policy or certificate provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and for purposes of Sections 1 to 17 of this Act includes short-term coverage policies.

(7) "Independent review entity" means an individual or organization certified by the department to perform external reviews under Sections 12, 13, and 14 of this Act. An

independent review entity which is accredited by the National Commission on Quality Assurance, the American Accreditation Health Care Commission, or another nationally recognized accreditation organization as identified by the department shall be deemed certified by the department;

(8) "Insurer" means any of the following entities authorized to issue health benefit plans as defined in subsection (6) of this section: an insurance company, health maintenance origination; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association; nonprofit hospital, medical-surgical, or health service corporation; or any other entity authorized to transact health insurance business in Kentucky;

(9) "Internal appeals process" means a formal process, as set forth in Section 9 of this Act, established and maintained by the insurer, its designee, or agent whereby the covered person, an authorized person, or a provider may contest an adverse determination rendered by the insurer, its designee, or private review agent;

(10) "Private review agent" or "agent" means a person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of any insurer or other person providing or administering health benefits to citizens of this Commonwealth. "Private review agent" or "agent" does not include an independent review entity which performs external review of adverse determinations;

(11) "Prospective review" means utilization review that is conducted prior to a hospital admission or a course of treatment;

(12) "Provider" shall have the same meaning as set forth in KRS 304.17A-005;

(13) "Qualified personnel" means licensed physician, registered nurse, licensed practical nurse, medical records technician, or other licensed medical personnel who through training and experience shall render consistent decisions based on the review criteria.

(14) "Registration" means an authorization issued by the department to an insurer or a private review agent to conduct utilization review.

(15) "Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person. "Retrospective review" does not include the review of a claim that is limited to an evaluation of reimbursement levels, or adjudication of payment;

(16) "Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a covered person for purposes of determining the availability of payment. Areas of review include concurrent, prospective, and retrospective review.

(17) "Utilization review plan" means a description of the procedures governing utilization review activities performed by an insurer or a private review agent.

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 17 of this Act shall apply to any insurer that covers citizens of the Commonwealth under a health benefit plan. An insurer shall maintain written procedures for:

(1) Determining whether a requested service, treatment, drug, or device is covered under the terms of a covered person's health benefit plan;

(2) Making utilization review determinations; and

(3) Notifying covered persons, authorized persons, and providers acting on behalf of covered persons of its determinations.

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Sections 1, 2, 3, 4, 5, 6, 7, and 8 of this Act set forth the requirements and procedures regarding utilization review and shall apply to:

(a) Any insurer or its private review agent that provides or performs utilization review in connection with a health benefit plan; and

(b) Any private review agent that performs utilization review functions on behalf of any person providing or administering health benefit plans.

(2) Where an insurer or its agent provides or performs utilization review, and in all instances where internal appeals as set forth in Section 9 of this Act, are involved, the insurer or its agent shall be responsible for:

(a) Monitoring all utilization reviews and internal appeals carried out by or on behalf of the insurer;

(b) Ensuring that all requirements of Sections 1 to 17 of this Act are met;

(c) Ensuring that all administrative regulations promulgated in accordance with Sections 5, 7, and 15 of this Act are complied with; and

(d) Ensuring that appropriate personnel have operational responsibility for the performance of the insurer's utilization review plan.

(3) A private review agent that operates solely under contract with the federal government for utilization review or patients eligible for hospital services under Title XVIII of the Social Security Act shall not be subject to the registration requirements set forth in Sections 4, 5, and 7 of this Act.

SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer or private review agent shall not provide or perform utilization reviews without being registered with the department. A registered insurer or private review agent shall:

(a) Have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported by licensed physicians with access to consultation with other appropriate physicians to carry out its utilization review activities;

(b) Ensure that only licensed physicians shall:

1. Make a utilization review decision to deny, reduce, limit, or terminate a health care benefit or to deny, or reduce payment for a health care service because that service is not medically necessary, experimental, or investigational except in the case of a health care service rendered by a chiropractor or optometrist

where the denial shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky; and

2. Supervise qualified personnel conducting case reviews;

(c) Have available the services of sufficient numbers of practicing physicians in appropriate specialty areas to assure the adequate review of medical and surgical specialty and subspecialty cases;

(d) Not disclose or publish individual medical records or any other confidential medical information in the performance of utilization review activities except as provided in the Health Insurance Portability and Accountability Act Subtitle F sec. 261-264 and 45 C.F.R. sections 160 to 164 and other applicable laws and administrative regulations;

(e) Provide a toll free telephone line for covered persons, authorized persons, and providers to contact the insurer or private review agent and be accessible to covered persons, authorized persons, and providers for forty (40) hours a week during normal business hours in this state;

(f) Be available twenty-four (24) hours a day, seven (7) days a week to conduct:

1. Preadmission review of an emergency admission, if preauthorization is required for emergency admissions or use of an emergency room;

2. Preauthorization of weekend admissions to a hospital, or to review services delivered on the weekend or after normal business hours, if the covered person is subject to preauthorization on weekends or after normal business hours; and

3. Review of a patient's continued hospitalization, if a prior authorization will expire on a weekend;

(g) Provide decisions to covered persons, authorized persons, and all providers on appeals of adverse determinations and coverage denials of the insurer or private review agent, in accordance with this section and administrative regulations promulgated in accordance with Section 5 of this Act;

(h) Provide a utilization review decision:

1. Within twenty-four (24) hours of a request for:

a. Preadmission review of a hospital admission, unless additional information is needed;

b. Preauthorization of treatment when the covered person is already hospitalized; or

c. Retrospective review of an emergency hospital admission;

2. Within two (2) business days of a receipt of a request for preauthorization for a treatment, procedure, drug, or device;

3. Within twenty-four (24) hours of receipt of a request for review of a covered person's continued hospital stay and prior to the time when a previous authorization for hospital care will expire; and

4. Within twenty (20) business days of the receipt of requested medical information when the insurer or private review agent has initiated a retrospective review;

(i) Provide written notice of review decisions to the covered person, authorized person, and providers. An insurer or agent that denies coverage or reduces payment for a treatment, procedure, drug, or device shall include in the written notice:

1. A statement of the specific medical and scientific reasons for denial or reduction of payment;

2. The name, state of licensure, medical license number, and the title of the reviewer making the decision;

3. A description of other alternative treatments, services, or supplies covered by the health benefit plan; and

4. Instructions for initiating or complying with the insurer's internal appeal procedure, as set forth in Section 9 of this Act, stating, at a minimum, whether the appeal shall be in writing, time limitations, or schedules for filing appeals, and the name and phone number of a contact person who can provide additional information;

(j) Afford participating physicians an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and afford other participating providers an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice; and

(k) Comply with its own policies and procedures on file with the department.

(2) The insurer's failure to make a determination and provide written notice within the time frames set forth in this section shall be deemed to be an adverse determination by the insurer for the purpose of initiating an internal appeal as set forth in Section 9 of this Act. This provision shall not apply where the failure to make the determination or provide the notice results from circumstances which are documented to be beyond the insurer's control.

(3) An insurer or private review agent shall submit a copy of any changes to its utilization review policies or procedures to the department. No change to policies and procedures shall be effective until thirty (30) days after it has been filed with and approved by the commissioner.

(4) A private review agent shall provide to the department the names of the entities for which the private review agent is performing utilization review in this state. Notice shall be provided within thirty (30) days of any change.

SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The department shall promulgate emergency administrative regulations regarding utilization review and internal review, including the specification of information required of insurers and private review agents which shall, at a minimum, include:

(1) A utilization review plan that includes information utilized for conducting preadmission, admission, readmission review, preauthorization, continued stay authorization, and retrospective review that, for each type of review, includes:

(a) Utilization review policies and procedures to evaluate proposed or delivered medical services;

(b) Time frames for review;

(c) A written summary describing the review process and required forms;

(d) Documentation of qualifications of personnel who developed the specific utilization review procedures relating to specialty and subspecialty areas;

(e) Descriptions and names of review criteria upon which utilization review decisions are based; and

(f) Additional standards, if any, for the consideration of special circumstances.

(2) The type and qualifications of the personnel either employed or under contract to perform utilization review;

(3) Assurance that a toll-free line will be provided that covered persons, authorized persons, and providers may use to contact the insurer or private review agent;

(4) The policies and procedures to ensure that a representative of the insurer or private review agent shall be reasonably accessible to covered persons, authorized persons, and providers at least forty (40) hours per week during normal business hours;

(5) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

(6) A copy of the materials designed to inform covered persons, authorized persons, and providers of the toll-free number and the requirements of the utilization review plan;

(7) A list of the entities for which the private review agent is performing utilization review in this state; and

(8) Evidence of compliance or the ability to comply with the requirements and procedures established regarding utilization review and the administrative regulations promulgated thereunder.

SECTION 6. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A utilization review decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer or its designee for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person, authorized person, or the provider.

SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The department shall, through the promulgation of emergency administrative regulations, develop a process:

(a) For the review of applications for registration of insurers or private review agents seeking to conduct utilization reviews;

(b) For the review of applications for insurers or private review agents seeking registration renewal to continue as a utilization review entity;

(c) Ensuring that no registration shall be approved unless the commissioner has documentation or findings that all applicants seeking registration or renewal to conduct utilization review are in compliance with the requirements and procedures established regarding utilization review, and as to renewals, have complied with Sections 1 to 17 of this Act and administrative regulations promulgated to enforce and to administer Sections 1 to 17 of this Act; and

(d) Establishing fees for applications and renewals in an amount sufficient to pay the administrative costs of the program and any other costs associated with carrying out the provisions of Sections 1, 2, 3, 4, 5, 6, 7, and 8 of this Act.

(2) The registration issued in accordance with this section expires on the second anniversary of the effective date unless it is renewed.

(3) The registration issued under this section is not transferable.

(4) The commissioner may revoke or suspend the utilization review registration of any insurer or private review agent who does not comply with the requirements and procedures established regarding utilization review or any administrative regulations promulgated thereunder.

(5) The department shall establish reporting requirements to:

(a) Evaluate the effectiveness of insurers and private review agents; and

(b) Determine if the utilization review plans are in compliance with the requirements and procedures established regarding utilization review and applicable administrative regulations.

(6) Upon request of any provider, authorized person, or covered person whose care is subject to review, the department shall provide copies of policies or procedures of any insurer or private review agent that has been issued a registration by the department to conduct review in this state.

(7) Notwithstanding any provision to the contrary, an insurer or private review agent registered and in good standing under the provisions of KRS 211.461 to 211.466, prior to the effective date of this Act, shall be deemed in compliance with requirements and procedures established in Sections 1 to 17 of this Act regarding utilization review and registered accordingly.

(8) Upon receipt of written complaints from covered persons, authorized persons, or providers stating that an insurer or a private review agent has failed to perform a review in accordance with the utilization review plan or the requirements and procedures established regarding utilization review, or administrative regulations promulgated thereunder, the commissioner shall:

(a) Send a copy of the complaint to the insurer or the private review agent within ten (10) days of receipt of the complaint, and require that any written reply be sent to the commissioner within ten (10) days; and

(b) Review the complaint and any written reply received from the insurer or private review agent within the time frames set forth in paragraph (a) of this subsection and make a recommendation to the insurer or private review agent and the covered person, authorized person, or provider.

(9) The commissioner shall consider complaints before issuing or renewing any registration or renewal of a registration to an insurer or a private review agent.

SECTION 8. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) No insurer or any other person providing or administering a health benefit plan shall deny or reduce payment for a service, procedure, treatment, drug or device covered under the covered person's health benefit plan if:

(a) The covered person's provider, during normal business hours, contacts the insurer, the designee, or agent on the day the covered person is expected to be discharged, in order to request review of the covered person's continued hospitalization, and the insurer, designee, or agent fails to provide a timely utilization review decision as required by Section 4 of this Act; or

(b) The covered person's provider makes at least three (3) documented attempts during a four (4) consecutive hour period to contact the insurer, designee, or agent, during normal business hours in order to request review of a continued hospital stay, preauthorization of treatment for a covered person who is already hospitalized, or retrospective review of an emergency hospital admission where the covered person remains hospitalized at the time the review requested is made, and the insurer, designee, or private review agent fails to be accessible as required by Section 4 of this Act.

(2) The insurer's liability to pay for the covered person's hospitalization under the circumstances set forth in subsection (1) of this section shall extend until the insurer, designee, or private review agent issues a utilization review decision applicable to requests for review relating to matters as set forth in subsection 1(b) of this section.

(3) The insurer's liability to pay under this section shall be conditioned on :

(a) The provider establishing verifiable documentation of the contact with, and subsequent failure of the insurer, designee, or agent to make the utilization review decision as set forth in subsection (1)(a) of this section; or

(b) The provider establishing verifiable documentation of the attempt to make contact with the insurer, designee, or agent as addressed in subsection (1)(b) of this section.

(4) In either instance, the contact, or attempts to contact, as set forth in this section, shall be made by the means required by the insurer, designee, or agent for requesting utilization review.

(5) This section applies only when the request for review concerns covered health benefits and it shall not supersede any limitations or exclusions in the covered person's health benefit plan. This section shall not apply if, in requesting a review, the provider does not furnish the information requested by the insurer or agent to make a utilization review decision, or if actions by the provider impede an insurer's or private review agent's ability to issue a utilization review decision.

SECTION 9. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Every insurer shall have an internal appeal process to be utilized by the insurer or its designee, consistent with this section and Section 10 of this Act and which shall be disclosed to covered persons in accordance with subsection (1)(g) of Section 27 of this Act. An insurer shall disclose the availability of the internal review process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial which meets the requirements set forth in subsection (1)(i) of Section 4 of this Act. For purposes of this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan. Where a coverage denial is involved, in addition to stating the reason for the coverage denial, the required notice shall contain instructions for filing a request for review by the department.

(2) The internal appeals process may be initiated by the covered person, an authorized person, or a provider acting on behalf of the covered person. The internal appeals process shall include adequate and reasonable procedures for review and resolution of appeals concerning adverse determinations made under utilization review and of coverage denials, including procedures for reviewing appeals from covered persons whose medical conditions require expedited review. At a minimum, these procedures shall include the following:

(a) Insurers or their designees shall provide decisions to covered persons, authorized persons, and providers on internal appeals of adverse determinations or coverage denials within thirty (30) days of receipt of the request for internal appeal;

(b) Insurers or their designees shall render a decision not later than three (3) business days after the request for an expedited appeal of either an adverse determination or a coverage denial. An expedited appeal is deemed necessary when a covered person is hospitalized or, in the opinion of the treating provider, review under a standard time frame could, in the absence of immediate medical attention, result in any of the following:

1. Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or the unborn child in serious jeopardy;

2. Serious impairment to bodily functions; or

3. Serious dysfunction of a bodily organ or part;

(c) Internal appeal of an adverse determination shall only be conducted by a licensed physician who did not participate in the initial review and denial. However, in the case of a review involving a medical or surgical specialty or subspecialty, the insurer or agent shall, upon request by a covered person, authorized person, or provider, utilize a board eligible or certified physician in the appropriate specialty or subspecialty area to conduct the internal appeal;

(d) Those portions of the medical record that are relevant to the internal appeal, if authorized by the covered person and in accordance with state or federal law, shall be considered and providers given the opportunity to present additional information;

(e) To facilitate expeditious handling of an appeal of an adverse determination or a coverage denial, an insurer or agent that denies, limits, reduces, or terminates coverage for a treatment, procedure, drug, or device for a covered person shall provide the person undertaking an appeal with a denial letter that shall include:

1. A statement of the specific medical and scientific reasons for denying coverage or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;

2. The name, state of licensure, medical license number, and the title of the person making the decision;

3. A description of other alternative treatments, services, or supplies covered by the health benefit plan, if any; and

4. Instructions for initiating an internal appeal of the adverse determination, or filing a request for review with the department where a coverage denial is upheld by the insurer on internal appeal.

(3) The department shall establish and maintain a system for receiving and reviewing requests for review of coverage denials from covered persons, authorized persons, and providers. For purposes of this subsection "coverage denials" shall not include an adverse determination as defined in Section 1 of this Act or subsequent denials arising from an adverse determination.

(a) On receipt of a written request for review of a coverage denial from a covered person, authorized person, or provider, the department shall notify the insurer which issued the denial of the request for review and shall call for the insurer to respond to the department regarding the request for review within five (5) days receipt of notice to the insurer;

(b) Within five (5) days of receiving the notice of the request for review from the department, the insurer shall provide to the department the following information:

1. Confirmation as to whether the person who received or sought the health service for which coverage was denied was a covered person on the date of service under a health benefit plan issued by the insurer;

2. Confirmation as to whether the covered person, authorized person, or provider has exhausted his or her rights under the insurer's appeal process under this section; and

3. The reason for the coverage denial, including the specific limitation or exclusion of the health benefit plan demonstrating that coverage is not available;

(c) In addition to the information described in paragraph (b) of this subsection, the insurer and the covered person, authorized person, or provider shall provide to the department any information requested by the department that is germane to its review;

(d) On the receipt of the information described in paragraphs (b) and (c) of this subsection, unless the department is not able to do so because making a determination requires resolution of a medical issue, it shall determine whether the

service, treatment, drug, or device is specifically limited or excluded under the terms of the covered person's health benefit plan. If the department determines that the treatment, service, drug, or device is not specifically limited or excluded, it shall so notify the insurer, and the insurer shall either cover the service, or afford the covered person an opportunity for external review under Section 11, 12, and 13 of this Act, where the conditions precedent to the review are present. If the department notifies the insurer that the treatment, service, drug, or device is specifically limited or excluded in the health benefit plan, the insurer is not required to cover the service or afford the covered person an external review.

SECTION 10. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) If the covered person, authorized person, or provider has new clinical information regarding the covered person's internal appeal he or she shall provide that information to the insurer prior to the initiation of the external review process. The insurer shall have five (5) business days from the date of the receipt of the information to render a decision based on the new information. If new information is provided in accordance with this section, the sixty (60) day time frame for commencing an external review as set forth in subsection (4) of Section 12 of this Act, shall not begin to run, until the insurer or its designee renders a decision regarding the new information.

(2) The insurer's failure to make a determination or provide a written notice within the time frames set forth in Section 9 of this Act shall be deemed to be an adverse determination by the insurer for the purpose of initiating an external review as set forth in Section 12 of this Act.

SECTION 11. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The Independent External Review Program is hereby established in the department. The program shall provide covered persons with a formal, independent review to address disagreements between the covered person and the covered person's insurer regarding an adverse determination made by the insurer, its designee, or a private review agent. This section and Sections 12 and 13 establish requirements and procedures governing external review and independent review entities.

SECTION 12. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Every insurer shall have an external review process to be utilized by the insurer or its designee, consistent with this section and which shall be disclosed to covered persons in accordance with subsection (1)(g) of Section 27 of this Act. An insurer, its designee, or agent shall disclose the availability of the external review process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial as set forth in subsection (1)(i) of Section 4 and subsections (1) and (2)(e) of Section 9 of this Act. For purposes of this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan.

(2) A covered person, an authorized person, or a provider acting on behalf of and with the consent of the covered person, may request an external review of an adverse determination rendered by an insurer, its designee, or agent.

(3) The insurer shall provide for an external review of an adverse determination if the following criteria are met:

(a) The insurer, its designee, or agent has rendered an adverse determination;

(b) The covered person has completed the insurer's internal appeal process, or the insurer has failed to make a timely determination or notification as set forth in subsection (2) of Section 10 of this Act. The insurer and the covered person may however, jointly agree to waive the internal appeal requirement;

(c) The covered person was enrolled in the health benefit plan on the date of service or, if a prospective denial, the covered person was enrolled and eligible to receive covered benefits under the health benefit plan on the date the proposed service was requested; and

(d) The entire course of treatment or service will cost the covered person at least one hundred dollars ($100) if not covered by the insurer.

(4) The covered person, an authorized person, or a provider with consent of the covered person shall submit a request for external review to the insurer within sixty (60) days, except as set forth in subsection (1) of Section 10 of this Act, of receiving notice that an adverse determination has been timely rendered under the insurer's internal appeal process. As part of the request, the covered person shall provide to the insurer or its designee written consent authorizing the independent review entity to obtain all necessary medical records from both the insurer and any provider utilized for review purposes regarding the decision to deny, limit, reduce or terminate coverage.

(5) The covered person shall be assessed a one (1) time filing fee of twenty-five dollars ($25) to be paid to the independent review entity and which may be waived if the independent review entity determines that the fee creates a financial hardship on the covered person. The fee shall be refunded if the independent review entity finds in favor of the covered person.

(6) A covered person shall not be afforded an external review of an adverse determination if:

(a) The subject of the covered person's adverse determination has previously gone through the external review process and the independent review entity found in favor of the insurer; and

(b) No relevant new clinical information has been submitted to the insurer since the independent review entity found in favor of the insurer.

(7) The department shall establish a system for each insurer to be assigned an independent review entity for external reviews. The system established by the department shall be prospective and shall require insurers to utilize independent review entities on a rotating basis so that an insurer does not have the same independent review entity for two (2) consecutive external reviews. The department shall contract with no less than two (2) independent review entities.

(8) (a) If a dispute arises between an insurer and a covered person regarding the covered person's right to an external review, the covered person may file a complaint with the department. Within five (5) days of receipt of the complaint, the department shall render a decision and may direct the insurer to submit the dispute to an independent review entity for an external review if it finds:

1. The dispute involves denial of coverage based on medical necessity or the service being experimental or investigational; and

2. All of the requirements of subsection (3) of this section have been met.

(b) The complaint process established in this section shall be separate and distinct from, and shall in no way limit other grievance or complaint processes available to consumers under other provisions of the KRS or duly promulgated administrative regulations. This complaint process shall not limit, alter, or supplant the mechanisms for appealing coverage denials established in Section 9 of this Act.

(9) The external review process shall be confidential and shall not be subject to KRS 61.805 to 61.850 and KRS 61.870 to 61.884.

(10) External reviews shall be conducted in an expedited manner by the independent review entity if the covered person is hospitalized, or if, in the opinion of the treating provider, review under the standard time frame could, in the absence of immediate medical attention, result in any of the following:

(a) Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or her unborn child in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of a bodily organ or part.

(11) Requests for expedited external review, shall be forwarded by the insurer to the independent review entity within twenty-four (24) hours of receipt by the insurer.

(12) For expedited external review, a determination shall be made by the independent review entity within twenty-four (24) hours from the date of its receipt of notice of the adverse determination from the insurer. An extension of up to twenty-four (24) hours may be allowed if the covered person and the insurer or its designee agree. The insurer or its designee shall provide notice to the independent review entity and to the covered person, by same-day communication, that the adverse determination has been assigned to an independent review entity for expedited review.

(13) External reviews which are not expedited shall be conducted by the independent review entity and a determination made within twenty-one (21) calendar days of receipt of the request for external review. An extension of up to fourteen (14) calendar days may be allowed if the covered person and the insurer are in agreement.

SECTION 13. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) In making its decision, an independent review entity conducting the external review shall take into account all of the following:

(a) Information submitted by the insurer, the covered person, the authorized person, and the covered person's provider, including the following:

1. The covered person's medical records;

2. The standards, criteria, and clinical rationale used by the insurer to make its decision; and

3. The insurer's health benefit plan.

(b) Findings, studies, research, and other relevant documents of government agencies and nationally recognized organizations, including the National Institutes of Health, or any board recognized by the National Institutes of Health, the National Cancer Institute, the National Academy of Sciences, and the United States Food and Drug Administration, the Health Care Financing Administration of the United States Department of Health and Human Services, and the Agency for Health Care Research and Policy; and

(c) Relevant findings in peer-reviewed medical or scientific literature, published opinions of nationally recognized medical specialists, and clinical guidelines adopted by relevant national medical societies.

(2) The independent review entity shall base its decision on the information submitted under subsection (1) of this section. In making its decision, the independent review entity shall consider safety, appropriateness, and cost effectiveness.

(3) The insurer shall provide any coverage determined by the independent review entity to be medically necessary. The independent review entity shall not be permitted to allow coverage for services specifically limited or excluded by the insurer in its health benefit plan. The decision shall apply only to the individual covered person's external review.

(4) Nothing in this section shall be construed as requiring an insurer to provide coverage for out of network services, procedures, or tests, except as set forth in KRS 304.17A-515(1)(c) and 304.17A-550 .

(5) The insurer shall be responsible for the cost of the external review.

(6) The independent review entity shall provide to the covered person, treating provider, insurer, and the department a decision which shall include:

(a) The findings for either the insurer or covered person regarding each issue under review;

(b) The proposed service, treatment, drug, device, or supply for which the review was performed;

(c) The relevant provisions in the insurer's health benefit plan and how applied; and

(d) The relevant provisions of any nationally recognized and peer-reviewed medical or scientific documents used in the external review.

(7) The decision of the independent review entity shall not be made solely for the convenience of the insurer, the covered person, or the provider.

(8) Consistent with the rules of evidence, a written decision prepared by an independent review entity shall be admissible in any civil action related to the adverse determination. The independent review entity's decision shall be presumed to be a scientifically valid and accurate description of the state of medical knowledge at the time it was written.

(9) The decision of the independent review entity shall be binding on the insurer with respect to that covered person. Failure of the insurer to provide coverage as required by the independent review entity shall:

(a) Be a violation of the insurance code of a nature sufficient to warrant the commissioner revoking or suspending the insurer's license or certificate of authority; and

(b) Constitute an unfair claims settlement practice as set forth in Section 18 of this Act.

(10) Failure to provide coverage as required by the independent review entity shall also subject the insurer to the provisions of KRS 304.99-010 and 304.99-020 and require the insurer to pay the claim that was the subject of the external review, without need for the covered person or authorized person to further establish a right as to the payment amount. Reasonable attorney fees associated with the actions of the insured necessary to collect amounts owed the covered person shall be assessed against and borne by the insurer.

(11) An independent review entity and any medical specialist the entity utilizes in conducting an external review shall not be liable in damages in a civil action for injury, death, or loss to person or property and is not subject to professional disciplinary action for making, in good faith, any finding, conclusion, or determination required to complete the external review. This subsection does not grant immunity from civil liability or professional disciplinary action to an independent review entity or medical specialist for an action that is outside the scope of authority granted in Sections 11, 12, and 13 of this Act.

(12) Nothing in Sections 1 to 17 of this Act shall be construed to create a cause of action against any of the following:

(a) An employer that provides health care benefits to employees through a health benefit plan;

(b) A medical expert, private review agent, or independent review entity that participates in the utilization review, internal appeal, or external review addressed in Sections 1 to 17 of this Act; or

(c) An insurer or provider acting in good faith and in accordance with any finding, conclusion, or determination of an Independent Review Entity acting within the scope of authority set forth in Sections 11, 12, and 13 of this Act.

(13) The covered person, insurer, or provider in the external review may submit written complaints to the department regarding any independent review entity's actions believed to be an inappropriate application of the requirements set forth in Sections 11, 12, and 13 of this Act. The department shall promptly review the complaint, and if the department determines that the actions of the independent review entity were inappropriate, the department shall take corrective measures, including decertification or suspension of the independent review entity from further participation in external reviews. The department's actions shall be subject to the powers and administrative procedures set forth in subtitle 17A of KRS Chapter 304.

SECTION 14. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) To be certified as an independent review entity under this chapter, an organization shall submit to the department an application on a form required by the department. The application shall include the following:

(a) The name of each stockholder or owner of more than five percent (5%) of any stock or options for an applicant;

(b) The name of any holder of bonds or notes of the applicant that exceeds one hundred thousand dollars ($100,000);

(c) The name and type of business of each corporation or other organization that the applicant controls or with which it is affiliated and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under paragraph (c) of this subsection and a description of any relationship the named individual has with an insurer as defined in Section 1 of this Act or a provider of health care services;

(e) The percentage of the applicant's revenues that are anticipated to be derived from independent reviews;

(f) A description of the minimum qualifications employed by the independent review entity to select health care professionals to perform external review, their areas of expertise, and the medical credentials of the health care professionals currently available to perform external reviews; and

(g) The procedures to be used by the independent review entity in making review determinations; and

(2) If at any time there is a material change in the information included in the application, provided for in subsection (1) of this section, the independent review entity shall submit updated information to the department.

(3) The independent review entity shall annually submit to the department the information required by subsection (1) of this section in a form acceptable to the department.

(4) An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by an insurer or a trade or professional association of payors.

(5) An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by a trade or professional association of providers.

(6) Health care professionals who are acting as reviewers for the independent review entity shall hold in good standing a nonrestricted license in a state of the United States.

(7) Health care professionals who are acting as reviewers for the independent review entity shall hold a current certification by a recognized American medical specialty board or other recognized health care professional boards in the area appropriate to the subject of the review, be a specialist in the treatment of the covered person's medical condition under review, and have actual clinical experience in that medical condition.

(8) The independent review entity shall have a quality assurance mechanism to ensure the timeliness and quality of the review, the qualifications and independence of the physician reviewer, and the confidentiality of medical records and review material.

(9) Neither the independent review entity nor any reviewers of the entity, shall have any material, professional, familial, or financial conflict of interest with any of the following:

(a) The insurer involved in the review;

(b) Any officer, director, or management employee of the insurer;

(c) The provider proposing the service or treatment or any associated independent practice association;

(d) The institution at which the service or treatment would be provided;

(e) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the covered person whose treatment is under review; or

(f) The covered person.

(10) As used in this section, "conflict of interest" shall not be interpreted to include:

(a) A contract under which an academic medical center or other similar medical center provides health care services to covered persons, except for academic medical centers that may provide the service under review;

(b) Provider affiliations which are limited to staff privileges; or

(c) A specialist reviewer's relationship with an insurer as a contracting health care provider, except for a specialist reviewer proposing to provide the service under review.

(11) On an annual basis, the independent review entity shall report to the department the following information:

(a) The number of independent review decisions in favor of covered persons ;

(b) The number of independent review decisions in favor of insurers;

(c) The average turnaround time for an independent review decision;

(d) The number of cases in which the independent review entity did not reach a decision in the time specified in statute or administrative regulation; and

(e) The reasons for any delay.

SECTION 15. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall promulgate administrative regulations to implement the provisions of Sections 11,12 13, 14, 15, and 16 of this Act.

SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Insurers subject to the administrative regulations required under Section 15 of this Act shall have no less than ninety (90) days to comply with the provisions of the administrative regulations.

SECTION 17. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall report every six (6) months to the Interim Joint Committee on Banking and Insurance, and to the Governor on the state of the Independent External Review Program. The report shall include a summary of the number of reviews conducted, medical specialties affected, and a summary of the findings and recommendations made by the independent external review entity.

Section 18. KRS 304.12-230 is amended to read as follows:

It is an unfair claims settlement practice for any person to commit or perform any of the following acts or omissions:

(1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(10) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made;

(11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;~~[or]~~

(14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement***; or***

(15) Failing to comply with the decision of an independent review entity to provide coverage for a covered person as a result of an external review in accordance with Sections 11, 12, and 13 of this Act.

SECTION 19. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 19, 20, 21, 22, and 23 of this Act "Emergency medical condition" means:

(1) A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson would reasonably have cause to believe constitutes a condition that the absence of immediate medical attention could reasonably be expected to result in:

(a) Placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part; or

(2) With respect to a pregnant woman who is having contractions:

(a) A situation in which there is inadequate time to effect a safe transfer to another hospital before delivery; or

(b) A situation in which transfer may pose a threat to the health or safety of the woman or the unborn child.

SECTION 20. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Where a covered person with an emergency medical condition has been stabilized, as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 42 U.S.C. sec. 300bb, in the emergency department of a nonparticipating hospital, and an insurer under its health benefit plan requires prior authorization for poststabilization treatment, approval or denial under the preauthorization requirement shall be provided in a timely manner appropriate to conditions of the patient and delivery of the services, but in no case to exceed two (2) hours from the time the request is made and all relevant information is provided. The insurer's failure to make a determination within the two (2) hour time frame, shall constitute an authorization for the hospital to provide the medical service for which prior authorization was sought.

(2) The nonparticipating hospital providing emergency room services, poststabilization treatment, or both, shall be paid at a rate negotiated between the nonparticipating hospital and the insurer. Nothing in this section is to be construed as requiring the payment of one hundred percent (100%) of the billed charges.

SECTION 21. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) "Special circumstances" includes a circumstance in which a covered person has a disability, a congenital condition, a life-threatening illness, or is past the twenty-fourth week of pregnancy where disruption of the covered person's continuity of care could cause medical harm.

(2) Any special circumstance shall be identified by the treating provider, who may request, with the concurrence of the covered person or authorized person, that the covered person be permitted to continue treatment under the provider's care even when the provider is no longer participating in the network, unless the provider has been terminated for a reason

related to quality. The treating, non network provider shall agree to care for the covered person under the same guidelines and payment schedule as required by the plan, and shall report to the plan on the care being provided.

(3) Procedures for resolving disputes regarding the necessity for continued treatment by a provider shall be established by the plan and shall provide for review through the plan's internal appeal process.

(4) This section does not extend the obligation of the plan to pay a terminated or nonrenewed provider for ongoing treatment of a covered person with "special circumstances":

(a) Beyond the ninetieth day after the effective date of the termination or nonrenewal;

(b) Beyond nine (9) months in the case of a covered person who at the time of the termination has been diagnosed with a terminal illness; or

(c) If the covered person is beyond the twenty-fourth week of pregnancy, the plan's obligation to pay for services extends through the delivery of the child, immediate postpartum care, and examination within the first six (6) weeks following delivery.

SECTION 22. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer shall not, under its health benefit plan prohibit a primary care physician from authorizing a covered person's referral to a participating nonprimary care physician specialist. A primary care physician treating a covered person who has a chronic, disabling, congenital, or life-threatening condition may authorize a referral to a participating nonprimary care physician specialist, up to twelve (12) months or for the contract period, whichever is shorter. Under this referral arrangement the covered person shall have direct access to the nonprimary care physician specialist, without the need of further contact or referral by the primary care physician.

SECTION 23. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer shall not, under its health benefit plan prohibit a primary care physician from authorizing a covered person's referral to a participating obstetrician or gynecologist. A primary care physician treating a covered person who is pregnant or has a chronic gynecological condition may authorize a referral to a participating obstetrician or gynecologist, up to twelve (12) months or for the contract period, whichever is shorter. Under this referral arrangement the covered person shall have direct access to the obstetrician or gynecologist, without the need of further contact or referral by the primary care physician.

(2) A female covered person shall be covered for an annual pap smear performed by an obstetrician or gynecologist without a referral from a primary care provider.

SECTION 24. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall promulgate administrative regulations necessary to implement the provisions of Sections 19, 20, 21, 22, and 23 of this Act.

Section 25. KRS 304.17A-520 is amended to read as follows:

(1) An enrollee shall have adequate choice among participating primary care providers in a managed care plan who are accessible and qualified.

(2) A managed care plan shall permit enrollees to choose their own primary care provider from a list of health care providers within the plan. This list shall be updated as health care providers are added or removed and shall include a sufficient number of primary care providers who are accepting new enrollees.

(3) Women shall be able to choose a qualified health care provider offered by a plan for the provision of covered care necessary to provide routine and preventive women's health care services.

(4) A managed care plan shall provide an enrollee with access to a consultation with a participating health care provider for a second opinion. ***Obtaining the second opinion shall not cost a covered person more than the covered person's normal copay.***

Section 26. KRS 304.17-412 is amended to read as follows:

(1) Every health insurer proposing to issue or deliver in this state a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by ***an insurer, its designee, or*** a private review agent shall:

(a) Be~~[a]~~ registered~~[private review agent]~~ in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***~~[KRS 211.462]~~; or

(b) Contract with a private review agent that has been registered in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***~~[KRS 211.462]~~.

(2) Notwithstanding any other provision of ***Sections 2, 3, 4, 5, 6, 7, and 8 of this Act***~~[KRS 211.461 to 211.466]~~, an insurer ***or its designee*** shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:

(a) Notice of denial has been issued. The notice shall inform patients***, authorized persons,*** and health-care providers of their right to appeal adverse determinations of ***a utilization review by*** the ***insurer, its designee, or*** private review agent to the ***insurer for the internal review process established by the insurer in accordance with Sections 9 and 10 of this Act***~~[Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)]~~. The notice shall also include instructions on filing an ***internal*** appeal~~[to the cabinet]~~; and

(b) The insurer is in compliance with subsection (1) of this section.

Section 27. KRS 304.17A-505 is amended to read as follows:

An insurer shall disclose in writing to ***a covered person and*** an enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its health ***benefit plan***~~[insurance contract]~~ and shall promptly provide the ***covered person and*** enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.

(1) The information required to be disclosed under this section shall include a description of:

(a) Covered services and benefits to which the enrollee or other covered person is entitled;

(b) Restrictions or limitations on covered services and benefits;

(c) Financial responsibility of the covered person, including copayments and deductibles;

(d) Prior authorization and any other review requirements with respect to accessing covered services;

(e) Where and in what manner covered services may be obtained;

(f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;

(g) The covered person's right to ***the following:***

1. ***A utilization review***~~[appeal]~~ and the procedure for initiating ***a utilization review, if an insurer elects to provide utilization review;***

2. An ***internal*** appeal of a utilization ***review***~~[management decision]~~ made by or on behalf of the insurer with respect to the denial, reduction, or termination of a health care benefit or the denial of payment for a health care service***, and the procedure to initiate an internal appeal***; ***and***

3. ***An external review and the procedure to initiate the external review process.***

(h)~~[The procedure to initiate an appeal through the process under KRS 211.464(1)(g);~~

~~(i)]~~ Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider; and

(i)~~[(j)]~~ Other information as the commissioner shall require by administrative regulation.

(2) The insurer shall file the information required under this section with the department.

Section 28. KRS 304.18-045 is amended to read as follows:

(1) Every health insurer proposing to issue or deliver in this state a group or blanket health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by ***an insurer, its designee, or*** a private review agent shall:

(a) Be~~[a]~~ registered~~[private review agent]~~ in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***~~[KRS 211.462]~~; or

(b) Contract with a private review agent that has been registered in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***~~[KRS 211.462]~~.

(2) Notwithstanding any other provision of ***Sections 2, 3, 4, 5, 6, 7, and 8 of this Act***~~[KRS 211.461 to 211.466]~~, an insurer ***or its designee*** shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:

(a) Notice of denial has been issued. The notice shall inform patients***, authorized persons,*** and health-care providers of their right to appeal adverse determinations of ***a utilization review by*** the ***insurer, its designee, or*** private review agent to the ***insurer for the internal review process established by the insurer in accordance with Sections 9 and 10 of this Act***[~~Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)~~]. The notice shall also include instructions on filing an ***internal*** appeal[~~ to the cabinet~~]; and

(b) The insurer is in compliance with subsection (1) of this section.

Section 29. KRS 304.32-147 is amended to read as follows:

(1) Every nonprofit hospital, medical-surgical, dental, and health service corporation proposing to issue or deliver in this state a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by a private review agent shall:

(a) Be a registered private review agent in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***[~~KRS 211.462~~]; or

(b) Contract with a private review agent that has been registered in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***[~~KRS 211.462~~].

(2) Notwithstanding any other provision of ***Sections 2, 3, 4, 5, 6, 7, and 8 of this Act***[~~KRS 211.461 to 211.466~~], a nonprofit hospital, medical-surgical, dental, and health service corporation shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:

(a) Notice of denial has been issued. The notice shall inform patients***, authorized persons,*** and health-care providers of their right to appeal adverse determinations of ***a utilization review by*** the ***insurer, its designee, or*** private review agent to the ***insurer for the internal appeal process established by the insurer in accordance with Sections 9 and 10 of this Act***[~~Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)~~]. The notice shall also include instructions on filing an appeal to the cabinet; and

(b) The nonprofit hospital, medical-surgical, dental, and health service corporation is in compliance with subsection (1) of this section.

Section 30. KRS 304.32-330 is amended to read as follows:

(1) Every employer in this state which provides coverage of hospital benefits on a self-insured basis and requires the utilization review of such benefits by ***an insurer, its designee, or*** a private review agent shall:

(a) Be a registered private review agent in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***[~~KRS 211.462~~]; or

(b) Contract with a private review agent that has been registered in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***[~~KRS 211.462~~].

(2) Notwithstanding any other provision of ***Sections 2, 3, 4, 5, 6, 7, and 8 of this Act***[~~KRS 211.461 to 211.466~~], a self-insured employer shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:

(a) Notice of denial has been issued; and

(b) The self-insured employer is in compliance with subsection (1) of this section.

Section 31. KRS 304.38-225 is amended to read as follows:

(1) Every health maintenance organization in this state which provides coverage of hospital benefits and requires the utilization review of such benefits or administers a health benefit program which provides for the coverage of hospital benefits and requires the utilization review of such benefits by a private review agent shall:

(a) Be a registered private review agent in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***[~~KRS 211.462~~]; or

(b) Contract with a private review agent that has been registered in accordance with ***Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act***[~~KRS 211.462~~].

(2) Notwithstanding any other provision of ***Sections 2, 3, 4, 5, 6, 7, and 8 of this Act***[~~KRS 211.461 to 211.466~~], a health maintenance organization shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:

(a) Notice of denial has been issued. The notice shall inform patients***, authorized persons,*** and health-care providers of their right to appeal adverse determinations of ***a utilization review by*** the ***insurer, its designee, or*** private review agent to the ***insurer for the internal review process established by the insurer in accordance with Sections 9 and 10 of this Act***[~~Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)~~]. The notice shall also include instructions on filing an ***internal*** appeal[~~ to the cabinet~~]; and

(b) The health maintenance organization is in compliance with subsection (1) of this section.

Section 32. KRS 304.47-050 is amended to read as follows:

(1) Any person, other than an insurer, agent, or other person licensed under this chapter, or an employee thereof, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the Division of Insurance Fraud Investigation a report of information pertinent to this knowledge of or belief and any additional relevant information the commissioner may request.

(2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the Division of Insurance Fraud Investigation a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:

(a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;

(b)[~~Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;~~

~~(c)~~] Any private medical review committee;

(c)[~~(d)~~] Any insurer, agent, or other person licensed under this chapter; and

(d)[~~(e)~~] Any employee of the persons named in paragraphs (a) to ***(c)***[~~(d)~~] of this subsection.

(3) The Division of Insurance Fraud Investigation or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.

(4) The Department of Workers' Claims shall provide the division access to all relevant information the commissioner may request.

(5) The Division of Insurance Fraud Investigation shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the division of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.

(6) Notwithstanding the provisions of subsections (1) to (5) of this section, when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured may notify a law enforcement agency of their knowledge or reasonable belief and provide information relevant to the fraudulent insurance act, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss.

(7) If the information referred to in subsection (6) of this section is specifically requested by a law enforcement agency or prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.

(8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel,

slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 33. KRS 211.990 is amended to read as follows:

(1) Any owner or occupant who fails to comply with an order made under the provisions of KRS 211.210 shall be guilty of a violation, and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.

(2) Except as otherwise provided by law, anyone who fails to comply with the provisions of the rules and regulations adopted pursuant to this chapter or who fails to comply with an order of the cabinet issued pursuant thereto shall be guilty of a violation. Each day of such violation or noncompliance shall constitute a separate offense.

(3) Any person who violates any provision of KRS 211.182 shall, upon first offense, be guilty of a Class A misdemeanor. Each subsequent violation of any provision of KRS 211.182 shall constitute a Class D felony.

(4) Any person who violates any provision of KRS 211.842 to 211.852 or any regulation adopted hereunder or any order issued by the Cabinet for Health Services to comply with any provision of KRS 211.842 to 211.852 or the regulations adopted thereunder shall be guilty of a Class A misdemeanor. Each day of violation or noncompliance shall constitute a separate offense.

(5) Any person who violates KRS 211.962 or any rule or regulation of the Cabinet for Health Services adopted pursuant to KRS 211.962 to 211.968 shall be guilty of a Class A misdemeanor.

(6)~~[A private review agent which performs utilization review without proper registration pursuant to KRS 211.461 to 211.466 shall be guilty of a Class A misdemeanor.~~

~~(7) Any properly registered private review agent which willfully violates any provision of KRS 211.461 to 211.466 or of the regulations shall be guilty of a Class D felony.~~

~~(8)]~~ A person who performs or offers to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities who is not certified as required by KRS 211.9063 or 211.9069 shall be guilty of a Class A misdemeanor.

(7)~~[(9)]~~ Any person who performs lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities, who willfully violates the standards for performing lead-hazard detection or lead-hazard abatement procedures included in the administrative regulations promulgated pursuant to KRS 211.9075 shall be guilty of a Class D felony.

(8)~~[(10)]~~ The penalties provided in subsections (6), ***and*** (7)~~[, (8), and (9)]~~ of this section are cumulative and are in addition to any other penalties, claims, damages, or remedies available at law or in equity.

(9)~~[(11)]~~ Any person who violates any provisions of KRS 211.760 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). Each day of violation or noncompliance shall constitute a separate offense.

Section 34. KRS 311.990 is amended to read as follows:

(1) Any person who violates KRS 311.250 shall be guilty of a violation.

(2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.

(3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.

(4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.

(5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.

(6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.

(7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.

(8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.

(9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.

(10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and

(b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.

(11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS 311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.

2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.

3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.

(b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.

(c) No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.

(12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.

(13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.

(14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.

(15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.

(16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.

(17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.

(18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.

(19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.

(20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.

(21) Any person who violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654 shall be guilty of a Class A misdemeanor.

(22) Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.

(23) Any person who violates KRS 311.914 shall be guilty of a violation.

(24) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.

(25) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;

(b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may

communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.

(26)~~[A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.~~

~~(27)]~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.

(27)~~[(28)]~~ Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(28)~~[(29)]~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.

(29)~~[(30)]~~ Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars ($50,000) nor more than five hundred thousand dollars ($500,000).

(30)~~[(31)]~~ Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars ($10,000) or more than fifty thousand dollars ($50,000).

Section 35. The following KRS section is repealed:

211.461 Definitions.

211.462 Registration of private review agent required -- Exceptions.

211.463 Duties of private review agent regarding utilization review.

211.464 Regulations -- Reporting requirements -- Copies of policies or procedures -- List of registered agents.

211.465 Procedures for registration and renewal.

211.466 Enjoining operation of improperly registered agent.

311.131 Definitions.

311.132 Certificate required for private review agent -- Exceptions.

311.133 Administrative regulations.

311.134 Requirements for health benefit program covering hospital and medical benefits and utilization review thereof.

311.135 Application for a certificate.

311.136 Expiration and renewal of certificate.

311.137 Revocation or denial of certificate.

311.138 Hearing and appeal.

311.139 Confidentiality of individual medical records.

Approved March 31, 2000

CHAPTER 263

(HB 398)

AN ACT relating to boats.

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

Section 1. KRS 235.410 is amended to read as follows:

As used in KRS 235.410 to 235.470, unless the context clearly indicates otherwise, the following words shall have the following meanings:

(1) ***"Houseboat" means any recreational or pleasure-type vessel, including but not limited to, cruisers, yachts, or runabouts equipped with a marine sanitation device and which can be used as an overnight residence***~~["Motorboat" means any vessel, except for a federally regulated commercial vessel, propelled by machinery, whether or not such machinery is the principal source of propulsion]~~;

(2) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

(3) "Person" or "persons" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity whatsoever;

(4) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, vessels, or other places, together with such industrial wastes, underground, surface, storm or other water, as may be present;

(5) "Industrial wastes" means liquid, or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource;

(6) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage and all other foreign substances not included within the above definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

Section 2. KRS 235.430 is amended to read as follows:

No person shall dispose of sewage accumulated in a holding tank, a marine sanitation device, or other similar container on a ***houseboat***~~[vessel]~~ in a manner that the sewage reaches or may reach the waters of the Commonwealth except for state waters into which discharges are allowed under federal law.

Section 3. KRS 235.440 is amended to read as follows:

No ***houseboat***~~[motorboat]~~ equipped with marine toilet facilities shall be on the waters of the Commonwealth unless the ***houseboat***~~[motorboat]~~ is equipped with a marine sanitation device.

Approved March 31, 2000

CHAPTER 264

(HB 452)

AN ACT relating to continuing care retirement communities.

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

Section 1. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

(1) "Abortion facility" means any place in which an abortion is performed;

(2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;

(3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;

(4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars ($1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;

(5) "Cabinet" means the Cabinet for Health Services;

(6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:

(a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or

(b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;

(7) "Capital expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;

(8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;

(9) "***Continuing care retirement community" means a community that provides, on the same campus, a continuum of residential living options and support services to persons sixty (60) years of age or older under a written agreement. The residential living options shall include independent living units, nursing home beds, and either assisted living units or personal care beds;***

(10) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;

(11)[~~(10)~~] "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;

(12)[~~(11)~~] "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;

(13) "Independent living" means the provision of living units and supportive services including, but not limited to, laundry, housekeeping, maintenance, activity direction, security, dining options, and transportation.

(14)[~~(12)~~] "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;

(15)[~~(13)~~] "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;

(16)[~~(14)~~] "Nonclinically-related expenditures" means expenditures for:

(a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or

(b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:

1. Parking facilities;

2. Telecommunications or telephone systems;

3. Management information systems;

4. Ventilation systems;

5. Heating or air conditioning, or both;

6. Energy conservation; or

7. Administrative offices;

(17)[~~(15)~~] "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;

(18)[~~(16)~~] "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;

(19)[~~(17)~~] "Record" means, as applicable in a particular proceeding:

(a) The application and any information provided by the applicant at the request of the cabinet;

(b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;

(c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;

(d) Any staff reports or recommendations prepared by or for the cabinet;

(e) Any recommendation or decision of the cabinet;

(f) Any testimony or documentary evidence adduced at a hearing;

(g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and

(h) Any other items required by administrative regulations promulgated by the cabinet;

(20)[~~(18)~~] "Secretary" means the secretary of the Cabinet for Health Services;

(21)[~~(19)~~] "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;

(22)[~~(20)~~] "Substantial change in a health service" means:

(a) The addition of a health service for which there are review criteria and standards in the state health plan;

(b) The addition of a health service subject to licensure under this chapter; or

(c) The reduction or termination of a health service which had previously been provided in the health facility;

(23)[~~(21)~~] "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;

(24)[~~(22)~~] "Substantial change in a project" means a change made to a pending or approved project which results in:

(a) A substantial change in a health service, except a reduction or termination of a health service;

(b) A substantial change in bed capacity, except for reductions;

(c) A change of location; or

(d) An increase in costs greater than the allowable amount as prescribed by regulation;

(25)[~~(23)~~] "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;

(26)[~~(24)~~] "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;

(27)[~~(25)~~] "To establish" means to construct, develop, or initiate a health facility;

(28)[~~(26)~~] "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and

(29)[~~(27)~~] "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 2. KRS 216B.020 is amended to read as follows:

(1) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to abortion facilities as defined in KRS 216B.015; any hospital which does not charge its patients for hospital services and does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government; assisted living residences; family care homes; state veterans' nursing homes; services provided on a contractual basis in a rural primary-care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services licensed as nursing pools; group homes; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including, but not limited to, wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics

which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically-related expenditures; ***nursing home beds that shall be exclusively limited to on-campus residents of a certified continuing care retirement community;*** the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of the hospital or the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars ($600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990. The provisions of this section shall not apply to nursing homes, personal care homes, intermediate care facilities, and family care homes; or nonconforming ambulance services as defined by administrative regulation. These listed facilities or services shall be subject to licensure, when applicable.

(2) Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:

(a) Private offices and clinics of physicians, dentists, and other practitioners of the healing arts, except any physician's office that meets the criteria set forth in KRS 216B.015(4);

(b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; unless the physician's office meets the criteria set forth in KRS 216B.015(4), or unless the physician's office is also an abortion facility as defined in KRS 216B.015, except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;

(c) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;

(d) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Veterans Administration for boarding services;

(e) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and

(f) On-duty police and fire department personnel assisting in emergency situations by providing first aid or transportation when regular emergency units licensed to provide first aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.

(3) An existing facility licensed as skilled nursing, intermediate care, or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of skilled nursing, intermediate care, or nursing home to the nursing facility licensure category.

(4) Notwithstanding any other provision of law to the contrary, dual-license acute care beds licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996, may be converted to nursing facility beds by December 31, 1996, without applying for a certificate of need. Any dual-license acute care beds not converted to nursing facility beds by December 31, 1996, shall, as of January 1, 1997, be converted to licensed acute care beds.

(5) Notwithstanding any other provision of law to the contrary, no dual-license acute care beds or acute care nursing home beds that have been converted to nursing facility beds pursuant to the provisions of subsection (3) of this section may be certified as Medicaid eligible after December 31, 1995, without the written authorization of the secretary.

(6) Notwithstanding any other provision of law to the contrary, total dual-license acute care beds shall be limited to those licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996. No acute care hospital may obtain a new dual license for acute care beds unless the hospital had a licensure application filed and in process prior to February 10, 1996.

(7) Ambulance services owned and operated by a city government, which propose to provide services in coterminous cities outside of the ambulance service's designated geographic service area, shall not be required to obtain a certificate of need if the governing body of the city in which the ambulance services are to be provided enters into an agreement with the ambulance service to provide services in the city.

(8) Notwithstanding any other provision of law, a continuing care retirement community's nursing home beds shall not be certified as Medicaid eligible unless a certificate of need has been issued authorizing applications for Medicaid certification. The provisions of subsection (3) of this section notwithstanding, a continuing care retirement community shall not change the level of care licensure status of its beds without first obtaining a certificate of need.

Section 3. KRS 216B.040 is amended to read as follows:

(1) The cabinet shall have four (4) separate and distinct functions in administering this chapter:

(a) To approve or deny certificates of need in accordance with the provisions of this chapter, except as to those applications which have been granted nonsubstantive review status by the cabinet;

(b) To issue and to revoke certificates of need;

(c) To provide a due process hearing and issue a final determination on all actions by the cabinet to deny, revoke, modify, or suspend licenses of health facilities and health services issued by the cabinet; and

(d) To enforce, through legal actions on its own motion, the provisions of this chapter and its orders and decisions issued pursuant to its functions.

(2) The cabinet shall:

(a) Promulgate administrative regulations pursuant to the provisions of KRS Chapter 13A:

1. To establish the certificate of need review procedures, including but not limited to, application procedures, notice provisions, procedures for review of completeness of applications, and timetables for review cycles.

2. To establish criteria for issuance and denial of certificates of need which shall be limited to the following considerations:

   a. Consistency with plans. Each proposal approved by the cabinet shall be consistent with the state health plan, and shall be subject to biennial budget authorizations and limitations, and with consideration given to the proposal's impact on health care costs in the Commonwealth. The state health plan shall contain a need assessment for long-term care beds, which shall be based on a statistically valid analysis of the present and future needs of the state as a whole and counties individually. The need assessment shall be applied uniformly to all areas of the state. The methodology shall be reviewed and updated on an annual basis. The long-term care bed need criteria in the state health plan or as set forth by the appropriate certificate of need authority shall give preference to conversion of personal care beds and acute care beds to nursing facility beds, so long as the state health plan or the appropriate certificate of need authority establishes a need in the affected counties and the proposed conversions are more cost-effective than new construction. The fact that the state health plan shall not address the specific type of proposal being reviewed shall not constitute grounds for disapproval of the proposal***. Notwithstanding any other provision of law, the long-term care bed need criteria in the state health plan or as set forth by the appropriate certificate of need authority shall not consider, factor in, or include any continuing care retirement community's nursing home beds established under Sections 1, 2, 5, and 6 of this Act***;

   b. Need and accessibility. The proposal shall meet an identified need in a defined geographic area and be accessible to all residents of the area. A defined geographic area shall be defined as the area the proposal seeks to serve, including its demographics, and shall not be limited to geographical boundaries;

   c. Interrelationships and linkages. The proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system;

   d. Costs, economic feasibility, and resources availability. The proposal, when measured against the cost of alternatives for meeting needs, shall be judged to be an effective and economical use of resources, not only of capital investment, but also ongoing requirements for health manpower and operational financing;

   e. Quality of services. The applicant shall be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements

assuring the provision of quality health care services, as established by the cabinet;

f. Hospital-based skilled nursing, intermediate care, and personal care beds shall be considered by the cabinet in determining the need for freestanding long-term care beds.

(b) Conduct public hearings, as requested, in respect to certificate-of-need applications, revocations of certificates of need, and denials, suspensions, modifications, or revocations of licenses.

(3) The cabinet may:

(a) Issue other administrative regulations necessary for the proper administration of this chapter;

(b) Administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet, and the process shall extend to all parts of the Commonwealth. Service of process in all proceedings brought before or initiated by the cabinet may be made by certified mail, or in the same manner as other process in civil cases, as the cabinet directs;

(c) Establish by promulgation of administrative regulation under KRS Chapter 13A reasonable application fees for certificates of need;

(d) Appoint technical advisory committees as are deemed necessary to administer its functions under the provisions of this chapter;

(e) Establish a mechanism for issuing advisory opinions to prospective applicants for certificates of need regarding the requirements of a certificate of need; and

(f) Establish a mechanism for biennial review of projects for compliance with the terms of the certificate of need.

Section 4. KRS 216B.095 is amended to read as follows:

(1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review as provided below. The cabinet may grant or deny nonsubstantive review status within ten (10) days of the date the application is deemed completed and shall give notice to all affected persons of the decision to conduct a nonsubstantive review. Any affected person other than the applicant may request a hearing by filing a request with the cabinet within ten (10) days of the notice to conduct a nonsubstantive review. As applicable, hearings shall be conducted as provided in KRS 216B.085. Based solely upon the record established with regard to the matter, the cabinet shall approve or deny a certificate of need on all projects assigned nonsubstantive review status within thirty-five (35) days of the determination of nonsubstantive review status. If the application is denied nonsubstantive review status, it shall automatically be placed in the formal review process.

(2) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next cycle of the formal review process. Nothing in this subsection shall require an applicant to pursue a formal review before obtaining judicial review pursuant to KRS 216B.115.

(3) The cabinet may grant nonsubstantive review status to an application for a certificate of need which is required:

(a) To change the location of a proposed health facility;

(b) To replace or relocate a licensed health facility, if there is no substantial change in health services or substantial change in bed capacity;

(c) To replace or repair worn equipment if the worn equipment has been used by the applicant in a health facility for five (5) years or more;

(d) For cost escalations;

(e) To establish an industrial ambulance service; or

(f) In other circumstances the cabinet by administrative regulation may prescribe.

(4) Notwithstanding any other provision to the contrary in this chapter, the cabinet may approve a certificate of need for a project required for the purposes set out in paragraphs (a) through (f) of subsection (3) of this section, unless it finds the facility or service with respect to which the capital expenditure is proposed to be made is not required; or to the extent the facility or services contemplated by the proposed capital expenditure is addressed in the state health plan, the cabinet finds that the capital expenditure is not consistent with the state health plan.

(5) The decision of the cabinet approving or denying a certificate of need pursuant to this section shall be final for purposes of judicial appeal, unless the applicant requests the application be placed in the formal review process. An approved certificate shall be issued thirty (30) days after notice of the cabinet's decision, unless a judicial appeal is taken and issuance is enjoined by the court.

(6) Notwithstanding any other provision of law, the cabinet shall not grant nonsubstantive review status to a certificate of need application that indicates an intent to apply for Medicaid certification of nursing home beds within a continuing care retirement community established under Sections 1, 2, 5, and 6 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

The cabinet shall promulgate administrative regulations according to KRS Chapter 13A that set forth the procedures and requirements for obtaining a certificate of compliance for a continuing care retirement community.

SECTION 6. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) To be eligible for a certificate of compliance, a continuing care retirement community shall certify in writing to the cabinet and shall disclose in writing to each of its residents that:

(a) None of the health facilities or health services operated by the continuing care retirement community shall apply for or become certified for participation in the Medicaid program; and

(b) No claim for Medicaid reimbursement shall be submitted for any person for any health service provided by the continuing care retirement community.

(2) A continuing care retirement community may establish one (1) bed at the nursing home level of care for every four (4) living units or personal care beds operated by the continuing care retirement community collectively. All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument.

(3) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents. A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician. No resident admitted to a nursing home bed shall be transferred or discharged without thirty (30) days prior written notice to the resident or his or her guardian.

(4) A continuing care retirement community shall assist each resident upon a move-out notice to find appropriate living arrangements. Each continuing care retirement community shall share information on alternative living arrangements provided by the Office of Aging Services at the time a move-out notice is given to a resident. The written agreement executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements, prior to the actual move-out date.

SECTION 7. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

The establishment of continuing care retirement community nursing home beds under Sections 1, 2, 5, and 6 of this Act shall be limited to the time period commencing upon the effective date of this Act and ending upon the adjournment of the 2002 General Assembly. No further continuing care retirement community nursing home beds shall be established under Sections 1, 2, 5, and 6 of this Act without affirmative actions of the General Assembly.

SECTION 8. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall monitor the establishment of continuing care retirement communities' nursing home beds closely. The cabinet shall collect the following data regarding continuing care retirement communities' nursing home beds:

(a) The number of applications for a certificate of need to convert nursing home beds to nursing facility beds, the number of beds included in each application, and the number of beds approved;

(b) The number of applications for Medicaid certification for continuing care retirement communities' nursing home beds, the number of beds included in each application, and the number of beds certified as Medicaid eligible;

(c) The payor sources for continuing care retirement communities' nursing home beds; and

(d) The number of each type of bed or living unit within each continuing care retirement community on the effective date of this Act and the number of each type of bed or living unit within each continuing care retirement community on October 31, 2001.

(2) Prior to the beginning of the 2002 Regular Session of the General Assembly, the secretary shall issue a report to the President of the Senate and the Speaker of the House of Representatives, the chair of the Senate Standing Committee on Health and Welfare, and the chair of the House Standing Committee on Health and Welfare addressing the impact of Sections 1, 2, 5, and 6 of this Act upon the state's Medicaid budget, consumer access issues, and providers of long-term care.

Approved March 31, 2000

CHAPTER 265

(HB 543)

AN ACT relating to the Kentucky River Authority.

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

Section 1. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

(1) State Property and Buildings Commission;

(2) Kentucky Pollution Abatement Authority;

(3) Kentucky Savings Bond Authority;

(4) County Officials Compensation Board;

(5) Kentucky Turnpike Authority;

(6) State Investment Commission;

(7) Kentucky Housing Corporation;~~[and]~~

(8) Governmental Services Center***; and***

(9) Kentucky River Authority.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

The Kentucky River Authority is created to perform the essential governmental functions and public purposes set out in KRS 151.700 to 151.730. The authority shall be a public corporation and independent governmental agency and instrumentality of the state. The responsibilities of the authority shall be managed and implemented by a board of directors as set out in Section 3 of this Act.

Section 3. KRS 151.710 is amended to read as follows:

(1) The Governor shall appoint members to the Kentucky River Authority, created to carry out the essential public purpose of protecting the health and welfare of the people of the Commonwealth as declared in KRS 151.700.

(2) The Governor shall appoint the ***secretaries***~~[secretary]~~ of the ***Finance and Administration Cabinet and the*** Natural Resources and Environmental Protection Cabinet and ten (10) other persons as the members of the authority. The ***secretaries***~~[secretary]~~ may designate ***alternates***~~[an alternate]~~. Of the ten (10) persons, one (1) shall be a registered engineer, one

(1) an expert in water quality, one (1) a mayor, and one (1) a county judge/executive. The mayor and the county judge/executive shall be officers from counties which obtain the major portion of their water supply from the Kentucky River. Five (5) members shall reside in a county adjacent to the main stem of the Kentucky River, one (1) of the five (5) members residing in counties adjacent to locks and dams one (1) through four (4); and one (1) member shall reside in a county adjacent to either the North Fork, Middle Fork, or South Fork of the Kentucky River. ***Of the twelve (12) members only one (1) may be an employee of the Natural Resources and Environmental Protection Cabinet.***

(3) Of the ten (10) members first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, three (3) for terms of three (3) years, and three (3) for terms of four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the authority for a term of four (4) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.

(4) Each member shall receive as compensation one hundred dollars ($100) per day for attending a meeting of the authority.

(5) Any member who misses three (3) consecutive meetings of the authority shall be deemed to have vacated the office. The authority shall declare the office vacant and the office shall be filled as provided by subsections (2) and (3) of this section.

(6) The authority annually shall elect one (1) of its members as chairman. A quorum for the transaction of business shall be six (6) members, and a majority of the members present at a meeting may take action on any matter legally before the authority.

(7) Members shall be paid their necessary travel expenses incurred in attending meetings and in the performance of their official duties, in addition to the per diem compensation of one hundred dollars ($100).

(8) The authority shall meet at least quarterly, and may meet upon the call of the chairman.

(9) The chairman shall be paid necessary travel expenses and a one hundred dollar ($100) per diem compensation for conducting official business of the authority.

(10) The authority shall be attached for administrative purposes to the ***Finance and Administration***[~~Natural Resources and Environmental Protection~~] Cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.

(11) The necessary travel expenses and per diem compensation of the members of the authority in attending meetings and in the performance of their official duties shall be paid by the authority.

(12) The authority shall promulgate administrative regulations necessary to carry out its duties, and shall report annually to the Governor and the Legislative Research Commission.

Section 4. KRS 151.720 is amended to read as follows:

The Kentucky River Authority is authorized and empowered to:

(1) Construct, reconstruct, provide for the major maintenance, or repair the locks and dams on the Kentucky River and all real and personal property pertaining thereto, as well as maintain the channel;

(2) Acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title to or any acceptable lesser interest in any real or personal property and by lease or other conveyance, contract for the right to use and occupy any real or personal property selected in the discretion of the authority as constituting necessary, desirable, or acceptable sites to fulfill its statutory authority and power;

(3) Lease its real or personal property to other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons as the authority deems necessary to carry out the purposes of this section;

(4) Sell or otherwise dispose of its real or personal property in accordance with KRS 56.463 and 45A.045;

(5) Collect water use fees from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes. Facilities charged such a fee may pass on all or any part of the fee;

(6) Issue revenue bonds in accordance with KRS 151.730;

(7) Employ persons to carry out the authority's responsibilities with revenue from the water use fees, including an executive director who shall serve at the pleasure of the authority;

(8) Contract for services with other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons to perform its duties;

(9) Promulgate administrative regulations providing for clean water, which shall not be less stringent than the state and federal regulations for clean water;

(10) Exercise all other powers necessary to perform its public purpose to implement and enforce the plans developed by the authority pursuant to this section ***and Sections 5 and 6 of this Act***, and to enforce administrative regulations promulgated by the authority. The long-range water resource plan and drought response plan shall be implemented for the basin upon the direction of the authority;

(11) Develop comprehensive plans for the management of the Kentucky River within the basin, including a long-range water resource plan and a drought response plan. Each county within the basin shall develop a long-range water resource plan and submit it to the authority. The authority***, after consultation with the Natural Resources and Environmental Protection Cabinet,*** shall develop a unified long-range water resource plan for the basin. ***The unified long-range water resource plan shall be implemented over short-range and long-range time periods. The short-range plan shall be for a period of six (6) years and the long-range plan shall be for a period of twenty (20) years.*** The authority shall conduct a public hearing on the plan ***prior to its adoption and amend the plan as appropriate based on the comments received. The Natural Resources and Environmental Protection Cabinet shall review the draft unified plan and provide comment during the public comment period concerning the consistency of the plan with the state requirements pursuant to KRS Chapters 224 and 151***[~~, and submit its final unified plan for the basin to the Natural Resources and Environmental Protection Cabinet. The cabinet shall act upon the plan within six (6) months and shall approve the plan, unless it objects for good reason shown~~]. A drought response plan for the basin shall be developed by the authority ***and shall be***

coordinated with the Natural Resources and Environmental Protection Cabinet to assure consistency with KRS Chapters 224 and 151, and this plan shall be implemented for the basin upon the direction of the authority;

(12) Develop and promote a plan for the protection and use of groundwater within the basin. Administrative regulations may be promulgated implementing the plan, and these regulations shall not be less stringent than state and federal regulations protecting groundwater;

(13) Develop recreational areas within the basin. These recreational areas may be operated and funded by the state Department of Parks, Kentucky State Nature Preserves Commission, or other governmental entity as specifically authorized or permitted within the biennial executive budget. There is hereby created the Kentucky River Park to be located as determined by the authority;

(14) Utilize funds provided for recreational purposes within the biennial executive budget for major or minor maintenance if the authority certifies to the secretary of the Finance and Administration Cabinet that a significant need exists for the repairs and no other funds are available for the maintenance;

(15) Coordinate the Kentucky River basin water resources activities among state agencies;

(16) Report quarterly on all of its activities to the legislative Committee on Appropriations and Revenue;

(17) Receive reports from state agencies on litigation concerning the Kentucky River, which agencies are hereby directed to report to the authority;

(18) Credit to the authority any income derived from the interest earned on the investment of the water use fees collected, which shall be available for the authority's expenditure; and

(19) Accomplish the watershed management mission of the authority, which is to fulfill the provisions of this section for the Kentucky River basin, the boundary of which shall be defined by a hydrologic map promulgated in an administrative regulation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky River Authority shall undertake a continuing study of the water available within the Kentucky River and the water needs within the Kentucky River Basin. The study shall focus on necessary capital construction to maintain or increase water availability within the Kentucky River, including bringing existing facilities up to acceptable standards or replacing existing facilities where required.

(2) The Kentucky River Authority shall on a biennial basis provide the General Assembly with an estimate of the cost of maintaining or increasing the water available within the Kentucky River in order to meet the water supply needs of the citizens within the Kentucky River Basin.

SECTION 6. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) Beginning with the 2000-2002 biennium and each biennium thereafter, the authority shall submit to the General Assembly a six (6) year program of preconstruction and

construction activities to maintain or increase water available within the Kentucky River. The program shall include a two (2) year construction component that shall be implemented as authorized by the General Assembly in the authority's biennial budget and a four (4) year preconstruction component that shall advise the General Assembly of the consistency of ongoing and long-term planning with the construction activities funded by the General Assembly.

(2) The program shall be developed by considering, at a minimum, the following factors:

(a) The population to be served by the available water;

(b) The social, economic, and environmental impact of program elements;

(c) The condition of existing facilities critical to water availability;

(d) The cost of maintaining, improving, replacing, or removing facilities; and

(e) The dependence of communities within the river basin on specific Kentucky River dam pools or other sources of water.

(3) The program shall include a four (4) year planning document setting out preconstruction activities that include planning and design and an environmental analysis of projects to maintain or increase water available within the Kentucky River and geotechnical and stability evaluations of the Kentucky River locks and dams.

(4) The authority shall provide to the General Assembly a long-range planning document consisting of twenty (20) years for water supply projects being considered by the authority.

(5) The authority shall be responsible for the execution of each six (6) year program as approved and authorized in the budget by the General Assembly and shall report any anticipated deviations from the authorized construction funding or preconstruction program to the Interim Joint Committee on Appropriations and Revenue.

SECTION 7. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

By July 1 of each year preceding the convening of the General Assembly in regular session, the authority shall provide the projected six (6) year construction and preconstruction program to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue.

Section 8. KRS 151.723 is amended to read as follows:

(1) The rate of the water use fees collected by the authority shall be set for each year of the biennium based upon a total amount of funds necessary to carry out only those functions, projects, and expenses authorized by the General Assembly in the authority's biennial budget.

(2) At the time the authority submits its budget to the Governor's Office of Policy and Management, it shall certify to the General Assembly~~[and the secretary of the Revenue Cabinet]~~ the total amount of water use reported for the preceding biennium by users subject to the water use fees. At least thirty (30) days prior to the effective date of the authority's budget, the ***authority***~~[secretary of the Revenue Cabinet]~~ shall establish a rate for each water use fee based upon an amount of water use projected for each year of the biennium from the amount reported, calculated to generate the amount of funds necessary to carry out the

functions, projects, and expenses which have been authorized by the General Assembly ***to be funded by the fees***. The rate shall be an amount for each one thousand (1,000) gallons of water use and shall be effective for at least one (1) year.

(3) The authority shall define by administrative regulation those uses of the Kentucky River or the waters of the Kentucky River basin subject to a water use fee. Water use fees shall not apply to facilities using water for agricultural purposes. The authority shall collect the fees on a quarterly basis and pay the collected fees into the State Treasury to the credit of a restricted fund for use by the authority.

SECTION 9. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

At the time a water utility requests a state agency to take action required to allow the transfer between water utilities of drinking water within or into the watershed of the Kentucky River basin, the water utility shall notify the authority of the request that has been made for state agency action. The authority shall review the request and comment on the requested transfer to the state agency within the time period for the review by the state agency.

Section 10. No later than September 30, 2000, the authority shall report to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue on implementation of those plan elements authorized during the 2000 Regular Session of the General Assembly.

Approved March 31, 2000

CHAPTER 266

(HB 596)

AN ACT relating to Kentucky Horse Council license plates.

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

Section 1. KRS 186.1868 is amended to read as follows:

(1) Any person who complies with the provisions of KRS 186.186 may apply for a special Kentucky Horse Council license plate.

(2) ***Any person who registers a farm truck under KRS 186.050(4)(a) and who complies with the provisions of KRS 186.186 may apply for a special Kentucky Horse Council license plate. The registration receipt for a farm truck issued a Kentucky Horse Council license plate shall state the declared gross weight of the vehicle.***

(3) In addition to the fees required by KRS 186.186, a person applying for a Kentucky Horse Council license plate shall pay a ten dollar ($10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. When applying for an annual renewal registration decal, a person with a Kentucky Horse Council license plate shall pay a five dollar ($5) fee, in addition to the renewal fee established in KRS 186.186(2). The five dollar ($5) fee shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.

(4)[~~(3)~~] A special Kentucky Horse Council license plate shall be the color and design selected by the Kentucky Horse Council and approved by the Transportation Cabinet. The name Kentucky and the annual registration renewal decal shall appear on the plate. The Transportation Cabinet may use any combination of letters or numerals as needed in the numbering of the license plates.

(5)[~~(4)~~] All revenues generated pursuant to this subsection shall be forwarded by the Transportation Cabinet to the Kentucky Horse Council.

Section 2. This Act takes effect January 1, 2001.

Approved March 31, 2000

CHAPTER 267

(HB 599)

AN ACT relating to mining reclamation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

(1) If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation.

(2) If a violation other than one described in subsection (1) cannot be abated because the permittee or operator responsible for abatement of the violation has been denied access to the land necessary to allow abatement of the violation, the cabinet shall terminate the notice of noncompliance or cessation order issued for the violation, if the following conditions are met:

(a) Prior to terminating a notice of noncompliance or cessation order under this subsection, and within thirty (30) days of a request by a permittee or operator to terminate a violation based on a lack of access, the cabinet shall verify the denial of access and advise the surface owners of record and the legal occupants of the affected land of the consequences of refusing to allow access to the property for the purpose of enabling abatement of the violation; and

(b) The cabinet shall explain the consequences by certified mail, return receipt requested, and shall make a good faith effort to notify all owners of interest and legal occupants verbally, that:

1. Refusal to allow access to the property will result in termination of the violation as uncorrectable;

2. If there is damage that occurs to public or private property due to the uncorrected violation condition on the property, that the property owner may

also be responsible under law for any property damage to private or public property that may result from the unreclaimed condition; and

3. While the landowner may seek damages or injunctive relief in an action against the permittee or operator, the refusal to grant access in order to allow abatement of the violation shall result in the state terminating the requirement that the permittee or operator undertake work necessary for abatement of the violation, and that while penalties may be assessed, the performance bond shall not be forfeited on the basis of the violation.

(3) The cabinet shall not terminate any notice of noncompliance or cessation order under this section if the cabinet determines that the denial of access necessary to abate the violation has been procured through collusion between the permittee or operator and the landowner or legal occupant of the affected land who is refusing to allow the necessary access. "Collusion," for the purpose of this section, includes any agreement, understanding, or contract by which the landowner refuses access to the property in return for any consideration, whether involving money or otherwise. Any act of collusion shall subject the permittee or operator to penalties under this chapter for willful and knowing refusal to correct the violation.

(4) No noncompliance or cessation order may be terminated under this section where there is any common ownership or control between the permittee or operator and the landowner or legal occupant. No noncompliance or cessation order may be terminated under this section where there is any other legal relationship between the permittee or operator and the landowner or legal occupant, except where a court of competent jurisdiction has determined that the legal relationship does not provide for a right of access.

(5) Where a violation may impact public or private property other than land for which access has been denied, the cabinet shall direct abatement measures to be taken by the permittee or operator to prevent damage to those lands for which access has not been denied.

(6) Termination of a notice of noncompliance or cessation order under this section shall not affect the assessment of a civil penalty for the violation. Nothing in this section shall affect any person's right for damages or injunctive relief.

Approved March 31, 2000

CHAPTER 268

(HB 616)

AN ACT relating to oil and gas.

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

Section 1. KRS 353.620 is amended to read as follows:

(1) Notwithstanding KRS 353.610, if an application is submitted for a permit to drill, deepen**,** or reopen a well closer to a boundary or to another well than prescribed in KRS 353.610 and the application is accompanied by the written consent of all owners of oil and gas interests in any premises which will be offset by the proposed well, the department shall issue a permit for the well.

(2) Notwithstanding KRS 353.610, the department may issue a permit for a well to be drilled, deepened***,*** or reopened closer to a boundary or another well than prescribed in KRS 353.610, if the director, after notice and hearing, finds that topographical or other conditions are such as to make compliance with the requirements of KRS 353.610 unduly burdensome or in conflict with reasonably prudent methods and practices for the production of oil or gas.

(3) ***Notwithstanding KRS 353.610, the department shall issue a permit for a well to be drilled, deepened, or reopened closer to a boundary than prescribed in KRS 353.610 if a pooling order has been issued pursuant to Section 2 of this Act.***

(4) If a permit is issued to drill, deepen***,*** or reopen a well under ***subsection (1) or (2) of*** this section at a location closer to a well or boundary than prescribed in KRS 353.610, the department shall permit a like variance from the requirements of KRS 353.610 on all premises offset and adversely affected by the well.

Section 2. KRS 353.630 is amended to read as follows:

(1) Whenever any separate tract of land is so situated because of size or other condition that it does not contain a location at which a well for oil or gas may be drilled, deepened or reopened by reason of the spacing provisions of KRS 353.610, the department shall order, after notice and a hearing, the pooling of all oil and gas interests in the separate tract or in a portion thereof with all like interests in a contiguous tract or tracts, or portions thereof, as are necessary to afford the pooled tracts one (1) location for the drilling, deepening***,*** or reopening of a well for the production of oil or gas in compliance with the spacing requirements of KRS 353.500 to 353.720. The department shall require the development and operation of all pooled ***acreage***[~~tracts~~] as a single leasehold estate in accordance with regulations and rules promulgated under KRS 353.500 to 353.720.

(2) ***Whenever an operator proposes to drill, deepen, or reopen a well at a location that would require the pooling of separate tracts or interests in order to comply with the spacing requirements of KRS 353.610, and the operator has secured the written consent or agreement from the owners of at least fifty-one percent (51%) of the interests in each tract, or portions thereof, included in the proposed pooled acreage, the department shall, where it finds that the requirements of this subsection have been met, order, after notice and a hearing, the pooling of all oil and gas interests in all tracts, or portions thereof, that are included within the proposed pooled acreage as established by the spacing requirements of KRS 353.610. The department shall issue a permit to drill, deepen, or reopen the well and require the development and operation of the pooled acreage as a single leasehold estate in accordance with administrative regulations promulgated under KRS 353.500 to 353.720.***

(3) Whenever an operator proposes to drill, deepen, or reopen a well at a location that would require the pooling of interests or tracts in order to comply with the spacing requirements of KRS 353.610, and the operator owns or controls the right to develop the oil and gas underlying one hundred percent (100%) of the interests in each tract, or portions thereof, included in the proposed pooled acreage, the department shall, where it finds that the requirements of this subsection have been met, order, after notice and a hearing, the pooling of all oil and gas interests in all tracts, or portions thereof, that are included within the proposed pooled acreage established by the spacing requirements of KRS 353.610. The department shall issue a permit to drill, deepen, or reopen the well and require the development and operation of all pooled tracts as a single leasehold estate in accordance with administrative regulations promulgated under KRS 353.500 to 353.720.

(4) No pooling as permitted by this section shall be ordered except:

(a) ***When***[~~After~~] an application ***has been filed*** to drill, deepen or reopen a well ***within the distance limitations prescribed in KRS 353.610***[~~for the production of oil upon the tract or within four hundred (400) feet of the tract, or after an application for a permit to drill, deepen or reopen a well for the production of gas upon the tract or within one thousand (1,000) feet of the tract has been submitted~~]; and

(b) ***When***[~~After~~] a lessee or owner of an oil or gas interest in the tract shall request the pooling.

(5)[~~(3)~~] No pooling as permitted by this section shall be ordered with respect to any tract or portion thereof upon which a well is drilled, deepened or reopened:

(a) Unless the pooling was requested prior to the commencement of the drilling, deepening***,*** or reopening of the well by a lessee or owner of an oil and gas interest in a contiguous tract ***pursuant to subsection (1), (2), or (3) of this section***[~~which does not contain a location at which a well for oil or gas may be drilled, deepened or reopened~~]; and

(b) Unless the request, if made by the owner of an operating interest who elects to participate in the risk and cost of the drilling, deepening***,*** or reopening of the well, is accompanied by a bond or other security satisfactory to and in an amount set by the director for the payment of such owner's share of the cost of drilling, deepening***,*** or reopening the well.

(6)[~~(4)~~] Production from any well which is ordered pooled pursuant to KRS 353.500 to 353.720 shall be deemed for all purposes to have been so produced from each tract or portion thereof included in the pool in proportion to the amounts established in the pooling order.

Section 3. KRS 353.640 is amended to read as follows:

(1) ***The operator shall provide a list to the department of all persons reasonably known to own an oil or gas interest in any tract, or portion thereof, proposed to be pooled in an application to the department for a pooling order. A pooling order shall be made only after the department provides notice to all persons reasonably known to own an oil or gas interest in any tract, or a portion thereof, proposed to be pooled after a hearing has been held. In the event of the filing of an application for a pooling order under KRS 353.630(2) where unknown owners or nonlocatable owners exist, the operator shall cause to be published, at least twenty (20) days prior to the hearing on the application for the pooling order, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, proposed to be pooled is located. The notice shall:***

(a) State that an application for a pooling order is being filed with the Division of Oil and Gas in the department;

(b) Describe any tract, or portion thereof, proposed to be pooled;

(c) In the case of an unknown owner, identify the name of the last known owner;

(d) In the case of a nonlocatable owner, identify the owner and the owner's last known address; and

(e) State that any party claiming an interest in any tract, or portion thereof, proposed to be pooled should contact the Director of the Division of Oil and Gas in the department within twenty (20) days of the date of publication~~[A pooling order shall be made only after notice to all persons owning an oil or gas interest in any tract proposed to be pooled with another tract, and after a hearing]~~.

(2) A pooling order shall authorize the drilling, deepening***,*** or reopening, and the operation of a well for the production of oil or gas on the tracts or portions thereof pooled; shall designate the operator to drill and operate the well; shall prescribe the time and manner in which all owners ***of operating interests*** in the pooled tracts or portions thereof may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, deepening***,*** or reopening, and the completing, operating, plugging***,*** and abandoning the well shall be borne, and all production from the well shall be shared by all owners of operating interests in proportion to the net mineral acres in the pooled tracts owned or under lease to each owner; and shall make provision for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision, by all those who elect to participate therein.

(3) Upon request a pooling order shall provide one (1) or more just and equitable alternatives whereby, an owner of an operating interest, who does not elect to participate in the risk and cost of the drilling, deepening or reopening of a well:

(a) May elect to surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration which, if not agreed upon, shall be determined by the director; or

(b) May elect to participate in the drilling, deepening or reopening of the well on a limited or carried basis upon terms and conditions determined by the director to be just and reasonable.

(4) A certified copy of any pooling order entered under KRS 353.500 to 353.720 shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located, and the record of the order, from the time of lodging the order for record, shall be notice of the order to all persons.

Approved March 31, 2000

CHAPTER 269

(HB 623)

AN ACT relating to certified school employees.

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

Section 1. 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)***[~~(3)~~] 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)[~~(n)~~] 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)[~~ If an alleged violation is not of a serious nature and the evidence presented to the Education Professional Standards Board, after an appropriate opportunity for the certificate holder to respond, provides clear indication that the alleged conduct did in fact occur, the board may issue a written admonishment to the certificate holder. The certificate holder shall have the right to file a written response within thirty (30) days of the date of the admonishment and to~~

~~have the response attached to the admonishment. Alternatively, the certificate holder may file a request for a hearing within thirty (30) days of the date of the written admonishment. Upon receipt of a timely request, the board shall set aside the written admonishment and set the matter for a hearing.~~

~~(3)~~] (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***[~~ and~~] shall have the right to file a written rebuttal ***to the report*** which shall be ***placed in the official file with the report***[~~attached to the district superintendent's report~~].

(3)[~~(4)~~] 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***;***~~[, the Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B.]~~

2.~~[(6)]~~ After denying an application for a certificate***,***~~[or issuing a written admonishment, the Education Professional Standards Board shall set the matter for a hearing]~~ upon written request filed within thirty (30) days of ***receipt of*** the letter advising of the denial***; or***~~[, refusal, or admonishment.]~~

3. After issuing a written admonishment, upon written request for a hearing filed within thirty (30) days of receipt of the written admonishment.

(b)~~[(7)]~~ Upon request, a hearing may be public or private at the discretion of the certified employee or applicant.

(c)~~[(8)]~~ 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)~~[(9)]~~ 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)~~[(10)]~~ 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[~~Any individual whose certificate is revoked may apply for reissuance of his certificate when he believes he can demonstrate himself suitable for reissuance, unless the Education Professional Standards Board's order of revocation sets forth a specific minimum period of revocation~~].

(12) An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 2. KRS 161.780 is amended to read as follows:

(1) No teacher[~~ or superintendent~~] shall be permitted to terminate his ***or her*** contract within thirty (30) days prior to the beginning of ***the***[~~his~~] school term ***or during the school term*** without the consent of the ***superintendent***[~~board~~]. ***No superintendent shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the employing board of education.*** A teacher[~~ or superintendent~~] shall be permitted to terminate his ***or her*** contract at any other time when schools are not in session by giving two (2) weeks[~~'~~] written notice to the employing ***superintendent***[~~board of education~~]. ***A superintendent shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing board of education.*** Upon complaint by the employing board ***or superintendent*** to the Education Professional Standards Board[~~ and after investigation by the board~~], the certificate of a teacher or superintendent terminating his contract in any manner other than provided in this section may be suspended for not more than one (1) year***, pursuant to the hearing procedures set forth in Section 1 of this Act***.

(2) If a teacher voluntarily resigns his contract during the school term, the resignation shall be in writing and shall become binding on the date the resignation is accepted by the superintendent. No further action by the employing board is necessary. The resignation is effective on the date specified in the letter of resignation. A resignation, once accepted, may be withdrawn only with the approval of the employing board of education. Nothing in this subsection shall release the teacher from liability to the local board of education for breach of contract.

Approved March 31, 2000

CHAPTER 270

(HB 631)

AN ACT relating to the Commission on Fire Protection Personnel Standards and Education.

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

Section 1. KRS 95A.020 is amended to read as follows:

(1) There is hereby created the Commission on Fire Protection Personnel Standards and Education, hereinafter called "commission," which shall be attached to the ***Kentucky Community and Technical College System***[~~state fire marshal's office in the Department of Housing, Buildings and Construction~~].

(2) The commission shall be composed of seventeen (17) members, residents of the State of Kentucky, appointed by the Governor. These members should be persons well qualified by experience or education in the field of fire protection or related fields.

(3) The membership of the commission shall include:

(a) Two (2) volunteer firefighters, neither of which is a fire chief or assistant fire chief;

(b) Three (3) paid firefighters, at least one (1) of whom shall be a full-time paid county firefighter and none of whom shall be a fire chief or assistant fire chief;

(c) One (1) trustee of a volunteer fire department or fire district who is not a volunteer firefighter;

(d) Two (2) fire chiefs of paid fire departments;

(e) One (1) licensed physician;

(f) Two (2) fire chiefs of volunteer fire departments;

(g) One (1) ***representative of the Kentucky Industrial Response Committee***[~~teacher or administrator representing the fire and rescue training service of the Kentucky Community and Technical College System~~];

(h) One (1) representative of the Division of Disaster and Emergency Services of the Department of Military Affairs;

(i) One (1) mayor of a Kentucky city;

(j) One (1) county judge/executive;

(k) One (1) representative of Kentucky industry or business enterprise; and

(l) One (1) representative of the general public.

The chancellor for the Technical Institutions' Branch of the Kentucky Community and Technical College System and the state fire marshal, or their designees, shall serve as ex officio members of the commission. Their designees shall have full voting rights. Appointive members shall be appointed for a term of four (4) years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he is chosen to succeed.

(4) Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions.

(5) Members of the commission appointed pursuant to this section shall first be appointed on July 15, 1980. The terms of members appointed earlier shall terminate on July 15, 1980, but the Governor may reappoint those members who qualify under the provisions of this section.

Section 2. KRS 95A.040 is amended to read as follows:

(1) The commission shall[~~ have authority to~~] make full and complete studies, recommendations and reports to the Governor***, the Kentucky Community and Technical College System,*** and the Legislature for the purpose of ***establishing***:

(a) ~~[Suggesting]~~Minimum standards and education of fire protection personnel appointed to positions in municipal fire departments, who are to be engaged in fire protection to include fire suppression, fire prevention, arson investigation and other allied fields;

(b) ~~[Suggesting]~~Basic minimum courses of training for fire protection personnel;

(c) ~~[Suggesting]~~Procedure for the certification of fire protection personnel and the certification of fire protection instructors.

(2) The commission shall have the authority to:

(a) Certify fire protection training and education programs as having attained the minimum required standards suggested by such commission;

(b) Certify instructors as having qualified as fire protection instructors under such conditions as the commission may prescribe;

(c) Direct research in the field of fire protection and accept gifts and grants for such purposes;

(d) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.

(3) The commission shall have authority to receive and to the extent required by federal law to disburse all grants and funds from the federal government for the purpose of fire protection personnel training and education. Except as otherwise provided by law, the ***commission***~~[Department of Insurance]~~ shall administer all state programs and all state and federally funded grant programs related to fire protection personnel training and education.

Section 3. KRS 95A.050 is amended to read as follows:

In carrying out its duties and responsibilities, the commission shall have the following additional duties:

(1) To meet at times and places in the State of Kentucky it deems proper. Meetings shall be called by the chairman upon his own motion, or upon the written request of a majority of the members;

(2) To contract with other agencies, public or private, or persons, it deems necessary for the rendition and affording of the services, facilities, studies, and reports it may require to cooperate with city, county, state, and federal agencies in training programs; and

(3) To ***promulgate***~~[recommend to the commissioner of housing, buildings and construction for promulgation]~~ reasonable ***administrative*** regulations relating to fire protection personnel.

Section 4. KRS 95A.240 is amended to read as follows:

(1) The commission shall administer the fund pursuant to the provisions of KRS 95A.200 to 95A.300 and may issue such reasonable rules and regulations as, in its discretion, will facilitate the administration of the fund and further the purposes of KRS 95A.200 to 95A.300.

(2) The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to any local government that does not comply with the requirements of KRS 95A.200 to 95A.300 or the rules and regulations issued by the commission thereunder.

(3) The commission shall, from the moneys appropriated to and accruing to the fund from any source, reimburse the ***Kentucky Community and Technical College System***[~~Department of Housing, Buildings and Construction~~] for salaries and other costs of administering the fund, including, but not limited to the costs of commission operations. The amount of reimbursement for any given year shall be determined by the commission and shall not exceed five percent (5%) of the total appropriation to the fund for that year.

Section 5. KRS 95A.262 is amended to read as follows:

(1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Health Services, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

(2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot six thousand five hundred dollars ($6,500) annually to each qualifying department, and beginning on July 1 of 1999, the commission shall allot seven thousand five hundred dollars ($7,500) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars ($500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to

purchase workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

(3) There shall be allotted two hundred thousand dollars ($200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars ($200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.

(4) Applications for funding low-interest loans and firefighters' training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.

(7) The amount of reimbursement for any given year for costs incurred by the ***Kentucky Community and Technical College System***~~[department]~~ for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.

(8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.

(9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:

(a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;

(b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;

(c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;

(d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;

(e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;

(f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

(g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.

(10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars ($10,000) or the actual amount of the loss, whichever is less.

(11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.

(12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.

(13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.

(14) There shall be allotted each year of the 1992-93 biennium one million dollars ($1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars ($1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its

payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 6. KRS 95A.270 is amended to read as follows:

The Finance and Administration Cabinet, on the certification of the commission, shall draw warrants as specified on the State Treasurer for the amount of the fund due each eligible local government or the ***Kentucky Community and Technical College System***~~[Department of Housing, Buildings and Construction]~~. Checks shall be issued by the State Treasurer and transmitted to the commission for distribution to the proper officials of participating local governments which have complied with the provisions of KRS 95A.200 to 95A.300. Beginning January 1, 1981, and on the first day of each month thereafter, the share of each eligible local unit shall be distributed from the fund.

Section 7. KRS 95A.290 is amended to read as follows:

(1) If funds appropriated by the General Assembly and otherwise made available to the fund are insufficient to provide the amount of money required by KRS 95A.250, the commission shall make a uniform percentage reduction in the allotment of funds available.

(2) The provisions of subsection (1) of this section shall not apply to amounts due the ***Kentucky Community and Technical College System***~~[Department of Housing, Buildings and Construction]~~ pursuant to KRS 95A.240.

(3) Funds appropriated by the General Assembly and unexpended by the commission at the close of the fiscal year for which the funds were appropriated and otherwise made available to this fund pursuant to KRS 42.190, 95A.220 and 136.392 shall not lapse as provided by KRS 45.229, but shall be carried forward into the following fiscal year, and shall be used solely for the purposes specified in KRS 95A.200 to 95A.300.

SECTION 8. A NEW SECTION OF KRS CHAPTER 95A IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Community and Technical College System shall conduct or contract for the delivery of all certificate, diploma, or associate degree programs approved by the commission.

(2) The Kentucky Community and Technical College System shall provide the fiscal and administrative support requested by the commission, through the Chancellor's Office of Technical Education and Workforce Development.

(3) The commission shall ratify all personnel decisions necessary to perform the functions required by the commission, subject to budget appropriation limits, except that no position including the term "State Fire Marshal" in its title shall remain with or be transferred to the commission or the Kentucky Community and Technical College System, but shall be assigned to the Office of the State Fire Marshal in the Department of Housing, Buildings and Construction.

(4) The commission shall establish the proposed budget for all administrative, fire rescue training functions, and other activities in which the commission is authorized to engage, including, but not limited to salaries, equipment, maintenance, utilities, insurance, and other matters. The commission shall submit the budget to the Kentucky Community and Technical College System, which shall submit the budget, through appropriate channels, for inclusion in the executive branch budget. The Kentucky Community and Technical

College System shall not change the proposed budget which is submitted to it, but may comment thereon in writing, with copies sent to the commission, and to all agencies who receive the proposed budget during the budget process.

Section 9. KRS 75.400 is amended to read as follows:

As used in KRS 75.400 to 75.460, unless the context requires otherwise:

(1) "Commission" means the Commission on Fire Protection Personnel Standards and Education, attached to the ***Kentucky Community and Technical College System***~~[state fire marshal's office in the Department of Housing, Buildings and Construction]~~.

(2) "Fire department" includes all of the officers, firefighters, and clerical and maintenance employees, whether paid or volunteer.

(3) "Full-time paid firefighter" means an individual who receives a minimum salary of eight thousand dollars ($8,000) annually, and who works a minimum of two thousand and eighty (2,080) hours per year as an employee of a fire department recognized by the fire commission.

(4) "Paid fire department" means a fire department recognized by the commission, of which at least fifty percent (50%) of its firefighters are full-time paid firefighters.

(5) "Volunteer fire department" means a fire department with a minimum of twelve (12) members and a chief, at least one (1) operational fire apparatus or one (1) on order, with fewer than fifty percent (50%) of its firefighters being full-time paid firefighters.

Section 10. The following KRS section is repealed:

198B.035 Transfer of other agency functions to department.

Section 11. The existing personnel, equipment, funds, personal property, and records of the Commission on Fire Protection Personnel Standards and Education are transferred to the Kentucky Community and Technical College System. Employees who transfer shall be governed by the same rules pertaining to the transferred employees from the KRS Chapter 18A personnel system under KRS 164.5805. New employees shall be governed by the rules established by the board of regents of the Kentucky Community and Technical College System.

Approved March 31, 2000

CHAPTER 271

(HB 640)

AN ACT relating to family resource and youth service centers and declaring an emergency.

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

Section 1. KRS 156.497 is amended to read as follows:

(1) There is created an Interagency Task Force on Family Resource Centers and Youth Services Centers which shall consist of twenty-one (21) members appointed by the Governor. The twenty-one (21) members appointed shall include one (1) representative from each of the following agencies or groups, except the Department of Education which shall include three (3) representatives and parents which shall have three (3) representatives:

(a) Department of Education;

(b) Department for Employment Services of the Cabinet for Workforce Development;

(c) Department for Health Services of the Cabinet for Human Resources;

(d) Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources;

(e) Department for Social Services of the Cabinet for Human Resources;

(f) Department for Social Insurance of the Cabinet for Human Resources;

(g) Justice Cabinet;

(h) Governor's Office;

(i) Office of the Secretary, Cabinet for Workforce Development;

(j) Parents;

(k) Teachers;

(l) Local school administrators;

(m) Local school boards;

(n) Local community mental health-mental retardation programs;

(o) Local health departments;

(p) Local community action agencies; and

(q) A family resource and youth services coordinator.

(2) The task force shall be appointed and begin to meet immediately upon July 13, 1990, to formulate a five (5) year implementation plan establishing family resource and youth services centers designed to meet the needs of children and their families. By July 1, 1995, the implementation plan shall be revised to include two (2) additional years, 1996 and 1997. The centers shall provide services which will enhance students' abilities to succeed in school. If resources are limited, students and families who are the most economically disadvantaged shall receive priority status for receiving services. The secretary of the Cabinet for Human Resources shall call the first meeting, at which time the task force by majority vote shall elect a task force chair to serve a one (1) year term. A new chair shall be elected annually thereafter, and the chair may succeed himself. The Cabinet for Human Resources shall provide adequate staff to assist in the development and implementation of the task force's plan.

(3) The plan developed by the task force shall include an effort to implement a network of family resource centers across the Commonwealth. The centers shall be located in or near each elementary school in the Commonwealth in which twenty percent (20%) or more of the student body are eligible for free ***or reduced price*** school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and shall include, but not be limited to, the following components for each site:

(a) Full-time preschool child care for children two (2) and three (3) years of age;

(b) After school child care for children ages four (4) through twelve (12), with the child care being full-time during the summer and on other days when school is not in session;

(c) Families in training, which shall consist of an integrated approach to home visits, group meetings, and monitoring child development for new and expectant parents;

(d) Parent and child education (PACE) as described in KRS 158.360 or similar program;

(e) Support and training for child day care providers; and

(f) Health services or referral to health services, or both.

(4) The plan developed by the task force shall include a schedule to implement a network of youth services centers across the Commonwealth. The centers shall be located in or near each school, except elementary schools, serving youth over twelve (12) years of age and in which twenty percent (20%) or more of the student body are eligible for free ***or reduced price*** school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and include, but not be limited to, the following components for each site:

(a) Referrals to health and social services;

(b) Employment counseling, training, and placement;

(c) Summer and part-time job development;

(d) Drug and alcohol abuse counseling; and

(e) Family crisis and mental health counseling.

(5) The task force shall complete its implementation plan for the program prior to January 1, 1991, and local school districts shall develop initial plans for their family resource centers and youth services centers by June 30, 1991. By June 30, 1992, family resource centers and youth services centers shall be established in or adjacent to at least one-fourth (1/4) of the eligible schools, with expansion by one-fourth (1/4) by June 30 of each year thereafter or until the centers have been established in or adjacent to all eligible schools.

(6) A grant program is established to provide financial assistance to eligible school districts establishing family resource centers and youth services centers. The Cabinet for Human Resources shall award the grants pursuant to KRS 156.4977. A school district shall not operate a family resource center or a youth services center which provides abortion counseling or makes referrals to a health care facility for purposes of seeking an abortion.

(7) ***Funding provided to the Cabinet for Families and Children for the grant program and agency administrative costs shall include an increase that is equal to or greater than the general fund growth factor provided in agency budget instructions.***

(8) The task force shall continue to monitor the family resource centers and the youth services centers, review grant applications, and otherwise monitor the implementation of the plan until December 31, 1997, at which time the task force shall cease to exist. During its existence, the task force shall report at least annually to the secretary of the Cabinet for Human Resources, the State Board for Elementary and Secondary Education, the Governor, and the Legislative Research Commission.

(9)[~~(8)~~] Members of the task force may be reimbursed for actual expenses for attending meetings and for other actual and necessary expenses incurred in the performance of their duties authorized by the task force. The expenses shall be paid out of the appropriation for the task force.

Section 2. KRS 161.011 is amended to read as follows:

(1) (a) "Classified employee" means an employee of a local district who is not required to have certification for his position as provided in KRS 161.020; and

(b) "Seniority" means total continuous months of service in the local school district, including all approved paid and unpaid leave.

(2) The commissioner of education shall establish by January, 1992, job classifications and minimum qualifications for local district classified employment positions which shall be effective July 1, 1992. After June 30, 1992, no person shall be eligible to be a classified employee or receive salary for services rendered in that position unless he holds the qualifications for the position as established by the commissioner of education.

(3) No person who is initially hired after July 13, 1990, shall be eligible to hold the position of a classified employee or receive salary for services rendered in such position, unless he holds at least a high school diploma or GED certificate, or he shows progress toward obtaining a GED. To show progress toward obtaining a GED, a person shall be enrolled in a GED program and be progressing satisfactorily through the program, as defined by administrative regulations adopted by the State Board for Adult and Technical Education.

(4) Local school districts shall encourage classified employees who were initially hired before July 13, 1990, and who do not have a high school diploma or a GED certificate to enroll in a program to obtain a GED.

(5) Local districts shall enter into written contracts with classified employees. Contracts with classified employees shall be renewed annually except contracts with the following employees:

(a) An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract will not be renewed for the subsequent school year. Upon written request by the employee, within ten (10) days of the receipt of the notice of nonrenewal, the superintendent shall provide, in a timely manner, written reasons for the nonrenewal.

(b) An employee who has completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract is not being renewed due to one (1) or more of the reasons described in subsection (6) of this section. Upon written request within ten (10) days of the receipt of the notice of nonrenewal, the employee shall be provided with a specific and complete written statement of the grounds upon which the nonrenewal is based. The employee shall have ten (10) days to respond in writing to the grounds for nonrenewal.

(6) ***Local districts shall provide in contracts with classified employees of family resource and youth services centers the same rate of salary adjustment as provided for other local board of education employees in the same classification.***

(7) Nothing in this section shall prevent a superintendent from terminating a classified employee for incompetency, neglect of duty, insubordination, inefficiency, misconduct, immorality, or other reasonable grounds which are specifically contained in board policy.

(8)[~~(7)~~] The superintendent shall have full authority to make a reduction in force due to reductions in funding, enrollment, or changes in the district or school boundaries, or other compelling reasons as determined by the superintendent.

(a) When a reduction of force is necessary, the superintendent shall, within each job classification affected, reduce classified employees on the basis of seniority and qualifications with those employees who have less than four (4) years of continuous active service being reduced first.

(b) If it becomes necessary to reduce employees who have more than four (4) years of continuous active service, the superintendent shall make reductions based upon seniority and qualifications within each job classification affected.

(c) Employees with more than four (4) years of continuous active service shall have the right of recall positions if positions become available for which they are qualified. Recall shall be done according to seniority with restoration of primary benefits, including all accumulated sick leave and appropriate rank and step on the current salary schedule based on the total number of years of service in the district.

(9)[~~(8)~~] Local school boards shall develop and provide to all classified employees written policies which shall include, but not be limited to:

(a) Terms and conditions of employment;

(b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and

(c) Discipline guidelines and procedures that satisfy due process requirements.

(10)[~~(9)~~] Local school boards shall maintain a registry of all vacant classified employee positions that is available for public inspection in a location determined by the superintendent and make copies available at cost to interested parties. If financially feasible, local school boards may provide training opportunities for classified employees focusing on topics to include, but not be limited to, suicide prevention, abuse recognition, and cardiopulmonary resuscitation (CPR).

(11)[~~(10)~~] The evaluation of the local board policies required for classified personnel as set out in this section shall be subject to review by the Department of Education while it is conducting district management audits pursuant to KRS 158.785.

Section 3. Whereas the decrease in student populations eligible for free school meals will fall below the 20% threshold in some schools and the decrease will render ineligible for funding a number of family resource and youth services centers that have become vital to students and their families, the school, and the community, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 31, 2000

CHAPTER 272

(HB 650)

AN ACT changing the classification of the City of Independence, in Kenton County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Independence, in Kenton County, is such as to justify its being classified as a city of the third class;

NOW, THEREFORE,

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

Section 1. The City of Independence, in Kenton County, is transferred from the fifth to the third class of cities.

Approved March 31, 2000

CHAPTER 273

(HB 737)

AN ACT relating to retirement.

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

Section 1. KRS 61.535 is amended to read as follows:

(1) The membership of any person in the system shall cease:

(a) Upon withdrawal of his accumulated contributions at or any time after termination of employment, regardless of length of service;

(b) Upon disability retirement;

(c) Upon service retirement;

(d) Upon death;~~[and]~~

(e) ***For persons hired prior to August 1, 2000,*** upon termination of employment with prejudice***; or***

(f) For persons hired on or after August 1, 2000, upon conviction of a felony relating to the person's employment as provided in subsection (3) of this section.

(2) For purposes of KRS 61.510 to 61.705, 16.505 to 16.652 and 78.510 to 78.852, termination of employment with prejudice shall mean termination as the result of conviction of the member in a court of competent jurisdiction of embezzlement or larceny of public funds or property or malfeasance in office, or the forcing of a member to make restitution for any funds or property criminally taken by said member at the time of termination of employment.

(3) Notwithstanding any provision of law to the contrary, an employee hired on or after August 1, 2000, who participates in one (1) of the retirement systems administered by the Kentucky Retirement Systems and who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and

benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefit shall be forfeited. The employer shall notify the retirement system when an employee is convicted under the provisions of this subsection.

Section 2. KRS 161.470 is amended to read as follows:

(1) The membership of the retirement system shall consist of all new members, all present teachers, and all persons participating under the retirement system as of June 30, 1986, except as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29. The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.

(2) Service credit shall be forfeited upon withdrawal. If a member again enters service it shall be as a new member, except that any teacher who withdraws by claiming his deposits may repay the system the amount withdrawn plus interest and reestablish his service credit as provided in subsection (3) of this section.

(3) Effective July 1, 1988, and thereafter, an active contributing member of the retirement system with contributing service equal to one (1) year may regain service credit by depositing in the teachers' savings fund the amount withdrawn with interest at the rate to be set by the board of trustees, and computed from the first of the month of withdrawal and including the month of redeposit.

(4) Effective July 1, 1974, any active contributing member with at least two (2) years of contributing service credit who declined membership as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29, may secure service credit for prior service, and for any subsequent service prior to date of membership, by depositing in the teachers' savings fund contributions for each year of subsequent service prior to date of membership, with interest at the rate of eight percent (8%) compounded annually to the date of deposit.

(5) Membership in the retirement system shall be terminated:

(a) By retirement for service;

(b) By death;

(c) By withdrawal of the member's accumulated contributions;~~[or]~~

(d) When a member, having less than five (5) years of Kentucky service is absent from service for more than three (3) consecutive years***; or***

(e) For persons hired on or after August 1, 2000, when a member is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment as provided in subparagraph 1. and 2. of this paragraph.

1. Notwithstanding any provision of law to the contrary, a member hired on or after August 1, 2000, who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions.

2. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.

Except for paragraph (e) of this subsection, upon termination of member accounts under this subsection, funds in the account shall be transferred to the guarantee fund. Inactive members may apply for refunds of these funds at any time. The terminated service shall be reinstated, if not withdrawn by the member, in the event that the member returns to active contributing service.

(6) In case of withdrawal from service prior to eligibility for retirement, the board of trustees shall on request of the member return all of his accumulated contributions with regular interest, including any payments made by the member to the state accumulation fund, but the member shall have no claim on any contributions made by the state with a view to his retirement or to contributions made to the medical insurance fund. If the member is eligible for an immediate service retirement allowance as provided in KRS 161.600, no withdrawal and refund shall be permitted, unless the allowance would prohibit the member from qualifying for Social Security benefits or the member elects to withdraw part or all of his service for the purpose of obtaining credit in another retirement plan. Requests for refund of contributions by the member must be filed on forms prescribed by the Teachers' Retirement System and the employer shall be financially responsible for all information that is certified on the prescribed form.

(7) Except as provided in KRS 161.520 and 161.525, in case of death prior to retirement, the board of trustees shall pay to the estate of the deceased member or to his assigns all of his accumulated contributions, with regular interest, including any payments made by the member to the state accumulation fund, but the estate or assigns shall have no claim on any contributions made by the state with a view to the retirement of the member or to contributions made to the medical insurance fund.

(8) Any active contributing member of the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Judicial Retirement System may use service, under that retirement system for the purpose of meeting the service requirement of subsections (3) and (4) of this section.

Approved March 31, 2000

CHAPTER 274

(HB 749)

AN ACT relating to property taxes.

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

Section 1. KRS 132.190 is amended to read as follows:

(1) The property subject to taxation, unless exempted by the Constitution ***or personal property exempted by statute***, shall be as follows:

(a) All real and personal property within this state, including intangible personal property of nonresidents and corporations not organized under the laws of this state that has

acquired a business situs within this state, except that twenty-five (25) domestic fowl to each family shall be exempt from taxation for any purpose.

(b) All intangible personal property of individuals residing in this state and of corporations organized under the laws of this state unless it has acquired a business situs without this state.

(2) The property enumerated in paragraph (b) of subsection (1) of this section shall be considered and estimated in fixing the valuation of corporate franchises.

(3) Property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale, except the following: real property qualifying for an assessment moratorium shall not have its fair cash value assessment changed while under the assessment moratorium unless the assessment moratorium expires or is otherwise canceled or revoked.

(4) The situs of intangible personal property for purposes of taxation shall be at the residence of the real or beneficial owner, and not at the residence of the fiduciary or agent having custody or possession. Any intangible property owned by a resident shall be taxable in this state, unless by the date of assessment he has changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state. The fact that a person again abides within this state within six (6) months from so changing his actual place of abode shall be prima facie evidence that he did not intend permanently to have his actual place of abode without this state. A person so changing his actual place of abode and not intending permanently to continue it without this state and not having listed his property for taxation as a resident of this state shall, for the purpose of having his property assessed for taxation within this state, be deemed to have resided, on the day when his property should have been so assessed, at his last actual or habitual place of abode within this state. The fact that a person does not claim or exercise the right to vote at public elections within this state shall not of itself constitute him a nonresident of this state.

(5) An administrator, executor, trustee, guardian, conservator, curator, or agent residing in this state shall not be liable for taxes on intangible personal property held by him if the real or beneficial owner of the property resides outside of this state. This exemption shall not apply in the case of an executor or administrator in the exercise of his office as personal representative while the estate of a deceased person is in process of settlement and before the share of the nonresident legatee or beneficiary is set apart to him, or before the legatee or beneficiary is entitled to be paid his share.

(6) Nothing contained in this section shall affect the liability for franchise taxes payable by corporations organized under the laws of this state; nor the method of taxation of financial institutions provided in KRS 136.505; nor the method of taxation of savings and loan associations provided in KRS 136.300; and nothing contained in this section shall alter or repeal KRS 136.030.

SECTION 2. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

There shall be exempt from ad valorem tax for state purposes, personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination. Personal property shall be deemed to be held for shipment to an out-of-state

destination if the owner can reasonably demonstrate that the personal property will be shipped out-of-state within the next six (6) months.

SECTION 3. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

(1) The tax rate levied by cities, counties, charter counties, urban-counties, and school districts on personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination shall be as follows:

(a) Eighty percent (80%) of the tax rate levied on other tangible personal property for tax assessments made on January 1, 2000; and

(b) Fifty percent (50%) of the tax rate levied on other tangible personal property for tax assessments made on January 1, 2001.

(2) Personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination shall be exempt from the ad valorem tax levied by cities, counties, charter counties, urban-counties, and school districts for tax assessments made on or after January 1, 2002.

(3) Any fire district or other special taxing district may exempt from the ad valorem tax personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination.

(4) For the purpose of this section, personal property shall be deemed to be held for shipment to an out-of-state destination if the owner can reasonably demonstrate that the personal property will be shipped out-of-state within the next six (6) months.

Section 4. The following KRS section is repealed:

132.095 Personal property in warehouse in transit, ad valorem tax.

Section 5. The provisions of Section 1 of this Act shall apply for tax assessments made on or after January 1, 2000.

Approved March 31, 2000

CHAPTER 275

(HB 777)

AN ACT relating to candidates for office.

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

Section 1. KRS 118.125 is amended to read as follows:

(1) Except as provided in KRS 118.155, any person who is qualified under the provisions of KRS 116.055 to vote in any primary election for the candidates for nomination by the party at whose hands he seeks the nomination, shall have his name printed on the official ballot of his party for an office to which he is eligible in that primary, upon filing, with the Secretary of State or county clerk, as appropriate, at the proper time, a notification and declaration.

(2) The notification and declaration shall be in the form prescribed by the State Board of Elections. It shall be signed by the candidate and by not less than two (2) registered voters of the same party from the district or jurisdiction from which the candidate seeks nomination.

(a) The notification and declaration for a candidate for an office other than Governor or Lieutenant Governor shall include the following oath:

"For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the ------ Party, I, ------ (name in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address), and that I am a registered ------ (party) voter in ------ precinct; that I believe in the principles of the ------ Party, and intend to support its principles and policies; ***that I meet all the statutory and constitutional qualifications for the office which I am seeking;*** that if nominated as a candidate of such party at the ensuing election I will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that I will not knowingly violate any election law or any law relating to corrupt and fraudulent practice in campaigns or elections in this state, and if finally elected I will qualify for the office."

The declaration shall be subscribed and sworn to ***before an officer authorized to administer an oath by the candidate and by the two (2) voters making the declaration and signing the candidate's petition for office***[~~by the person making it before an officer authorized to administer an oath~~].

(b) The notification and declaration for a slate of candidates for Governor and Lieutenant Governor shall include the following oath:

"For the purpose of having our names placed on the official primary election ballot as a slate of candidates for Governor and Lieutenant Governor for nomination by the ------ Party, I, ------, (name of candidate for Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that my residence address is ------ (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address), and that I am a registered ------ (party) voter in ------ precinct; and I, ------, (name of candidate for Lieutenant Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address), and that I am a registered ------ (party) voter in ------ precinct; that we believe in the principles of the ------ Party, and intend to support its principles and policies; ***that we meet all the statutory and constitutional qualifications for the offices which we are seeking;*** that we will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that we will not knowingly violate any election law or any law relating to corrupt or fraudulent practice in campaigns or elections in this state, and if finally elected we will qualify for our offices."

The declaration shall be subscribed and sworn to ***before an officer authorized to administer an oath*** by the ***candidate and by the two (2) voters making the declaration and signing the petition for office***[~~persons making it before an officer authorized to administer an oath~~].

(3) When the notice and declaration has been filed with the Secretary of State or county clerk, as appropriate, and certified according to KRS 118.165, the Secretary of State or county

clerk, as appropriate, shall have the candidate's name printed on the ballot according to the provisions of this chapter, except as provided in KRS 118.185.

(4) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.

Section 2. KRS 118.315 is amended to read as follows:

(1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him, complying with the provisions of subsection (2) of this section. No person who is a registered member of a political party shall be eligible to election as an independent candidate, nor shall any person be eligible to election as an independent candidate who was a registered member of a political party on December 31 immediately preceding the regular election for which the person seeks to be a candidate. This restriction shall not apply to candidates to those offices specified in KRS 118.105(5), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class, or to candidates participating in nonpartisan elections.

(2) The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. ***The petition shall include a declaration, sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed.*** Signatures for a petition of nomination for a candidate seeking any office shall not be solicited prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer, two (2) petitioners; and for an officer of a division less than a county, except as herein provided, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include his residence, Social Security number or date of birth, and post-office address. Failure of a voter to include his Social Security number or date of birth and address shall result in his signature not being counted. If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his signature is affixed.

(3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.

(4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error,

the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

Section 3. KRS 118A.060 is amended to read as follows:

(1) Except as provided in KRS 118A.100, no person's name shall appear on a ballot label or absentee ballot for an office of the Court of Justice without first having been nominated as provided in this section.

(2) Each candidate for nomination shall file a petition for nomination with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the last Tuesday in January preceding the day fixed by law for holding the primary election for the office. The petition shall be ***sworn to before an officer authorized to administer an oath***~~[signed]~~ by the candidate and by not less than two (2) registered voters from the district or circuit from which he seeks nomination. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.

(3) The petition for nomination shall be in the form prescribed by the State Board of Elections. ***The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed.*** Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.

(4) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing. The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the last Tuesday in January preceding the primary election.

(5) Not later than the third Tuesday in February preceding the primary election, and after the order of names on the ballot has been determined as required in subsection (4) of this section, the Secretary of State shall:

(a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for nomination filed with him; and

(b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.

(6) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(7) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the primary the names of the candidates for offices in the Court of Justice.

(8) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot." The words "Vote for one," or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.

(9) The two (2) candidates receiving the highest number of votes for nomination for justice or judge of a district or circuit, or numbered division thereof if divisions exist, shall be nominated. Certificates of nomination shall be issued as provided in KRS 118A.190.

(10) If it appears after expiration of the time for filing petitions for nomination that there are not more than two (2) candidates who have filed the necessary petitions for a place on the ballot in the regular election, no drawing for ballot position shall be held and the Secretary of State shall immediately issue and file in his office certificates of nomination, and send copies to the candidates.

Approved March 31, 2000

CHAPTER 276

(HB 870)

AN ACT relating to a special license plate to benefit the Kentucky Chapter of the National Wild Turkey Federation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Any person who complies with the provisions of KRS 186.186 and who can provide proof of membership in the National Wild Turkey Federation may apply for a National Wild Turkey Federation license plate.

(2) A National Wild Turkey Federation license plate shall be the color and design selected by the Kentucky Chapter of the National Wild Turkey Federation and approved by the Transportation Cabinet.

(3) In addition to the fees required by KRS 186.186, a person initially applying for a National Wild Turkey Federation license plate shall pay a ten dollar ($10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. A person applying for an annual renewal registration decal for a National Wild Turkey Federation license plate shall, in addition to the renewal fee established in KRS 186.186(2), pay a ten dollar ($10) fee. The ten dollar ($10) fee shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.

(4) The additional ten dollar ($10) initial fee and the additional ten dollar ($10) renewal fee collected under subsection (3) of this section shall be forwarded quarterly by the Transportation Cabinet to the Kentucky Chapter of the National Wild Turkey Federation for use in education programs in Kentucky dedicated to conserving wild turkeys and wild turkey habitat enhancement and preserving hunting traditions.

Approved March 31, 2000

CHAPTER 277

(HB 884)

AN ACT relating to education paperwork requirements.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

(1) At the request of a local board of education or a school council, a local school district superintendent shall submit a request to the Kentucky Board of Education for a waiver from a reporting requirement established by a Kentucky Revised Statute that requires the paperwork to be submitted to the Kentucky Board of Education or the Department of Education.

(2) Upon a finding of good cause for the waiver, the Kentucky Board of Education may grant the waiver.

(3) The Kentucky Board of Education shall not waive statutory paperwork or reporting requirements necessary under federal law or relating to health, safety, or civil rights.

Approved March 31, 2000

CHAPTER 278

(HJR 131)

A JOINT RESOLUTION directing the Transportation Cabinet to rename a portion of Kentucky Route 260 in Hopkins County "Veterans Drive."

WHEREAS, it is the United States Armed Forces that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless servicemen have sacrificed their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, all Americans owe a debt of gratitude that we can never repay to the selfless men and women who have served in the United States Armed Forces; and

WHEREAS, rows of plain white headstones, both here and around the world, represent the ultimate sacrifice made to protect our freedom and our way of life; and

WHEREAS, even though millions of friends and loved ones have shed silent tears and endured grief-filled hearts, there remains a constant overwhelming pride in the veterans who have gallantly served their country;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. Kentucky Route 260 in Hopkins County from the west boundary of the right-of-way of the Pennyrile Parkway extending easterly for 0.743 miles shall be renamed the "Veterans Drive."

Section 2. The Secretary of the Transportation Cabinet shall erect appropriate highway signs at all junctions on Kentucky Route 260 along the length of the "Veterans Drive" within thirty (30) days of the effective date of this Resolution.

Approved March 31, 2000

CHAPTER 279

(SB 169)

AN ACT relating to banks.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 287 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, a CAMEL rating means a system of rating used by examiners of financial institutions to rate the institutions in five (5) categories: capital adequacy, asset quality, management effectiveness, quantity and quality of earnings, and liquidity.

(2) In addition to all other banking activities permitted by this chapter, a state bank receiving a CAMEL rating of 1 or 2 at its most recent state or federal bank regulatory examination may engage in any banking activity in which the bank could engage if:

(a) It was operating as a national bank in any state;

(b) It was operating as a state bank, state thrift, or state savings bank in any state; or

(c) It meets the qualified thrift lender test as determined by the Office of Thrift Supervision or its successor, or was operating as a federally chartered thrift or federal savings bank in any state.

(3) Before a state bank may engage in any of the banking activities permitted by subsection (1) of this section, the state bank shall obtain a legal opinion specifying the statutory or regulatory provisions that permit the activity in which the state bank intends to engage. This legal opinion shall be maintained by the bank and provided to the department upon request.

Section 2. KRS 287.011 is amended to read as follows:

(1) There is created a Department of Financial Institutions, which constitutes a department of the state government within the meaning of KRS Chapter 12. The department shall be headed by a commissioner of financial institutions, who shall be the executive head of the department and shall be charged with the administration of the department.

(2) The Department of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.

(3) There is established within the Department of Financial Institutions the following divisions and offices:

(a) The Division of Financial Institutions, which shall be headed by a director appointed by the commissioner, subject to prior written approval of the Governor in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner;

(b) The Division of Securities, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner;

(c) The Division of Administrative Services, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall be composed of organizational entities deemed appropriate by the commissioner;

(d) The Office of the Commissioner, which shall be composed of organizational entities deemed appropriate by the commissioner; and

(e) The Office of General Counsel, which shall be headed by a general counsel appointed by the commissioner in accordance with KRS 12.050. The office shall be composed of organizational entities as deemed appropriate by the commissioner.

(4) The department may accept any application or other document required to be filed with the department in electronic format or in any other technology acceptable to the department.

Section 3. KRS 287.100 is amended to read as follows:

A bank may:

(1) Hold~~[such]~~ personal property ***that***~~[as]~~ has been transferred to it as collateral for the payment of any debt;

(2) Acquire and hold title to real estate, provided:

(a) The real estate is necessary or appropriate for the transaction of legitimate business~~[and the acquisition has been approved by the commissioner as required by KRS 287.103]~~; and

(b) The cost of the real estate, including furniture and fixtures, shall not exceed forty percent (40%) of the total paid-in capital, unimpaired surplus and undivided profits (determined on accrual basis). The investment may exceed the bank's forty percent (40%) limit with prior written approval of the commissioner;

(3) Acquire and hold for not longer than ten (10) years, any real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. A bank acquiring real estate in satisfaction of debts previously contracted in the course of business shall write down the acquisition at ten percent (10%) per year;

(4) Invest in the bonds of any federal home loan bank;

(5) Invest in obligations issued separately or collectively by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Act of Congress known as the Farm Credit Act of 1971, 85 Stat. 583, 12 U.S.C. sec. 2001 and amendments thereto;

(6) Invest, subject to the approval of the commissioner, in the capital stock or bonds or both of any domestic realty corporation organized or existing for the sole purpose of acquiring and holding title to real property used by the bank, through lease or otherwise, for the transaction of the bank's legitimate business;

(7) Purchase, hold, and convey the shares of any open end registered investment company registered under the Investment Company Act of 1940, or a series of ***the***~~[such]~~ company, whose shares are registered under the Securities Act of 1933 and whose investments are limited to:

(a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;

(b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;

(c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue ***these***~~[such]~~ instruments of indebtedness;

(d) Any other obligations in which national banking associations organized under the laws of the United States are permitted to invest in directly;

(8) Purchase and hold shares of a bank service corporation as that term is used in the Bank Service Corporation Act (12 U.S.C. sec. 1861) and any amendments thereto;

(9) Invest in:

(a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;

(b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;

(c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue such instruments of indebtedness;

(10) (a) Invest in other real estate in the bank's generally accepted banking market. For purposes of this section, "the bank's generally accepted banking market" means the geographic banking market at the time the investment is made as defined by the Federal Reserve Bank in the Federal Reserve District in which the bank is located. The investment shall not exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment; and

(b) Investment in other real estate not to exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment, if the bank has acquired the real estate in satisfaction of a debt previously contracted and the investment is for the purpose of improving the real estate for sale. Any real estate acquired in satisfaction of a debt previously contracted and improved by the bank shall be disposed of within five (5) years of the date of acquisition, with the commissioner authorized to extend ***the***~~[such]~~ disposition upon written request of the bank for good cause shown on a year-to-year basis not exceeding an additional five (5) years;

(11) Own or operate a discount brokerage service either through the bank or a bona fide subsidiary of the bank;

(12) Own or operate a travel agency either through the bank or a bona fide subsidiary of the bank;~~[and]~~

(13) Invest, with the prior approval of the commissioner, in the capital stock or bonds of a trust company***; and***

(14) Own or operate a courier service, either through the bank or a bona fide subsidiary of the bank, in any county where the bank has its principal office or a branch.

Investments ***in accordance with***~~[pursuant to]~~ subsections (7) and (9) of this section are subject to KRS 287.280 and 287.290. For purposes of computing the maximum investment of a bank in bonds, notes, and other investments, book value shall be used. For deep discount bonds or zero coupon bonds, accreted book value shall be used.

Section 4. KRS 287.180 is amended to read as follows:

(1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.

(2) ***A bank may establish a branch in a county in which its principal office or an existing branch is located and may exercise all of the powers conferred in subsection (1) of this section at the branch. A bank, except for a bank that the commissioner may designate by the promulgation of administrative regulations, shall apply to the commissioner for permission to establish a branch.***~~[Any corporation presently or after July 13, 1990, engaged in the business of banking, and meeting the requirements of this subsection, may apply to the commissioner for permission to establish, within any county in which its principal office or an existing branch is located, a branch at which all of the powers conferred in subsection (1) of this section may be exercised.]~~ Before the commissioner shall approve or disapprove any application made under this subsection ***the commissioner***~~[he]~~ shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch. The following conditions shall apply to applications for branches:

(a) The permission to open a branch shall lapse one (1) year after the commissioner has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the commissioner, be extended for any period of time ***the commissioner***~~[he]~~ deems to be necessary; and

(b) An application to establish a branch office shall be approved or disapproved by the commissioner based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.

(3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future ***in accordance with***~~[pursuant to]~~ the terms of this section.

(4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided the commissioner shall determine that the public convenience and necessity will be served by the operation, and provided further that, at the time of the merger or purchase, each of the banks involved shall have been in operation for a period of five (5) years or more. The bank which does not survive the merger shall surrender its charter.

(5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.

(6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the commissioner. In the discretion of the commissioner the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

Section 5. KRS 287.185 is amended to read as follows:

A bank may move its principal office or a branch from one location to another. A bank, except for a bank that the commissioner may designate through the promulgation of administrative regulations, shall apply to the commissioner for approval to relocate its principal office or a branch~~[(1) No branch or principal office of any bank shall be moved from one location to another without the approval of the commissioner]~~. Before the commissioner shall approve or disapprove any change of location he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is a reasonable probability of the successful operation of the branch or principal office at the new location.

~~[(2) If a bank wishes to move its principal office from one location to another in the same county and retain its former principal office as a branch, the provisions of subsection (1) of this~~

~~section shall be followed in regard to approval of the change of location. A final order by the commissioner approving or disapproving the change of location shall be deemed to constitute a similar approval or disapproval of the former principal office as a branch, and no further administrative proceedings shall be necessary.]~~

Section 6. KRS 287.900 is amended to read as follows:

(1) For purposes of this section and KRS 287.905:

(a) "Bank" means any institution organized under this chapter, the banking laws of another state, or the National Bank Act, as amended, to do a banking business. However, it shall not include an "interim bank" chartered solely for the purpose of facilitating the acquisition of an existing bank unless the existing bank has been in existence for less than five (5) years;

(b) "Bank holding company," "company," and "control" have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. secs. 1841 et seq.). "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;

(c) "Individual" means a natural person, partnership, association, business trust, voting trust, or similar organization. Individual does not include a corporation; and

(d) "Deposit" has the meaning accorded it in the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder; excluded, however, from deposits are all interbank deposits and all deposits in foreign branches and international banking facilities, as shown in the reports made by all federally-insured depository institutions to their respective supervisory authorities.

(2) Any individual, or any bank holding company having its principal place of business in this state, may acquire control of one (1) or more banks or bank holding companies wherever located, except that no individual, who on July 13, 1984, controls a bank or bank holding company wherever located, and no bank holding company wherever located, may acquire, directly or indirectly, control ***of greater than fifty percent (50%) of the voting securities*** of a bank having its principal place of business in this state if the bank was chartered after July 13, 1984, and if, at the time of the acquisition, the bank has been in existence less than five (5) years. The provisions of this subsection shall not prohibit the organization of a one (1) bank holding company for the purpose of acquiring control of a bank even if the bank was chartered after July 13, 1984, and has been in existence less than five (5) years at the time of the acquisition.

(3) No individual or bank holding company wherever located may acquire control of any bank or bank holding company if, upon the acquisition, the individual or bank holding company would control banks in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent ***June 30 quarterly report***~~[year-end reports]~~ made by the institutions to their respective supervisory authorities which are available at the time of the acquisition.

(4) The limitations set forth in this section or any other provision of this chapter or any ***administrative*** regulation promulgated thereunder, as now in effect or amended after July 13, 1984, shall not apply to the acquisition of a bank if, in his ***or her*** discretion, the

commissioner, if the bank is organized under the laws of this state, or the comptroller of the currency, if the bank is a national bank, determines that an emergency exists and the acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.

(5) The provisions of this section shall not be construed to prohibit or restrict the merger or consolidation of banks or bank holding companies having their principal places of business in the same county and the operation by the merged or consolidated corporation of the banks, nor to prohibit the sale of any bank or bank holding company to, and the purchase thereof by, any other bank or bank holding company with its principal place of business in the same county and the operation of the bank as a branch so long as the provisions of KRS 287.180(4) have been satisfied.

Section 7. KRS 287.920 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and

(b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky ***in accordance with***~~[pursuant to]~~ an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his ***or her*** approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky ***in accordance with***~~[pursuant to]~~ an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his ***or her*** approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(4) The bank to be acquired in an interstate merger transaction under the provisions of subsection (3) of this section shall have been involved in operation for a period of five (5) years or more. No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent ***June 30 quarterly report***~~[year-end reports]~~ made

by the institutions to their respective supervisory authorities which are available at the time of the transaction.

(5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.

(6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.

(7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:

(a) Authorized under the laws of the host state for banks chartered by the host state; or

(b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Approved March 31, 2000

CHAPTER 280

(HB 243)

AN ACT relating to reorganization.

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

Section 1. KRS 36.310 is amended to read as follows:

(1) There is created a board to be known as the Advisory Board for Veterans' Affairs***,*** which shall be attached to the Department of Veterans' Affairs.

(2) The board shall be composed of ***the following:***

(a) ***Seven (7)***~~[five (5)]~~ members appointed by the Governor***;***

(b) ***The executive director of the Kentucky Commission on Military Affairs; and***

(c) ***The adjutant general of the Commonwealth***.

(3) ~~[Two (2) of said members shall serve for a period of three (3) years, two (2) for a period of two (2) years and one (1) for a period of one (1) year and]~~All ***board members appointed by the Governor*** shall serve until their successors are appointed, and~~[with]~~ all appointments~~[after the original appointments]~~ ***shall be***~~[being]~~ for three (3) years. It is further provided that ***the***~~[said]~~ appointments shall be veterans with service during time of war or hostilities wherein American troops were engaged in conflict with an armed enemy. ***If***~~[Insofar as]~~ practicable, the Governor, in making appointments to the board, shall give due consideration to a fair representation on the board of nationally recognized veterans' organizations active in Kentucky, based on size of the membership of such organizations in this state. The state headquarters of each~~[said]~~ major veterans' organization may, from time to time, submit a

list of not more than three (3) names to the Governor from which list original appointments may be made and vacancies filled in his discretion

(4)~~[(2)]~~ Members of the board shall meet at least once every two (2) months at the Department of Veterans' Affairs, and at such other times as the chairman may designate, and the members shall decide as to the specific meeting date.

(5)~~[(3)]~~ Members of the board shall be paid for the actual expenses incurred upon attendance of meetings of the board subject to the Finance and Administration Cabinet regulations.

(6)~~[(4)]~~ At its first meeting the members of the board shall select a chairman, vice chairman**,** and secretary from among the members.

(7)~~[(5)]~~ The board shall advise~~[the Governor and]~~ the commissioner of the Department of Veterans' Affairs on the administration of veterans' services programs.

(8) The commissioner shall advise the Governor on matters relating to veterans' affairs.

(9)~~[(6)]~~ The ***commissioner***~~[board]~~ shall advise the General Assembly on matters relating to veterans' affairs.

Section 2. The General Assembly confirms Executive Orders 97-1161, dated September 9, 1997, and 99-1588, dated December 3, 1999, to the extent they are not otherwise confirmed or superseded by this Act.

Section 3. Notwithstanding KRS 446.260, the change made in Section 1 of this Act shall be merged into the section of 2000 House Bill 139 affecting that statute, if House Bill 139 becomes law.

Approved March 31, 2000

CHAPTER 281

(HB 719)

AN ACT relating to collection of taxes.

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

Section 1. KRS 134.500 is amended to read as follows:

(1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the certificate of delinquency is issued. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.

(3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.

(4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. ***This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale.*** If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or

rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

(5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

Approved March 31, 2000

CHAPTER 282

(SB 78)

AN ACT relating to a special license plate to benefit Ducks Unlimited.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Any person who complies with the provisions of KRS 186.186 and who can provide proof of membership in Ducks Unlimited may apply for a Ducks Unlimited license plate.

(2) A Ducks Unlimited license plate shall be the color and design selected by Kentucky Ducks Unlimited and approved by the Transportation Cabinet. The name Kentucky and the annual renewal decal shall appear on the plate. The Transportation Cabinet, in consultation with Kentucky Ducks Unlimited, shall develop a system for numbering of the

Ducks Unlimited license plate. Kentucky Ducks Unlimited may direct the Transportation Cabinet to assign specific plate numbers to particular members.

(3) In addition to the fees required by KRS 186.186, a person applying for a Ducks Unlimited license plate shall pay a ten dollar ($10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. When applying for an annual renewal registration decal, a person with a Ducks Unlimited license plate shall pay a ten dollar ($10) fee, in addition to the renewal fee established in KRS 186.186(2). The ten dollar ($10) fee shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.

(4) The ten dollar ($10) initial fee and the ten dollar ($10) renewal fee collected under subsection (3) of this section shall be forwarded quarterly by the Transportation Cabinet to Kentucky Ducks Unlimited for use in furthering their wetlands conservation programs in Kentucky.

Section 2. This Act takes effect January 1, 2001.

Approved April 3, 2000

CHAPTER 283

(SB 137)

AN ACT relating to criminal records checks.

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

Section 1. KRS 216.793 is amended to read as follows:

(1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in a nursing facility or nursing pool providing staff to a nursing facility or in a position funded by the Department for Social Services or the Office of Aging Services of the Cabinet for Families and Children and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet ***or the Administrative Office of the Courts***. The Justice Cabinet ***or the Administrative Office of the Courts*** may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request~~[and shall not exceed five dollars ($5) per application]~~.

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

(1) In any instance that the Justice Cabinet is required by statute to conduct a criminal records or background check, the Justice Cabinet may contract with the Administrative Office of the Courts to perform that service.

(2) (a) Except as provided in paragraph (b) of this subsection, the Administrative Office of the Courts shall set a reasonable fee for a criminal records check conducted by the office in an amount no greater than the actual cost of conducting that criminal records check.

(b) When another statute sets the dollar amount of the fee charged for a criminal records check conducted by the Administrative Office of the Courts, the office shall charge that fee.

(3) The Administrative Office of the Courts shall be required to accept a criminal records check request only when the request is made:

(a) By letter, electronic mail, or facsimile transmission; or

(b) In person.

(4) The Administrative Office of the Courts may establish an escrow account for a person who frequently requests that the office conduct criminal records checks.

Approved April 3, 2000

CHAPTER 284

(SB 147)

AN ACT relating to wetland and stream mitigation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

(1) Upon request of any state agency or any other entity, the department may contract with the agency or party to undertake any compensatory mitigation project, including but not limited to wetland or stream mitigation.

(2) The department may establish and manage wetland or stream compensatory mitigation banks, the purpose of which shall be to restore, create, or enhance wetlands and streams as compensatory mitigation where a state agency or other party is required to provide compensatory mitigation, and where the use of banked mitigation is approved by the agency requiring mitigation. The department may create the bank in advance of requests for banked mitigation credits.

(3) There is established and created in the State Treasury the "Kentucky Wetland and Stream Mitigation Fund" for the purpose of restoring, creating, enhancing, or preserving the Commonwealth's wetlands or streams that may be damaged or destroyed due to any project, recovering costs associated with performing these projects, and administering these programs. The fund shall be deemed a trust and agency fund account and made available solely for the purposes and benefits of the Kentucky wetland and stream mitigation projects. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Money deposited in the fund shall be disbursed by the State Treasurer upon the request of the commissioner

with the approval of the commission. Any unallocated or unencumbered balance in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments, along with the unallocated or unencumbered balance in the fund, shall not lapse.

Approved April 3, 2000

CHAPTER 285

(SB 160)

AN ACT relating to agreements involving the Department for Local Government.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of law to the contrary, the Department for Local Government may enter into multiyear contracts, memoranda of agreement, memoranda of understanding, grant agreements, or any other similar documents that exceed the biennium in that they are made for projects that are funded solely through federal grant money.

(2) All documents entered into in accordance with subsection (1) of this section shall contain a provision stating that the contract funding may be discontinued by the General Assembly in a subsequent budget.

Approved April 3, 2000

CHAPTER 286

(SB 171)

AN ACT relating to city revenue bonds.

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

Section 1. KRS 96.537 is amended to read as follows:

The legislative body of any city operating a municipal system for the acquisition and distribution of natural gas~~[under the authority of KRS 96.170]~~ may, by ordinance, authorize the issuance of revenue bonds to pay all or any part of the costs of any project for the improvement or extension of ***the***~~[said]~~ system, or for obtaining new sources of supply. ***The***~~[Said]~~ revenue bonds may be sold and issued in the manner provided for the sale and issuance of revenue bonds under the provisions of KRS 58.010 to 58.140, ***58.150, 58.155, and 58.180, including by negotiated sale***~~[inclusive]~~, or, upon a determination of ***a***~~[said]~~ legislative body, acting upon the advice of the city attorney or city solicitor, that the proposed bonds will be industrial development bonds within the meaning of federal statutes, ***the***~~[said]~~ revenue bonds, whether or not exempt from federal income taxation, may be sold in any manner provided for the sale of industrial building revenue bonds under the terms of KRS 103.200 to 103.285, inclusive; provided, however, that the contract with the private corporation which is deemed to give rise to the federal classification of industrial development bonds need not take the form of a lease agreement, and no request in writing from any contracting

private corporation shall be required for any negotiated sale, and provided, further, that in the event of a negotiated sale, a report of negotiations shall be made to a consultant who shall be employed by the city to make a recommendation to the legislative body on the adequacy of such negotiations and of the terms of sale in the light of market conditions. The provisions of KRS 424.360 shall not apply to any negotiated sale under this section.

Approved April 3, 2000

CHAPTER 287

(SB 192)

AN ACT relating to the Kentucky River Authority.

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

Section 1. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

(1) State Property and Buildings Commission;

(2) Kentucky Pollution Abatement Authority;

(3) Kentucky Savings Bond Authority;

(4) County Officials Compensation Board;

(5) Kentucky Turnpike Authority;

(6) State Investment Commission;

(7) Kentucky Housing Corporation;~~[and]~~

(8) Governmental Services Center***; and***

(9) Kentucky River Authority.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

The Kentucky River Authority is created to perform the essential governmental functions and public purposes set out in KRS 151.700 to 151.730. The authority shall be a public corporation and independent governmental agency and instrumentality of the state. The responsibilities of the authority shall be managed and implemented by a board of directors as set out in Section 3 of this Act.

Section 3. KRS 151.710 is amended to read as follows:

(1) The Governor shall appoint members to the Kentucky River Authority, created to carry out the essential public purpose of protecting the health and welfare of the people of the Commonwealth as declared in KRS 151.700.

(2) The Governor shall appoint the ***secretaries***~~[secretary]~~ of the ***Finance and Administration Cabinet and the*** Natural Resources and Environmental Protection Cabinet and ten (10) other persons as the members of the authority. The ***secretaries***~~[secretary]~~ may designate ***alternates***~~[an alternate]~~. Of the ten (10) persons, one (1) shall be a registered engineer, one (1) an expert in water quality, one (1) a mayor, and one (1) a county judge/executive. The

mayor and the county judge/executive shall be officers from counties which obtain the major portion of their water supply from the Kentucky River. Five (5) members shall reside in a county adjacent to the main stem of the Kentucky River, one (1) of the five (5) members residing in counties adjacent to locks and dams one (1) through four (4); and one (1) member shall reside in a county adjacent to either the North Fork, Middle Fork, or South Fork of the Kentucky River. ***Of the twelve (12) members only one (1) may be an employee of the Natural Resources and Environmental Protection Cabinet.***

(3) Of the ten (10) members first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, three (3) for terms of three (3) years, and three (3) for terms of four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the authority for a term of four (4) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.

(4) Each member shall receive as compensation one hundred dollars ($100) per day for attending a meeting of the authority.

(5) Any member who misses three (3) consecutive meetings of the authority shall be deemed to have vacated the office. The authority shall declare the office vacant and the office shall be filled as provided by subsections (2) and (3) of this section.

(6) The authority annually shall elect one (1) of its members as chairman. A quorum for the transaction of business shall be six (6) members, and a majority of the members present at a meeting may take action on any matter legally before the authority.

(7) Members shall be paid their necessary travel expenses incurred in attending meetings and in the performance of their official duties, in addition to the per diem compensation of one hundred dollars ($100).

(8) The authority shall meet at least quarterly, and may meet upon the call of the chairman.

(9) The chairman shall be paid necessary travel expenses and a one hundred dollar ($100) per diem compensation for conducting official business of the authority.

(10) The authority shall be attached for administrative purposes to the ***Finance and Administration***[~~Natural Resources and Environmental Protection~~] Cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.

(11) The necessary travel expenses and per diem compensation of the members of the authority in attending meetings and in the performance of their official duties shall be paid by the authority.

(12) The authority shall promulgate administrative regulations necessary to carry out its duties, and shall report annually to the Governor and the Legislative Research Commission.

Section 4. KRS 151.720 is amended to read as follows:

The Kentucky River Authority is authorized and empowered to:

(1) Construct, reconstruct, provide for the major maintenance, or repair the locks and dams on the Kentucky River and all real and personal property pertaining thereto, as well as maintain the channel;

(2) Acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title to or any acceptable lesser interest in any real or personal property and by lease or other conveyance, contract for the right to use and occupy any real or personal property selected in the discretion of the authority as constituting necessary, desirable, or acceptable sites to fulfill its statutory authority and power;

(3) Lease its real or personal property to other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons as the authority deems necessary to carry out the purposes of this section;

(4) Sell or otherwise dispose of its real or personal property in accordance with KRS 56.463 and 45A.045;

(5) Collect water use fees from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes. Facilities charged such a fee may pass on all or any part of the fee;

(6) Issue revenue bonds in accordance with KRS 151.730;

(7) Employ persons to carry out the authority's responsibilities with revenue from the water use fees, including an executive director who shall serve at the pleasure of the authority;

(8) Contract for services with other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons to perform its duties;

(9) Promulgate administrative regulations providing for clean water, which shall not be less stringent than the state and federal regulations for clean water;

(10) Exercise all other powers necessary to perform its public purpose to implement and enforce the plans developed by the authority pursuant to this section ***and Sections 5 and 6 of this Act***, and to enforce administrative regulations promulgated by the authority. The long-range water resource plan and drought response plan shall be implemented for the basin upon the direction of the authority;

(11) Develop comprehensive plans for the management of the Kentucky River within the basin, including a long-range water resource plan and a drought response plan. Each county within the basin shall develop a long-range water resource plan and submit it to the authority. The authority ***after consultation with the Natural Resources and Environmental Protection Cabinet,*** shall develop a unified long-range water resource plan for the basin. ***The unified long-range water resource plan shall be implemented over short-range and long-range time periods. The short-range plan shall be for a period of six (6) years and the long-range plan shall be for a period of twenty (20) years.*** The authority shall conduct a public hearing on the plan ***prior to its adoption and amend the plan as appropriate based on the comments received. The Natural Resources and Environmental Protection Cabinet shall review the draft unified plan and provide comment during the public comment period concerning the consistency of the plan with the state requirements under KRS Chapters 224 and 151***~~[, and submit its final unified plan for the basin to the Natural Resources and Environmental Protection Cabinet. The cabinet shall act upon the plan within six (6) months and shall approve the plan, unless it objects for good reason shown]~~. A drought response plan for the basin shall be developed by the authority ***and shall be coordinated with the Natural Resources and Environmental Protection Cabinet to assure consistency with KRS Chapters 224 and 151***, and this plan shall be implemented for the basin upon the direction of the authority;

(12) Develop and promote a plan for the protection and use of groundwater within the basin. Administrative regulations may be promulgated implementing the plan, and these regulations shall not be less stringent than state and federal regulations protecting groundwater;

(13) Develop recreational areas within the basin. These recreational areas may be operated and funded by the state Department of Parks, Kentucky State Nature Preserves Commission, or other governmental entity as specifically authorized or permitted within the biennial executive budget. There is hereby created the Kentucky River Park to be located as determined by the authority;

(14) Utilize funds provided for recreational purposes within the biennial executive budget for major or minor maintenance if the authority certifies to the secretary of the Finance and Administration Cabinet that a significant need exists for the repairs and no other funds are available for the maintenance;

(15) Coordinate the Kentucky River basin water resources activities among state agencies;

(16) Report quarterly on all of its activities to the legislative Committee on Appropriations and Revenue;

(17) Receive reports from state agencies on litigation concerning the Kentucky River, which agencies are hereby directed to report to the authority;

(18) Credit to the authority any income derived from the interest earned on the investment of the water use fees collected, which shall be available for the authority's expenditure; and

(19) Accomplish the watershed management mission of the authority, which is to fulfill the provisions of this section for the Kentucky River basin, the boundary of which shall be defined by a hydrologic map promulgated in an administrative regulation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky River Authority shall undertake a continuing study of the water available within the Kentucky River and the water needs within the Kentucky River Basin. The study shall focus on necessary capital construction to maintain or increase water availability within the Kentucky River, including bringing existing facilities up to acceptable standards or replacing existing facilities where required.

(2) The Kentucky River Authority shall on a biennial basis provide the General Assembly with an estimate of the cost of maintaining or increasing the water available within the Kentucky River in order to meet the water supply needs of the citizens within the Kentucky River Basin.

SECTION 6. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) Beginning with the 2000-2002 biennium and each biennium thereafter, the authority shall submit to the General Assembly a six (6) year program of preconstruction and construction activities to maintain or increase water available within the Kentucky River. The program shall include a two (2) year construction component that shall be implemented as authorized by the General Assembly in the authority's biennial budget and a four (4) year preconstruction component that shall advise the General Assembly of

the consistency of ongoing and long-term planning with the construction activities funded by the General Assembly.

(2) The program shall be developed by considering, at a minimum, the following factors:

(a) The population to be served by the available water;

(b) The social, economic, and environmental impact of program elements;

(c) The condition of existing facilities critical to water availability;

(d) The cost of maintaining, improving, replacing, or removing facilities; and

(e) The dependence of communities within the river basin on specific Kentucky River dam pools or other sources of water.

(3) The program shall include a four (4) year planning document setting out preconstruction activities that include planning and design and an environmental analysis of projects to maintain or increase water available within the Kentucky River and geotechnical and stability evaluations of the Kentucky River locks and dams.

(4) The authority shall provide to the General Assembly a long-range planning document consisting of twenty (20) years for water supply projects being considered by the authority.

(5) The authority shall be responsible for the execution of each six (6) year program as approved and authorized in the budget by the General Assembly and shall report any anticipated deviations from the authorized construction funding or preconstruction program to the Interim Joint Committee on Appropriations and Revenue.

SECTION 7. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

By July 1 of each year preceding the convening of the General Assembly in regular session, the authority shall provide the projected six (6) year construction and preconstruction program to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue.

Section 8. KRS 151.723 is amended to read as follows:

(1) The rate of the water use fees collected by the authority shall be set for each year of the biennium based upon a total amount of funds necessary to carry out only those functions, projects, and expenses authorized by the General Assembly in the authority's biennial budget.

(2) At the time the authority submits its budget to the Governor's Office of Policy and Management, it shall certify to the General Assembly~~[and the secretary of the Revenue Cabinet]~~ the total amount of water use reported for the preceding biennium by users subject to the water use fees. At least thirty (30) days prior to the effective date of the authority's budget, the ***authority***~~[secretary of the Revenue Cabinet]~~ shall establish a rate for each water use fee based upon an amount of water use projected for each year of the biennium from the amount reported, calculated to generate the amount of funds necessary to carry out the functions, projects, and expenses which have been authorized by the General Assembly ***to be funded by the fees***. The rate shall be an amount for each one thousand (1,000) gallons of water use and shall be effective for at least one (1) year.

(3) The authority shall define by administrative regulation those uses of the Kentucky River or the waters of the Kentucky River basin subject to a water use fee. Water use fees shall not apply to facilities using water for agricultural purposes. The authority shall collect the fees on a quarterly basis and pay the collected fees into the State Treasury to the credit of a restricted fund for use by the authority.

SECTION 9. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

At the time a water utility requests a state agency to take action required to allow the transfer between water utilities of drinking water within or into the watershed of the Kentucky River basin, the water utility shall notify the authority of the request that has been made for state agency action. The authority shall review the request and comment on the requested transfer to the state agency within the time period for the review by the state agency.

Section 10. No later than September 30, 2000, the authority shall report to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue on implementation of those plan elements authorized during the 2000 Regular Session of the General Assembly.

Approved April 3, 2000

CHAPTER 288

(SB 206)

AN ACT relating to administrative regulations.

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

Section 1. KRS 13A.015 is amended to read as follows:

(1) Except as provided by subsection ***(7)***[~~(6)~~] of this section, prior to the promulgation of an administrative regulation, an administrative body shall, for each administrative regulation it intends to promulgate:

(a) File with the regulations compiler the original and five (5) copies, and, if available, an electronic version of a notice of its intent to promulgate an administrative regulation for publication in the administrative register; and

(b) Hold a public hearing and receive oral or written comments on the proposed administrative regulation as provided by this section.

(2) Prior to filing a notice of intent to promulgate a new administrative regulation, an administrative body shall obtain from the regulations compiler a number for the new administrative regulation.

(3) The notice of intent shall include:

(a) A statement that the administrative body intends to promulgate an administrative regulation;

(b) The number and the specific subject matter of the proposed administrative regulation;

(c) A statement that the administrative body will hold a public hearing if a public hearing is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members, provided that a minimum of five (5) persons, or one (1) person representing an administrative body or association, agree to be present at the public hearing:

1. No sooner than the twenty-first day nor later than the last workday of the month in which the notice of intent to promulgate is published in the Administrative Register;

2. At which it will accept oral and written comments from any interested person;

(d) The name, address, telephone number, and facsimile number to whom the written request for a public hearing and written comments shall be sent;

(e) The date, time, and place of the public hearing;

(f) The following information relating to the proposed administrative regulation:

1. The statutory authority for the administrative regulation;

2. A summary of the administrative regulation, including how an existing administrative regulation will be amended by the proposed administrative regulation, if applicable;

3. A statement setting forth the necessity for promulgating the administrative regulation, and a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b);

4. A statement of the benefits expected from the administrative regulation; and

5. How the administrative regulation will be implemented.

(4) (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified of the intent of the administrative body to promulgate an administrative regulation.

(b) A copy of the notice of intent shall be mailed:

1. To every person who has filed this form;

2. On the date the notice is published in the Administrative Register.

(5) ***If a notice of intent is filed to promulgate an administrative regulation in response to a statute enacted or amended by the General Assembly during the two (2) year time period immediately preceding the date the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the appropriate legislator as determined by this subsection.***

(a) If the primary sponsor of the legislation, who shall be the first person listed in the Legislative Record following the bill number, is a current member of the General Assembly at the time the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the primary sponsor.

(b) If the primary sponsor of the legislation is not a current member of the General Assembly at the time the notice of intent is filed, the administrative body shall mail a

copy of the notice of intent to the chair of the appropriate standing or interim joint committee of the General Assembly.

(6) (a) An administrative body shall file the original and five (5) copies of the notice of its intent to promulgate an administrative regulation with the regulations compiler.

(b) The date a notice of intent to promulgate an administrative regulation is published in the Administrative Register shall be governed by the provisions of KRS 13A.050(3) and 13A.150.

(c) A notice of intent shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches, and single-spaced. The first page shall have a two (2) inch top margin, and one (1) inch side and bottom margins. Subsequent pages shall have one (1) inch top, bottom, and side margins. The notice of intent shall be typed in a twelve (12) point font approved by the regulations compiler.

(7)[~~(6)~~] (a) A notice of intent shall not be filed for an emergency administrative regulation that will not be replaced by an ordinary administrative regulation.

(b) If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the notice of intent for the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that will be replaced.

(8)[~~(7)~~] If a notice of intent to promulgate an administrative regulation has been filed, a subsequent notice of intent on the same administrative regulation shall not be filed unless the first notice of intent has been withdrawn.

Section 2. KRS 13A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;

(2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, the amendment or repeal of an existing administrative regulation, but does not include:

(a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public; or

(b) Declaratory rulings; or

(c) Intradepartmental memoranda not in conflict with KRS 13A.130; or

(d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or

(e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;

(3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;

(4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;

(5) "Commission" means the Legislative Research Commission;

(6) "Economic impact" means a financial impact on:

(a) Commercial enterprises;

(b) Retail businesses;

(c) Service businesses;

(d) Industry;

(e) Consumers of a product or service; or

(f) Taxpayers;

(7) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290 and 13A.330;

(8) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;

(9) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;

(10) "Filed" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;

(11) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A;

(12) "Proposed administrative regulation~~[,]~~"~~[except as provided by KRS 13A.015(6),]~~ means an administrative regulation that an administrative body proposes to promulgate;

(13) "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;

(14) "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation;

(15) "Subcommittee" includes the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, a standing committee of the General Assembly, or a House and Senate standing committee meeting jointly; and

(16) "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

Approved April 3, 2000

CHAPTER 289

(SB 215)

AN ACT relating to sales of alcoholic beverages.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO READ AS FOLLOWS:

(1) Manufacturers and importers of distilled spirits and wine may advertise and promote, by specific brand and bottle size, distilled spirits and wine for off-premises consumption by use of rebate coupons.

(2) Rebate coupons are redeemable by the consumer at the point of purchase, or by mail-in certificate by which the consumer receives a cash refund or nonalcoholic beverage merchandise from the manufacturer, importer, or clearinghouse acting for the manufacturer or importer, upon submission by the consumer of the required proof of purchase.

(3) Rebate coupons on malt beverages are prohibited.

Section 2. KRS 243.120 is amended to read as follows:

A distiller's, rectifier's, or vintner's license shall authorize the licensee to engage in the business of distiller, rectifier, or vintner at the premises specifically designated in the license, to maintain aging warehouses, and to transport for himself or herself only any alcoholic beverage which he or she is authorized under the license to manufacture or sell. The licensee shall transport alcoholic beverages only by a vehicle~~[owned and]~~ operated by himself or herself, which has affixed to its sides at all times a sign of form and size prescribed by the state board, containing among other things the name and license number of the licensee. No distilled spirits or wine shall be transported on the same truck or vehicle with malt beverages, except by a common carrier, unless the owner of the truck or vehicle holds a distributor's license.

Section 3. KRS 244.260 is amended to read as follows:

~~[(1)]~~No wholesaler shall purchase, import, keep upon the licensed premises, or sell any distilled spirits or wine in any container except in the original sealed package containing quantities of not less than two hundred (200) milliliters each of distilled spirits or one hundred (100) milliliters of wine, and not exceeding 1.75 liters of distilled spirits or two hundred twenty (220) liters of wine, and fifty (50) milliliters of distilled spirits, as received from the distiller, rectifier, vintner, or wholesaler, as the case may be. The containers shall at all times have affixed to them all labels as may be required by the administrative regulations of the board, together with all necessary federal revenue and state excise tax stamps.

~~[(2) No wholesaler shall sell any distilled spirits or wine except in cases of containers of uniform size, except that wine may be sold in barrels or kegs. "Case" as used in this section means a~~

~~carton of containers aggregating not less than six (6) liters nor more than twenty-four (24) liters of wine and distilled spirits, or case containing one hundred twenty (120) or two hundred forty (240) fifty (50) milliliter bottles of distilled spirits and wine.]~~

Section 4. KRS 244.280 is amended to read as follows:

~~[(1)~~]No licensee under KRS 243.030 nor any of his agents, servants**,** or employees shall peddle any alcoholic beverages from house to house, by any means, where the sale is consummated and delivery made concurrently at the residence or place of business of the consumer.

~~[(2) Deliveries shall not be made by holders of special agent's or solicitor's licenses.]~~

Section 5. KRS 243.220 is amended to read as follows:

(1) No license for the sale of alcoholic beverages at retail shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease ***or a permit*** for a term of not less than the license period.

(2) (a) No premises shall be licensed for the sale of alcoholic beverages at retail unless the licensed premises and the entrance to the premises are on the street level and located in a business center or on a main thoroughfare.

(b) Paragraph (a) of this subsection shall not apply to a hotel, club or restaurant, if the club or restaurant receives a minimum of fifty percent (50%) of its income from the sale of food and has a minimum seating capacity of fifty (50) people at tables. In the cases described in this paragraph the administrator to whom the application is made may, in the exercise of his ***or her*** sound discretion, decide whether the premises are to be licensed.

Approved April 3, 2000

CHAPTER 290

(SB 294)

AN ACT relating to Medicaid reimbursement for chiropractic services.

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

Section 1. KRS 205.560 is amended to read as follows:

(1) The scope of medical care for which the Cabinet for Health Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS

205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:

(a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;

(b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;

(c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist;

(d) Physician, podiatric, and dental services;

(e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);

(f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;

(g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;

(h) Services provided by health-care delivery networks as defined in KRS 216.900; and

(i) Services provided by midlevel health-care practitioners as defined in KRS 216.900.

(2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health Services shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:

(a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;

(b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars ($15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen

thousand dollar ($15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;

(c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;

(d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;

(e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health Services; and

(f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.

(4) The rules and regulations of the Cabinet for Health Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.

(5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts

reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.

(6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.

(7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.

(8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.

(9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.

(10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.

(11) The Cabinet for Health Services ***shall***~~[may]~~ make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.

Approved April 3, 2000

CHAPTER 291

(SB 324)

AN ACT relating to medical residency programs.

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

Section 1. KRS 311.560 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, no person shall engage or attempt to engage in the practice of medicine or osteopathy within this state, or open, maintain, or

occupy an office or place of business within this state for engaging in practice, or in any manner announce or express a readiness to engage in practice within this state, unless the person holds a valid and effective license or permit issued by the board as hereinafter provided.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Commissioned medical officers of the Armed Forces of the United States, or medical officers of the United States Public Health Service, the United States Veterans Administration, and other agencies of the government of the United States of America, while said persons are engaged in the performance, within this state, of their official duties under federal laws;

(b) ***1.*** Persons who, being nonresidents of Kentucky and lawfully licensed to practice medicine or osteopathy in their states of actual residence, infrequently engage in the practice of medicine or osteopathy within this state, when called to see or attend particular patients in consultation and association with a physician licensed pursuant to this chapter; ***or***

2. Persons who, being current participants in a medical residency program outside of Kentucky and lawfully licensed to practice medicine or osteopathy in the states of their medical residency programs, who participate in a temporary residency rotation of no more than sixty (60) days at a hospital in this Commonwealth. All persons who participate in a temporary residency rotation under this paragraph shall register with the board at no cost, on forms provided by the board, and shall be subject to the jurisdiction of the board for so long as they participate in the residency rotation. Persons who wish to participate in a second or subsequent temporary residency rotation under this paragraph shall seek advance approval of the board; or

(c) Graduates of medical or osteopathic schools approved by the board, while engaged in performing supervised internship or first-year postgraduate training approved by the board at hospitals in this state. All first-year postgraduate trainees shall register with the board at no cost, on forms provided by the board. This shall not be construed to otherwise exempt interns or first-year postgraduate trainees, or to exempt in any manner resident or staff physicians of hospitals, from the licensure requirements of KRS ***311.530***~~[311.550]~~ to 311.620. ***A residency physician who participates in a temporary residency rotation under paragraph (b) of this subsection shall not be required to obtain a license under KRS 311.530 to 311.620.***

(3) Physician assistants shall be considered to practice medicine or osteopathy with physician supervision. A physician assistant may perform those duties and responsibilities that are delegated by the supervising physician. A physician assistant shall be considered the agent of the supervising physician in the performance of all practice-related activities, including, but not limited to, the performance of or ordering of diagnostic, therapeutic, and other medical services. A physician assistant shall not render services in hospitals or other licensed health care facilities without the express written permission of the facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.

(4) A physician assistant may prescribe and administer drugs and medical devices to the extent delegated by the supervising physician. Prescribing and administering of drugs may include

all nonscheduled legend drugs. Any physician assistant who is delegated prescribing privileges may request, receive, and sign for professional sample drugs and distribute professional sample drugs to patients.

Approved April 3, 2000

CHAPTER 292

(SB 330)

AN ACT relating to the licensing of hospital outpatient services.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of law to the contrary, if the Federal Health Care Financing Administration issues a final regulation establishing an outpatient Medicare prospective payment system for hospitals that requires that an outpatient health facility operated by the hospital be under the same license as the hospital to achieve provider-based status, the cabinet shall, at the hospital's request, issue a new license to a hospital that owns and operates an existing or newly established outpatient health facility that lists each location operated by the hospital.

(2) Any outpatient health facility listed on the hospital's license under subsection (1) of this section shall:

(a) Comply with all applicable licensure regulations that pertain to the type of health services provided; and

(b) Prior to the establishment of a health facility, the operation of a health facility, or the provision of health services or the addition of a health service at a location other than the hospital's main campus, obtain a certificate of need if a certificate of need would otherwise be required in the absence of subsection (1) of this section. Licensure of the outpatient health facility or service under the same license as the hospital pursuant to subsection (1) of this section shall not eliminate the requirements for a certificate of need.

Approved April 3, 2000

CHAPTER 293

(SB 341)

AN ACT relating to managed health care plans.

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

Section 1. KRS 304.17A-510 is amended to read as follows:

(1) In addition to the disclosure requirements provided in KRS 304.17A-505, an insurer that offers a managed care plan shall ***notify***~~[disclose to]~~ an enrollee, in writing, ***of the***

availability of a printed document, in a manner consistent with KRS 304.14-420 to 304.14-450, ***containing*** the following information at the time of enrollment and upon request:

(a) A current participating provider directory providing information on a covered person's access to primary care health care providers, including available participating health care providers, by provider category or specialty and by county. The directory shall include the professional office address of each participating health care provider. The directory shall also provide information about participating hospitals and other providers. The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider;

(b) General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients; and

(c) The insurer's managed care plan's standard for customary waiting times for appointments for urgent and routine care.

The insurer shall provide a prospective enrollee with information about the provider network, including hospital affiliations, and other information specified in this subsection, upon request. ***In addition to making the information available in a printed document, an insurer may also make the information available in an accessible electronic format.***

(2) Upon request of a covered person, an insurer shall promptly inform the person:

(a) Whether a particular network provider is board certified; and

(b) Whether a particular network provider is currently accepting new patients.

(3) Each insurer shall annually make available to its enrollees at its principal office and place of business:

(a) Its most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursements; and

(b) A current description of its organizational structure and operation.

Section 2. KRS 304.17A-590 is amended to read as follows:

(1) An insurer that offers a managed care plan ***or a risk-bearing managed care plan*** shall ***notify***~~[disclose to]~~ an enrollee, in writing, ***of the availability,*** in a manner consistent with KRS 304.14-420 to 304.14-450,~~[and any risk-bearing managed care plan shall disclose to an enrollee,]~~ in writing, at the time of enrollment and thereafter upon request, and as new providers are contracted with by the plans, or as the directory may change, ***of*** a current participating provider directory providing information on a covered person's access to primary care physicians and specialists, optometrists, chiropractors, and hospitals, including available participating physicians, optometrists, chiropractors, and hospitals, by provider category or specialty and by county. The directory shall include the following:

(a) Professional office addresses and telephone numbers for all participating:

1. Primary care physicians;

2. Optometrists;

3. Chiropractors;

4. Hospitals; and

5. Other health care providers as defined under KRS 304.17A-010(11);

(b) Information about drug formularies and their restrictions, limitations, and procedures for authorization outside the formularies;

(c) The benefits for each provider type;

(d) General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients; and

(e) Grievance procedures available under the plans for complaint resolutions.

In addition to making the information available in a printed document, an insurer may also make the information available in an accessible electronic format.

(2) The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider.

(3) The provisions of this section shall be implemented prior to any open enrollment period for which the effective date of coverage will be January 1, 1999, or for which the effective date shall commence after an open enrollment period, and shall continue for each open enrollment period thereafter.

Approved April 3, 2000

CHAPTER 294

(SJR 69)

A JOINT RESOLUTION directing the Transportation Cabinet to name the new bypass connecting Kentucky Route 52 and Kentucky Route 89 in Estill County in honor of Joseph Proctor.

We pause to honor a hero and patriot of the Commonwealth, a man in whom "the public's confidence in his purity and integrity was absolute", the Reverend Joseph Proctor.

WHEREAS, Joseph Proctor was born in Rowan County, North Carolina, in 1754; and

WHEREAS, a valiant young man, Joseph Proctor rallied to protect early settlers in North Carolina against uprisings of the Cherokee Nation; and

WHEREAS, Joseph Proctor's early experience fighting Indians proved essential to the citizens of the Commonwealth when he moved to Boonesborough in April, 1778; and

WHEREAS, Joseph Proctor assisted in defending the fort at Boonesborough in August, 1778, during a nine day siege in an attack by 500 Indians led by Canadian officers; and

WHEREAS, being a fearless warrior was only one facet of Joseph Proctor's personality, for, in 1809, he was ordained a Methodist Episcopal minister; and

WHEREAS, Joseph Proctor, along with Thomas Todd, was one of the first families to build a home in what is now Estill County; and

WHEREAS, Joseph Proctor's first home was a cabin on Sweet Lick Creek, now known as Estill Springs; and

WHEREAS, Reverend Joseph Proctor founded two of the earliest churches in Estill County, the first being the Methodist Episcopal Church at the rural community of Kimbrell in 1809, and the second being Proctor's Chapel which was located on White Oak Creek; and

WHEREAS, Reverend Joseph Proctor's ministry was most notable for the weekly prayer meetings he held each Thursday night in Estill County -- after the first courthouse was built and until his death in 1844, Joseph Proctor could be found in the County Clerk's office sharing the gospel; and

WHEREAS, even though Reverend Joseph Proctor was not a native Kentuckian, his contributions to the Commonwealth's early struggles were critical to the state's success for he was instrumental in protecting both the physical and religious lives of those first pioneer families;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name the new by-pass connecting Kentucky Route 52 and Kentucky Route 89 in Estill County the "Joseph Proctor Memorial By-Pass".

Section 2. The Transportation Cabinet is directed to erect signs at each junction of the new by-pass with Kentucky Route 52 and Kentucky Route 89 that read "The Joseph Proctor Memorial By-Pass" within thirty (30) days of the effective date of this Resolution.

Approved April 3, 2000

CHAPTER 295

(SB 351)

AN ACT relating to respiratory care practitioners.

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

Section 1. KRS 314A.010 is amended to read as follows:

As used in this chapter:

(1) "Respiratory care" includes "respiratory therapy," "inhalation therapy," or other "cardiopulmonary" terms.

(2) "Practice of respiratory care" means the procedures employed in the therapy, management, rehabilitation, gathering of assessment information, or other procedures administered to patients with deficiencies or abnormalities which affect their cardiopulmonary system and associated aspects of cardiopulmonary and other system functions. This includes, but is not limited to:

(a) Provision of respiratory care procedures to ensure the safety, comfort, personal hygiene, protection of patients, and the performance of disease prevention and restorative measures;

(b) The administration of pharmacologic and therapeutic agents related to the cardiopulmonary care necessary for treatment, disease prevention, or rehabilitation regimes prescribed by a physician; and

(c) Observation of signs and symptoms of cardiopulmonary illness, reactions to treatment, general physical condition; determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and performance of standard procedures according to observed abnormalities, or reporting them to the physician in charge or other caretakers; initiating standard or emergency procedures.

(3) "Respiratory care practitioner" means a person who holds a mandatory certificate approved by the board. The term "respiratory care practitioner" includes the following:

(a) A "***registered*** respiratory therapist" means an individual who has successfully completed a training program accredited by the American Medical Association's ***Commission***~~[Committee]~~ on ***Accreditation of*** Allied Health Education ***or its equivalent***~~[and Accreditation]~~ in collaboration with the ***Committee on Accreditation***~~[Joint Review Committee]~~ for Respiratory ***Care or its equivalent***~~[Therapy Education]~~, and who has successfully completed the registry examination for ***advanced*** respiratory therapists administered by the National Board of Respiratory Care, Incorporated ***or its equivalent***;

(b) ***An "entry level therapist"***~~[A "respiratory care technician"]~~ means an individual who has successfully completed a training program accredited by the American Medical Association's ***Commission***~~[Committee]~~ on ***Accreditation of*** Allied Health Education ***or its equivalent***~~[and Accreditation]~~ in collaboration with the ***Committee on Accreditation***~~[Joint Review Committee]~~ for Respiratory ***Care or its equivalent***~~[Therapy Education]~~, and who has successfully completed the entry level certification examination for respiratory care technicians administered by the National Board for Respiratory Care, Incorporated ***or its equivalent***;

(c) A "graduate respiratory care practitioner" means an individual who has graduated from an approved educational program and ***eligible***~~[is waiting]~~ to sit for the~~[next available]~~ entry level certification examination that will be administered by the National Board for Respiratory Care, Incorporated ***or its equivalent***;

(d) A "student respiratory care practitioner" means:

1. An individual enrolled in an education and training program, accredited by the American Medical Association's ***Commission***~~[Committee]~~ on ***Accreditation of*** Allied Health Education ***or its equivalent***~~[and Accreditation]~~ and the ***Committee on Accreditation for Respiratory Care or its equivalent***~~[Joint Review Committee for Respiratory Therapy Education]~~, for respiratory care practitioners and whose sponsoring educational institution assumes responsibility for the supervision of and the services rendered by the student respiratory care practitioner while ***the student***~~[he]~~ is functioning in a clinical training capacity; or

2. An individual enrolled in an education and training program, accredited by the American Medical Association's ***Commission***~~[Committee]~~ on ***Accreditation of*** Allied Health Education ***or its equivalent***~~[and Accreditation]~~ and the ***Committee on Accreditation for Respiratory Care or its equivalent***~~[Joint Review~~

~~Committee for Respiratory Therapy Education]~~, and who is also employed for compensation to provide respiratory care services as outlined in ***Section 4 of this Act***~~[KRS 314A.110(1)(d)]~~.

(4) "Board" means the Kentucky Board of Respiratory Care.

(5) "Accredited program" means a training program accredited by the American Medical Association's ***Commission***~~[Committee]~~ on ***Accreditation of*** Allied Health ***or its equivalent***~~[Education]~~ in collaboration with the ***Committee on Accreditation for Respiratory Care or its equivalent***~~[Joint Review Committee for Respiratory Therapy Education]~~ which qualifies the graduate to sit for the registry examination ~~[for respiratory therapists]~~ or the entry level~~[certification]~~ examination~~[for respiratory care technicians]~~ administered by the National Board for Respiratory Care ***or its equivalent***.

(6) "Mandatory certification" means the board's official authorization to practice respiratory care for the time specified by the mandatory certification.~~[; and]~~

(7) "Continuing education" means educational activities primarily designed to keep respiratory care practitioners informed of developments in the respiratory care field or any special areas of practice engaged in by such persons.

(8) ***"Documented competency" means adherence to guidelines established by health facilities, medical staff, or accreditation agencies. These guidelines shall be in accordance with national standards of practice deemed appropriate by the National Board for Respiratory Care or its equivalent.***

(9) "Medical director" means a licensed physician who is knowledgeable in the diagnosis, treatment, and assessment of respiratory problems and whose responsibilities are established by statutes and regulations governing the operation of facilities licensed under KRS Chapter 216B, as well as statutes and regulations dealing with hospice, home health, and other settings where respiratory care services may be delivered.

(10) "Direct supervision" means supervision by a holder of a mandatory certificate who shall be on the premises where respiratory care services are provided and who shall be available for immediate consultation.

(11) "Indirect supervision" means supervision by a holder of a mandatory certificate who shall be available by telephone and who shall have a response time, if needed, of thirty (30) minutes or less.

Section 2. KRS 314A.100 is amended to read as follows:

(1) A respiratory care practitioner may perform respiratory care procedures under medical direction ***with documented competency***, in accordance with agency or facility guidelines and only in accordance with the prescription of a physician. The procedures shall include, but not be limited to, the assessment and therapeutic use of the following: medical gases, exclusive of general anesthesia; aerosols, humidification, environmental control systems; pharmacologic agents related to ***cardiopulmonary procedures, unless prohibited by the medical staff of the licensed health-care facility***~~[respiratory care procedures, excluding intravenous or intramuscular medications]~~; mechanical or physiological ventilatory support; bronchopulmonary hygiene, maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; specific assessment and testing procedures such as drawing and analyzing of arterial blood gases employed in the medical measurement and monitoring of cardiac function as it relates to pulmonary pathophysiology.

(2) The practice of respiratory care may be performed in hospitals or in other settings where respiratory care is to be provided in accordance with a prescription of a physician. In addition, respiratory care may be provided during the transportation of a patient, or under any circumstances where an emergency necessitates respiratory care.

(3) The respiratory care practitioner may transcribe and implement a physician's written or verbal orders pertaining to the practice of respiratory care procedures as defined in this section.

(4) The respiratory care practitioner's scope of practice shall include practice standards and guidelines as developed by the American Association for Respiratory Care, or its equivalent, and as incorporated by the board through promulgation of administrative regulations in accordance with KRS Chapter 13A.

Section 3. KRS 314A.110 is amended to read as follows:

(1) To be eligible for mandatory certification as a respiratory care practitioner the applicant shall ***hold a currently valid registered respiratory therapist (RRT) or certified respiratory therapist (CRT) credential issued by the National Board for Respiratory Care or its equivalent***~~[:~~

~~(a) Initially submit a completed application within twelve (12) months after July 13, 1990, with the required fee, and meet the requirements of paragraphs (b), (c), or (d) of this subsection; thereafter, only persons qualified under paragraph (b) or (d) of this subsection or under subsection (2) of this section may apply for a mandatory certificate;~~

~~(b) Hold a currently valid certificate of registry or certification issued by the National Board for Respiratory Care or its successor~~].

(2) A temporary mandatory certificate may be issued to the graduate respiratory care practitioner ***for a period not to exceed six (6) months from graduation***~~[which shall be effective until receipt of a passing score from the first available National Board for Respiratory Care entry-level certification examination for which the graduate respiratory care practitioner is eligible]~~. The holder of a ***temporary*** mandatory certificate who does not successfully pass the~~[first available]~~ National Board for Respiratory Care ***or its equivalent*** entry-level certification examination ***within a six (6) month period***~~[for which he is eligible]~~ shall cease and desist performing any services as a respiratory care practitioner. Failure to comply in this instance shall subject ***the individual***~~[him]~~ to prosecution for practicing as a respiratory care practitioner without a mandatory certificate.~~[However, a failing score on the entry-level certification examination shall not prevent an applicant from applying for and taking subsequent entry-level certification examinations according to National Board for Respiratory Care guidelines;~~

~~(c) Individuals that do not hold a valid certificate of registry or certification, but who have practiced respiratory care in the Commonwealth of Kentucky for a minimum of twenty-four (24) months under medical supervision, and who provide satisfactory documentation of such experience, may apply to the board for a mandatory certificate, provided such documentation is presented within twelve (12) months of July 13, 1990;]~~

(3)[~~(d)~~] In order for student respiratory care practitioners to be employed for compensation to provide respiratory care services, they must apply to the board for a limited mandatory certificate which will permit them to perform respiratory care procedures (for which they have received training) under the ***direct*** supervision of a respiratory therapist ***who holds a mandatory certificate***[~~or a respiratory care technician~~]. This limited mandatory certificate excludes the performance of continuous mechanical or physiological ventilatory support, arterial puncture, and blood gas analysis. The limited mandatory certificate may be granted only to individuals actively enrolled in an accredited program and for a period not to exceed three (3) years. This limited mandatory certificate is in no manner required for individuals actively enrolled in an accredited program while performing uncompensated clinical activities required by the program.

(4)[~~(2)~~] Respiratory care practitioners duly authorized to practice in other states and in good standing ***and who hold the CRT credential or its equivalent*** may be conferred a mandatory certificate by the board if the requirements for licensure or certification in that state are substantially equal to the requirements of this section.

(5)[~~(3)~~] Respiratory ***therapists***[~~care technicians~~] applying for mandatory certification shall retain their National Board for Respiratory Care (NBRC) ***designations***[~~designation~~] as certified respiratory ***therapists (CRT) or registered respiratory therapists (RRT)***[~~therapy technicians in addition to that of respiratory care practitioner, and respiratory therapists shall retain their NBRC designation as registered respiratory therapists in addition to respiratory care practitioner subject to the requirements of mandatory certification herein described~~]. Persons ***holding a***[~~ applying for~~] mandatory certification through the limited mechanism of grandfather status shall solely be designated as respiratory care practitioner.

(6)[~~(4)~~] Mandatory certification of respiratory care practitioners shall be on a biennial basis according to established criteria under KRS 314A.115. Mandatory certificates issued by the board shall expire and shall not be renewed unless the certificate holder submits proof to the board of compliance with KRS 314A.115. On and after the date on which a person's mandatory certificate has expired, ***the practitioner***[~~he~~] may apply for reinstatement within five (5) years of the expiration of the mandatory certificate. The applicant shall show compliance with the current continuing education requirement in force at the time of mandatory certificate renewal application. After expiration of a five (5) year period, current standards for mandatory certification shall be met. The board may require individualized conditions for reinstatement.

SECTION 4. A NEW SECTION OF KRS CHAPTER 314A IS CREATED TO READ AS FOLLOWS:

To be eligible for limited mandatory certification as a respiratory care practitioner, the applicant shall meet the criteria established under this chapter and any administrative regulation promulgated to carry out the provisions of this chapter.

Section 5. KRS 314A.200 is amended to read as follows:

(1) There is hereby created a Board of Respiratory Care which shall consist of seven (7) ***voting*** members appointed by the Governor.

(a) Four (4) members shall be respiratory care practitioners ***holding a valid mandatory certificate and practicing in Kentucky;***[~~chosen from a list of seven (7) submitted by the Kentucky Society for Respiratory Care,~~]

(b) Two (2) ***members*** shall be pulmonologists ***who are licensed and practicing physicians in Kentucky;***~~[,]~~ and

(c) One (1) ***member*** shall be a citizen at large who is not associated with or financially interested in respiratory care.

(2) ***Members shall be appointed to the board for terms of three (3) years, expiring on October 30 of the third year.***~~[The executive director of the Division of Occupations and Professions shall serve on the board in an ex officio capacity. The respiratory care practitioner members shall hold valid mandatory certificates in Kentucky and shall also practice in the Commonwealth. The pulmonologists shall be licensed physicians practicing in Kentucky. The members of the board shall serve until the expiration of the term for which they have been appointed. All appointments made shall be for a term of three (3) years, except for appointments to fill vacancies caused by a reason other than the expiration of a member's term which shall be filled for the remaining portion of the member's term.]~~ No person shall be appointed to serve more than two (2) consecutive terms.

(3) By May 30 of years in which respiratory care practitioner terms expire, the Kentucky Society for Respiratory Care shall submit to the Governor a list of names of candidates qualified for the appointment of respiratory care practitioner, in numbers not less than twice the numbers of appointments to be made, from which the Governor shall make each appointment or appointments by October 31 of that year. The Governor shall also appoint the pulmonologist and citizen at-large members by October 31 of any year in which a term expires.

(4) A vacancy on the board shall be filled by the Governor as provided under subsection (1) of this section. The appointment shall be for the remaining portion of the member's term.

(5) The Governor or board may remove a member from the board for cause or as provided under administrative regulations promulgated by the board in accordance with KRS Chapter 13A.

(6) The board shall reorganize annually and select a chairperson. Four (4) ***voting*** members of the board shall constitute a quorum to do business. The board shall hold at least one (1) regular meeting each year. Additional meetings may be held upon the call of the chairperson or at the written request of any two (2) members of the board. All meetings of the board shall be open and public ***to the extent permitted by law***.

Section 6. KRS 314A.220 is amended to read as follows:

(1) The board shall issue a mandatory certificate to all applicants who meet the requirements of this chapter and who pay to the board the initial mandatory certificate fee.

(2) The amount of fees prescribed in connection with a mandatory certificate as a respiratory care practitioner shall be ***prescribed by administrative regulation promulgated by the board in accordance with KRS Chapter 13A***~~[as follows:~~

~~(a) The initial mandatory certificate fee shall not exceed fifty dollars ($50);~~

~~(b) The delinquency fee shall not exceed twenty dollars ($20);~~

~~(c) The application fee shall not exceed fifty dollars ($50);~~

~~(d) The inactive mandatory certificate fee shall not exceed ten dollars ($10) every two (2) years; and~~

~~(e) The temporary mandatory certificate fee shall not exceed ten dollars ($10)]~~.

(3) Each respiratory care mandatory certificate shall expire on January 30 every two (2) years. A thirty (30) day grace period shall be allowed after January 30, during which time mandatory certificates may be renewed on payment of a renewal fee of not more than seventy dollars ($70) plus a grace period fee, when applicable, which combined will not exceed ninety dollars ($90). No person who applies for renewal, whose mandatory certificate has expired, shall be required to submit to any examination as a condition to renewal, provided such renewal application is made within five (5) years from the date of such expiration. No person shall practice respiratory care in this state unless ***the individual***~~[he]~~ holds a valid certificate. All mandatory certificates not renewed by March 2 following the date of issuance shall be deemed expired.

(4) A suspended mandatory certificate is subject to expiration and shall be renewed as provided in this chapter, but such renewal shall not entitle the respiratory care practitioner, while the mandatory certificate remains suspended, and until it is reinstated, to engage in mandatory certification activities, or in any other activity or conduct in violation of the order of judgment by which the mandatory certificate was suspended. A mandatory certificate revoked on disciplinary grounds is subject to expiration as provided in this chapter, but it may not be renewed. If it is reinstated after its expiration, the mandatory certificate holder, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(5) A person who fails to renew his or her mandatory certificate within the five (5) years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but such persons may apply for and obtain a new mandatory certificate if he meets the requirements of this chapter.

Section 7. KRS 314A.225 is amended to read as follows:

(1) The board may refuse to issue a mandatory certificate, or may suspend or revoke the mandatory certificate of any certificate holder if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct may include:

(a) Obtaining a mandatory certificate by means of fraud, misrepresentation, or concealment of material facts;

(b) Having been guilty of unprofessional conduct as defined by the administrative regulations promulgated by the board, or having violated the code of ethics promulgated by the board;

(c) Having violated any lawful order or administrative regulation rendered or promulgated by the board; or

(d) Having violated any provisions of this chapter.

(2) The board shall deny an application for, or suspend or revoke, or impose probationary conditions upon, a mandatory certificate as ordered by the board in any decision made after a hearing conducted in accordance with KRS Chapter 13B. One (1) year from the date of

revocation of a mandatory certificate under this chapter, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of felony or of any offense involving moral turpitude is deemed to be a conviction within the meaning of this chapter. At the direction of the board and after a hearing conducted in accordance with KRS Chapter 13B, the mandatory certificate shall be suspended or revoked, or issuance of a mandatory certificate shall be declined when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of the penal code allowing a person to withdraw his plea of guilty, and to enter a plea of not guilty or setting aside the verdict of guilty, or dismissing the acquisition, information, or indictment.

(4) (a) The chair of the board or the chair's designee may determine that immediate temporary suspension of a certificate, against which disciplinary action or an investigation is pending, is necessary to protect the public. If it appears that this action may be necessary, the chair or the designee shall issue an emergency order suspending the certificate. Upon appeal of an emergency order, an emergency hearing shall be conducted under KRS Chapter 13B.

(b) No board member shall be disqualified from serving on a disciplinary action hearing panel for the reason that the member has previously served on a hearing panel considering temporary suspension of the same certificate.

(c) The board shall expedite the disciplinary process in any action that involves a certificate that has been temporarily suspended.

(d) The order of immediate temporary suspension shall remain in effect until either retracted or superseded by final disciplinary action by the board. If disciplinary action is imposed, the board may order that the temporary suspension continue until the later of the expiration of the time permitted for appeal or the termination of the appellate process.

Section 8. The terms of the members of the Board of Respiratory Care who hold membership as of the effective date of this Act shall expire on October 31, 2000. By August 15, 2000, the Kentucky Society for Respiratory Care shall submit to the Governor a list of eight (8) names of candidates who are qualified for appointment as respiratory care practitioners. The Governor shall make the appointments of the respiratory care practitioners from this list by October 31, 2000, and the Governor shall also make the appointments of qualified pulmonologists and the citizen at-large member by October 31, 2000. The terms of the initial appointments shall be staggered to assure continuity of experience, as follows: two (2) respiratory care practitioners and one (1) pulmonologist shall serve for one (1) year; two (2) respiratory care practitioners and one (1) pulmonologist shall serve for two (2) years; and the citizen at-large-member shall serve for three (3) years. Subsequent appointments shall be for three (3) years and as provided under Section 5 of this Act.

Approved April 3, 2000

CHAPTER 296

(SJR 73)

A JOINT RESOLUTION directing the Transportation Cabinet to name portions of United States Route 60 and Kentucky Route 180 in Boyd County the "Purple Heart Highway" and to erect appropriate highway signs.

WHEREAS, it is the Armed Forces of the United States that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless soldiers, sailors, airmen, and marines have risked their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, rows of plain white headstones, both here at home and around the world, stand as a testimony to the ultimate sacrifice made to protect our freedom and our way of life; and

WHEREAS, every citizen of the Commonwealth owes a great debt of gratitude to the patriotic men and women killed and wounded in service to their country in times of great need ; and

WHEREAS, these recipients of the Purple Heart deserve our thanks, recognition, and respect for their devotion and service to our Commonwealth and our nation;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name United States Route 60 from milepoint 0.800 to milepoint 2.518 and Kentucky Route 180 from milepoint 4.023 to milepoint 8.617 in Boyd County the "Purple Heart Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Purple Heart Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. The Clerk of the Senate shall transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Flemingsburg, Kentucky.

Approved April 3, 2000

CHAPTER 297

(SJR 104)

A JOINT RESOLUTION naming a bridge in Pike County in honor of Charles Douglas "C.D." Roberts.

WHEREAS, Charles Douglas "C.D." Roberts is a native son of Pikeville, Kentucky; and

WHEREAS, Charles Douglas "C.D." Roberts bravely served his country during World War II as a daring navy pilot; and

WHEREAS, upon his return from World War II, Charles Douglas "C.D." Roberts attended the University of Kentucky where he earned a degree in engineering; and

WHEREAS, Charles Douglas "C.D." Roberts is a self-employed businessman who worked in the coal industry, as well as the coal and gas industry in east Kentucky; and

WHEREAS, as a trusted citizen of Pike County Charles Douglas "C.D." Roberts was elected county surveyor and served in that capacity for sixteen years; and

WHEREAS, Charles Douglas "C.D." Roberts has been active in many community and civic organizations throughout his lifetime;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name the bridge located under the exit ramp of United States Route 23 South and Hambley Boulevard in Pike County in honor of "C.D." Roberts. The project number for this bridge is 12-MP-098-0023B00183P.

Section 2. The Transportation Cabinet shall erect signs within thirty (30) days of the effective date of this Resolution at each bridge approach to the bridge located under the exit ramp of United States Route 23 South and Hambley Boulevard in Pike County that read "The C.D. Roberts Bridge."

Approved April 3, 2000

CHAPTER 298

(HB 88)

AN ACT related to reorganization.

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

Section 1. KRS 439.320 is amended to read as follows:

(1) The Governor shall appoint a Parole Board consisting of seven (7) ***full-time*** members ***and two (2) part-time members, as described in subsection (7) of this section***, to be confirmed by the Senate in accordance with KRS 11.160. ***Each of the two (2) part-time members shall be from a different political party. The Governor***~~[He]~~ shall make each appointment ***for full-time and part-time members*** from a list of three (3) names given to him by the Commission on Correction and Community Service. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than ***five (5)***~~[four (4)]~~ board members shall be of the same political party. The board shall be attached to the Justice Cabinet for administrative purposes only; the Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.

(2) The Governor shall name one (1) ***full-time*** member as chairman of the board. The chairman shall be the chief administrative officer of the board and shall be responsible for all administrative, organizational, and personnel matters of the board.

(3) The ***full-time*** members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS

64.640(2), except the chairman of the board shall receive additional compensation of one thousand dollars ($1,000) per year for his services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. The chairman of the board shall serve as such until the expiration of his term at which time the Governor shall name his successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.

(4) The organization of the board shall be determined by the chairman and a quorum of the board shall be as follows:

(a) For parole hearings at which the inmate appears before the board, three (3) members; and

(b) For all other business, four (4) members. A decision by any three (3) member panel in a parole hearing shall be final only if it is unanimous; otherwise the case must be reviewed and voted on by not less than four (4) members of the board. Parole decisions for inmates who do not appear before the board shall be reviewed and voted on by not less than four (4) members of the board.

(5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.

(6) Upon the expiration of the terms of office of the two (2) ***full-time*** board members whose terms expire May 23, 1994, the Governor shall appoint two (2) ***full-time*** members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two (2) ***full-time*** terms shall be for four (4) years and shall be filled as provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.

(7) ~~[The Governor shall appoint up to two (2) part-time Parole Board members, to be confirmed by the Senate in accordance with KRS 11.160. The appointment process for these members shall be the same as set forth in subsection (1) of this section, and these members shall possess the same qualifications of a full-time Parole Board member with the additional requirement that they shall have previously served as a full-time Parole Board member. These]~~***The part-time*** members may participate in considering the grant or revocation of parole at the request of the chairman. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses. The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.

Section 2. The General Assembly confirms Executive Order 98-1593, dated December 3, 1998, relating to the reorganization of the Parole Board to the extent it is not otherwise confirmed by this Act.

Approved April 3, 2000

CHAPTER 299

(HB 258)

AN ACT relating to retirement.

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

Section 1. KRS 78.615 is amended to read as follows:

(1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS 78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

(a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.

(b) For noncertified employees of school boards, ***for service prior to July 1, 2000,*** service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of days worked, the rate of pay, and the hours in a work day for each employee monthly or annually. The employer shall file at the retirement office the final monthly report or the annual report for a fiscal year no later than twenty (20) days following the completion of the fiscal year. The retirement system shall impose a penalty on the employer of one thousand dollars ($1,000) if the information is not submitted by the date required with an additional two hundred and fifty dollars ($250) for each additional thirty (30) day period the information is reported late.

1. If the employee works fewer than the number of contracted days, the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.

2. If the employee works fewer than the number of contracted days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.

3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.

(c) For noncertified employees of school boards, for service on and after July 1, 2000, at the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations promulgated by the system. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1. Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. This credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year. Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.

(2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit shall be earned.

(3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:

(a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555; and

(b) A member on educational leave who meets the criteria established by the state Personnel Cabinet for approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his employer shall pay employer contributions or the contributions shall be picked up in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.

(4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

Approved April 3, 2000

CHAPTER 300

(HB 381)

AN ACT relating to economic development.

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

Section 1. KRS 42.4588 is amended to read as follows:

(1) There is established within the Kentucky Economic Development Finance Authority a Local Government Economic Development Program to consist of a system of grants to counties to attract new industry.

(2) Grants obtained under this program shall be used for:

(a) Industrial development projects if an industrial firm has agreed with the local government, to the satisfaction of the Kentucky Economic Development Finance Authority, to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development;

(b) Industrial development projects if the secretary of the Cabinet for Economic Development finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development; and

(c) Debt service for industrial development projects, as defined in subsection (2)(a) and (b) of this section, or for facilities approved by the secretary of the Cabinet for Economic Development under the provisions of subsection (3) of this section.

(3) The secretary of the Cabinet for Economic Development may approve facilities, other than manufacturing, processing, or assembling facilities, for industrial development projects when the secretary finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities, but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities. The secretary may also approve privately-owned facilities for transient lodging and recreation where the secretary finds that the cost of the recreation component of the facility is equal to, or greater than, the cost of the lodging component of the facility. The criteria for approval of applications for grants provided for in paragraphs (a), (b), and (c) of subsection (9) of this section shall be paramount in the case of lodging and recreational facilities.

(4) Applications for grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund. Applications for grants from funds provided for in KRS 42.4592(1)(c) shall be made by the legislative bodies of two (2) or more counties with accounts in the local government economic development fund. No grant shall be awarded without application for a grant.

(5) A grant may be awarded for an industrial development project located in a county that does not have an account in the local government economic development fund, if the secretary of

the Cabinet for Economic Development finds that the industrial development project may be reasonably expected to create jobs for residents of the local unit or units of government applying for the grant. Application for the grant shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund.

(6) ***An industrial development project may include legal, accounting, engineering, and marketing expenses for a regional industrial park, in addition to the activities set forth in subsection (11)(a) of this section.***

(7) Grants awarded from funds provided for in KRS 42.4592(1)(a) and (b) shall not exceed the total balance of the accounts of the applicant counties at the time of the award of the grant.

(8)[~~(7)~~] Grants awarded under the provisions of subsection (2)(c) of this section may be for a period not to exceed the current biennium of the Commonwealth, and shall be limited to an amount not to exceed the amount estimated to be allocated to the applicant county or counties for the current biennium under the provisions of KRS 42.4592(1)(a) and (b).

(9)[~~(8)~~] Approval of grant applications shall be by the secretary of the Cabinet for Economic Development. Award of grants shall be by the Kentucky Economic Development Finance Authority.

(10)[~~(9)~~] Criteria for approval of applications and the award of grants to be considered, if applicable, shall include:

(a) The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;

(b) Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;

(c) The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;

(d) The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;

(e) The needs of any industrial firm benefiting from the industrial development project;

(f) The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;

(g) The amount of capital made available to the facility by lenders and by the industrial firm; and

(h) The economic feasibility of the facility.

(11)[~~(10)~~] For purposes of this section:

(a) "Industrial development project" includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate for conveyance to or lease to industrial firms to be used for manufacturing,

processing, or assembling purposes, including surveys; site tests and inspections; subsurface site work; excavation, removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage; storm water retention; installation of utilities, such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation on the real estate of the industrial firm of buildings, including buildings to be used for worker training and education; rail facilities; roads; sidewalks; curbs;~~[and]~~ other improvements to the real estate necessary to its manufacturing, processing, assembling, or other approved use by industrial entities; workforce training; ***and*** job development incentive grants;

(b) "Industrial firm" means any corporation, limited liability company, limited liability partnership, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, assembling, or other approved facility on the site of an industrial development project financed pursuant to this section;~~[and]~~

(c) "Job development incentive grant" means an award to a county of funds from its account administered by the Kentucky Economic Development Finance Authority pursuant to KRS 42.4592(1)(a) and (b) for the use by the county to encourage job development for those industrial development projects located in that county which create at least twenty-five (25) new full-time jobs held by Kentucky residents who receive a minimum wage of at least one hundred thirty percent (130%) of the federal minimum wage. Each job development incentive grant is limited to five thousand dollars ($5,000) for each job created which fulfills the requirements of this subsection. The industrial firm receiving the job development incentive grant shall pay its employees at the project site an average wage equal to or greater than one hundred fifty percent (150%) of the federal minimum wage and shall invest at least ten thousand dollars ($10,000) per new job created. After a fiscal court has received authorization for the job development grant by the Kentucky Economic Development Finance Authority, the county, the industrial firm, and the ***Kentucky Economic Development Finance Authority***~~[Cabinet for Economic Development]~~ shall enter into an agreement committing the grant funds to be disbursed at such time as the industrial firm certifies the authenticity of the following information to be delivered to the county:

1. The industrial firm has made at least the minimum investment required;

2. At least twenty-five (25) new full-time Kentucky jobs have been created at the project site by the industrial firm;

3. No employee at the project site is paid a salary by the industrial firm which is less than one hundred thirty percent (130%) of the federal minimum wage;

4. The employees at the project site are paid an average wage by the industrial firm at least equal to one hundred fifty percent (150%) of the federal minimum wage;

5. Each employee hired for the project by the industrial firm shall have worked on a full-time basis at the minimum wages described in this section at least twelve

(12) full consecutive months at the site prior to any grant funds disbursement; and

6. No job created by the industrial firm after twenty-four (24) months from the date of the first eligible hire at the project site shall be considered for the grant.

If the county is satisfied the information provided is accurate and qualifies the industrial firm for the job development incentive grant as described in the agreement, it shall forward the certified information to the Cabinet for Economic Development which shall make the job development grant disbursement upon sufficient evidence that all terms of the agreement have been met***; and***

(d) "Regional industrial park" means an industrial development project authorized for a grant award by the Kentucky Economic Development Finance Authority for a minimum of three (3) counties eligible for grant funds provided for in KRS 42.4592(1)(c), which coalition may include a county as approved under subsection (5) of this section.

(12)[~~(11)~~] Findings by the secretary of the Cabinet for Economic Development, provided for in subsections (2)(b), (3), and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.

(13)[~~(12)~~] By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development shall provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.

Section 2. KRS 141.310 is amended to read as follows:

(1) Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which the wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of wages by the employer during the calendar year, or the date of commencement of employment with the employer during the year, or January 1 of the year, whichever is the later.

(4) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.

(5) The tables mentioned in subsection (1) of this section take into consideration the deductible federal income tax. If Congress changes substantially the federal income tax, the cabinet

shall make the change in these tables necessary to compensate for any increase or decrease in the deductible federal income tax.

(6) The cabinet may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation so permitted produces substantially the same result set forth in the tables authorized by KRS 141.370. Prior approval of the calculation shall be secured from the cabinet at least thirty days before the first payroll period for which it is to be used.

(7) The cabinet may, by regulations, authorize employers:

(a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;

(b) To determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages estimated constituted the actual wages paid; and

(c) To deduct and withhold upon any payment of wages to the employee during the quarter the amount necessary to adjust the amount actually deducted and withheld upon the wages of the employee during the quarter to the amount that would be required to be deducted and withheld during the quarter if the payroll period of the employee was quarterly.

(8) The cabinet may provide by regulation, under the conditions and to the extent it deems proper, for withholding in addition to that otherwise required under this section and KRS 141.315 in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(9) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.24-110 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from the employee ***or the Commonwealth's contribution if subsection (3) of Section 20 of this Act applies***.~~[If the Kentucky income tax to be withheld from the employee under this section is greater than four-fifths (4/5) of the job assessment fee set forth above, the excess shall be withheld.]~~ If the ***provisions in***~~[agreement under]~~ KRS 154.24-150***(3) or (4) apply***~~[is consummated]~~, the offset shall be one hundred percent (100%) of the assessment.

(10) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.22-070 ***or KRS 154.28-110*** may offset~~[a portion of]~~ the fee against the Kentucky income tax required to be withheld from the employee under this section.~~[The amount of the offset shall be equal to the amount of the assessment fee withheld from the employee.]~~

(11) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.26-100 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be two-thirds (2/3) of the amount of the assessment fee withheld from the employee~~[. If the~~

~~Kentucky income tax to be withheld from the employee under this section is greater than two-thirds (2/3) of the job assessment fee set forth above,~~] or four-fifths (4/5) if the agreement under KRS 154.26-090(1)(d)2.b. is consummated[~~, the excess shall be withheld~~].

(12)[~~ Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.22-070 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be equal to the amount of the assessment fee withheld from the employee.~~

~~(13)~~] Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the cabinet. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the cabinet, but shall not exceed fifty thousand dollars ($50,000).

(13)[~~(14)~~] The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of an employer's business until the bond is posted or the tax required to be withheld is paid or both. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the defendant.

Section 3. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and KRS 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.24-110, ***subsections (3) and (4) of Section 21 of this Act;*** 154.26-100(2), or KRS ***154.28-110***[~~154.28-090~~] shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

Section 4. KRS 141.405 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" has the same meaning as set forth in KRS 154.12-2084; and

(b) "Skills training investment credit" has the same meaning as set forth in KRS 154.12-2084.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) (a) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040, on net income as defined by KRS 141.010(11), or taxable net income as defined by KRS 141.010(14);

(b) The amount of the skills training investment credit that the Bluegrass State Skills Corporation has given final approval for under KRS 154.12-2088(6) shall be applied against the amount of the tax computed under paragraph (a) of this subsection; and

(c) The skills training investment credit payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.12-2088(6).

(4) (a) ***In the case of an approved company which is an S-corporation or partnership the amount of the tax credit awarded by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act shall be apportioned among the shareholders or partners thereof at the same ratio as the shareholders' or partners' distributive shares of income are determined for the tax year during which the final authorization resolution is adopted by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act***[~~Notwithstanding any other provisions of this chapter, an approved company which is an S-corporation, partnership, limited liability partnership, or trust shall be subject to income tax on the net income attributable to the approved company's operations at the rates provided in KRS 141.020(2)~~];

(b) The amount of the ***tax credit apportioned to each shareholder or partner that may be claimed in any tax year of the shareholder or partner shall be determined in accordance with the provisions of Section 7 of this Act***[~~skills training investment credit shall be the same as the amount of the tax computed in this section or, upon the annual election of the approved company, in lieu of the skills training investment credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this subsection shall be in satisfaction of the tax liability of the shareholders, partners, or beneficiaries of the S-corporation, partnership, limited liability partnership, or trust, and shall be paid on behalf of the shareholders, partners, or beneficiaries;~~

~~(c) The skills training investment credit or estimated payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.12-2088(6);~~

~~(d) If the tax computed in this section exceeds the credit, the excess shall be paid by the S-corporation, partnership, limited liability partnership, or trust at the times provided by KRS 141.160 for filing the returns; and~~

~~(e) Any estimated tax payment made by the S-corporation, partnership, limited liability partnership, or trust in satisfaction of the tax liability of shareholders, partners, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, or beneficiary~~].

(5) ***(a) In the case of an approved company that is a trust, the amount of the tax credit awarded by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act.***

(b) The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with the provisions of Section 7 of this Act.[~~Notwithstanding any other provisions of this chapter, the net income subject to tax, the skills training investment credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, limited liability partnership, or trust.~~

~~(6) Any limited liability company that is treated as a corporation for federal tax purposes shall determine the skills training investment credit as provided in subsection (3) of this section.~~

~~(7) Any limited liability company which is treated as a partnership for federal tax purposes shall determine the skills training investment credit as provided in subsection (4) of this section.~~

~~(8)~~]The Revenue Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A ***adopting forms and procedures for the reporting of the credit allowed in***[~~and require the filing of forms designed by the Revenue Cabinet to reflect the intent of KRS 154.12-2084 to 154.12-2089 and the allowable skills training investment credits that an approved company may retain under~~] KRS 154.12-2084 to 154.12-2089.

Section 5. KRS 154.12-204 is amended to read as follows:

As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

(1) "Applicant" means an educational institution,[~~ and~~] business**,** or industry that has made[~~ joint~~] application for a grant-in-aid as authorized by KRS 154.12-205 to 154.12-208;

(2) "Board" means the board of directors of the Bluegrass State Skills Corporation;

(3) "Business and industry" means a private corporation, limited liability company, registered limited liability partnership, institution, firm, person, group, or other entity or association of the same, concerned with commerce, trade, manufacturing, or the provision of services within the Commonwealth, or a public or nonprofit hospital licensed by the Commonwealth;

(4) "Corporation" means the Bluegrass State Skills Corporation, or BSSC;

(5) "Educational institution" means a public or nonpublic secondary or post-secondary institution or an independent institution within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level;

(6) "Grant-in-aid" means funding that is provided to an educational institution and business and industry by the BSSC for the development or expansion of a program as provided in this chapter;

(7) "Program" or "program of skills training or education consistent with employment needs" means a coordinated course of instruction which is designed to prepare individuals for employment in a specific trade, occupation, or profession. Such instruction may include:

(a) Classroom instruction;

(b) Classroom-related field, shop, factory, office, or laboratory work; and

(c) Entry level training, job upgrading, retraining, and advance training.

(8) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program as defined herein.

Section 6. KRS 154.12-207 is amended to read as follows:

(1) The corporation may, subject to appropriation from the General Assembly or from funds made available to the corporation from any other public or private source, provide grants-in-aid to educational institutions, and business and industry, not in excess of two hundred thousand dollars ($200,000) per grant-in-aid. Such grants-in-aid shall be used exclusively for programs which are consistent with the provisions of this chapter.

(2) To qualify for a grant-in-aid ***in which an educational institution will provide training***, an educational institution and a business or industry shall submit a joint application to the corporation that contains a proposal for a program of skills training and education; a description of the program; the type of skills training or education to be provided; a statement of the total cost of the program and breakdown of the costs associated with equipment, personnel, facilities, and materials; and with respect to educational institutions only, a statement of the technical assistance and financial support for the program received or pledged from business and industry. ***To qualify for a grant-in-aid in which a provider other than an educational institution will provide training, the business or industry may independently submit a proposal to the corporation containing the same information as set forth in this subsection.***

(3) Approval of the grant-in-aid application by the board, shall be based upon the following criteria:

(a) The program must be within the scope of KRS 154.12-204 to 154.12-208;

(b) Participants in the program must be limited to citizens of the Commonwealth;

(c) The program must involve an area of skills training and education which is needed by business and industry and for which a shortage of qualified individuals exists within the Commonwealth;

(d) The grant-in-aid must be essential to the success of the program as the resources of the educational institution are inadequate to attract the technical assistance and financial support necessary from business and industry;

(e) The educational institution must have obtained a firm commitment from business and industry for the information, technical assistance and financial support which, together, with the grant-in-aid, the resources of the applicant, and support from any other source, is sufficient to ensure the success of the program. In addition, the commitment of financial support from business and industry shall be equal to or greater than the amount of the requested grant-in-aid; and

(f) The educational institution must have established adequate auditing procedures and reporting methods for the submission of information and data as required by the corporation.

Section 7. KRS 154.12-2086 is amended to read as follows:

(1) The Bluegrass State Skills Corporation may, in accordance with KRS 154.12-2084 to 154.12-2089, award a credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 to an approved company. The amount of the skills training investment credit awarded by the Bluegrass State Skills Corporation shall be an amount equal to fifty percent (50%) of the amount of approved costs incurred by the approved company in connection with its program of occupational upgrade training or skills upgrade training, the credit amount not to exceed five hundred dollars ($500) per employee and, in the aggregate, not to exceed one hundred thousand dollars ($100,000) for each approved company per biennium. The Bluegrass State Skills Corporation shall only approve one (1) application per biennium for each qualified company.

(2) The skills training investment credit shall be credited ***on the income tax return of the approved company filed*** for the fiscal year ***during***~~[for]~~ which the ***final authorizing resolution is adopted by the Bluegrass State Skills Corporation in accordance with subsection (6) of Section 8 of this Act***~~[tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042]~~. The skill training investment credits allowed under KRS 154.12-2084 to 154.12-2089 shall only be used by the approved company that has been awarded the credits in accordance with KRS 154.12-2084 to 154.12-2089. The skills training investment credits provided for in this section shall be in addition to all other tax credits granted under the laws of the Commonwealth.

(3) The skills training investment credits may be carried forward for three (3) successive fiscal years of the approved company if the amount allowable as credits exceeds the income tax liability of the approved company in ***the***~~[that]~~ tax year ***during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation***; however, thereafter, if the amount allowable as credits exceeds the income tax liability of the approved company, the excess credits shall not be refundable or carried forward to any other fiscal year of the approved company for which a tax return of the approved company is to be filed.

(4) A qualified company shall not be entitled to receive the skills training investment credits if the qualified company requires that the employee reimburse the employer or otherwise pay for any costs or expenses incurred in connection with the occupational upgrade training or skills upgrade training.

(5) To the extent that any expenditures of a qualified company constitute approved costs and are the basis for the skills training investment credits under KRS 154.12-2084 to 154.12-2089, these expenditures shall not be eligible as the basis for grants-in-aid under Bluegrass State Skills Corporation provisions in KRS 154.12-204 to 154.12-208 or the Local Government Economic Development Program under the provisions of KRS 42.4588 to 42.4595.

(6) Priority consideration for preliminary approval under KRS 154.12-2088 shall be given to qualified companies that the Bluegrass State Skills Corporation determines to be high performance companies. A minimum of thirty percent (30%) of the total skills training investment credits authorized by the Bluegrass State Skills Corporation during any fiscal year shall be awarded to qualified companies that have been designated as high performance companies by the Bluegrass State Skills Corporation. The Bluegrass State Skills Corporation shall establish guidelines and standards for the designation of high performance companies.

(7) ***By October 1 of each year***~~[Ninety (90) days after the filing of the tax return of the approved company]~~, the Revenue Cabinet shall certify to the Bluegrass State Skills Corporation the~~[Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed, and the]~~ amount of any skills training investment credits taken pursuant to KRS 154.12-2084 to 154.12-2089 ***on tax returns filed during the fiscal year ending June 30 of that year***.

Section 8. KRS 154.12-2088 is amended to read as follows:

(1) The Bluegrass State Skills Corporation shall establish guidelines and standards for approving skills training investment credits for occupational upgrade training and skills upgrade training. The guidelines and standards may include, but are not limited to: required hours of classroom instruction; required courses; certification of teachers or instructors,

whether independent contractors or employees of a qualified company; certification of providers; progressive levels of instruction; and standardized measures of employee evaluation to determine successful completion of a course of study.

(2) To apply for skills training investment credits under KRS 154.12-2084 to 154.12-2089, a qualified company shall submit an application to the Bluegrass State Skills Corporation before commencing its program of occupational upgrade training or skills upgrade training. The application submitted by the qualified company shall contain information the Bluegrass State Skills Corporation requires including, but not limited to:

(a) A proposal for a program of occupational upgrade training or skills upgrade training;

(b) A description of each component of the proposed training program and the number of employee training hours requested;

(c) ***A***~~[An itemized]~~ statement of all anticipated costs and expenses of the training program, including~~[a breakdown of]~~ the costs and expenses associated with employee wages, equipment, personnel, facilities, and materials; and

(d) Auditing procedures and reporting methods for the submission of information and data to the Bluegrass State Skills Corporation.

(3) After a review of applications for skills training investment credits, the Bluegrass State Skills Corporation may designate the qualified company as a preliminarily approved company and preliminarily approve the amount of skills training investment credits that the qualified company shall be eligible to receive. The maximum amount of skills training investment credits preliminarily approved for all qualified companies by the Bluegrass State Skills Corporation for fiscal year 1998-1999 and fiscal year 1999-2000 shall not exceed one million dollars ($1,000,000) and shall not exceed two million five hundred thousand dollars ($2,500,000) for each fiscal year thereafter. Skills training investment credits shall be allocated to qualified companies in the same order preliminary approval is granted by the Bluegrass State Skills Corporation. Skills training investment credits that remain unallocated by the Bluegrass State Skills Corporation at the end of its fiscal year shall lapse and shall not be carried forward to a new fiscal year.

(4) The preliminarily approved company shall complete all programs of occupational upgrade training or skills upgrade training within one (1) year from the date of the preliminary approval of the skills training investment credits by the Bluegrass State Skills Corporation and shall certify the completion of these programs to the Bluegrass State Skills Corporation.

(5) The preliminarily approved company shall maintain in its employment the employees receiving occupational upgrade or skills upgrade training for a minimum of ninety (90) days following the completion of the program of occupational upgrade training or skills upgrade training and shall certify to the Bluegrass State Skills Corporation the number of employees who remained in the employment of the preliminarily approved company for the full ninety (90) day period.

(6) If a qualified company concludes its training program within the prescribed one (1) year and receives the required certifications described in subsections (4) and (5) of this section, then the Bluegrass State Skills Corporation shall adopt a final authorizing resolution approving the amount of skills training investment credits awarded to the preliminarily approved company in accordance with KRS 154.12-2084 to 154.12-2089. The adoption of a final

authorizing resolution shall be contingent upon the Bluegrass State Skills Corporation's approval of documentation submitted by the preliminarily approved company supporting all incurred approved costs. If one (1) or more of the employees of the preliminarily approved company failed to continue in the employment of the company for ninety (90) days following the completion of the prescribed one (1) year, then the amount of the skills training investment credits preliminarily approved for a qualified company shall be reduced on a pro rata basis for each employee who failed to continue employment with the preliminarily approved company through the ninety (90) day period. The final amount of the skills training investment credits awarded to the approved company shall not exceed the amount of skills training investment credits that the approved company was preliminarily approved for by the Bluegrass State Skills Corporation prior to commencement of the training program.

Section 9. KRS 154.20-253 is amended to read as follows:

As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

(1) "Administrative expenses and fees" means expenses and fees incurred by the investment fund in connection with the management and administration of qualified investments;

(2) "Agreement" means an investment fund agreement entered into pursuant to KRS 154.20-257(2) by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;

(3) "Applicant" means any person or entity who has not received ***approval***~~[certification]~~ from the authority as an investment fund manager, but who has or will submit an application to the authority for ***approval***~~[certification]~~ as an investment fund manager;

(4) "Authority" means the Kentucky Economic Development Finance Authority;

(5) "Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;

(6) "Commonwealth" means the Commonwealth of Kentucky;

(7) "Credit" means a credit against state income or license tax liability awarded by the authority pursuant to KRS 154.20-263 for cash contributions to investment funds;

(8) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;

(9) "Financial institution" means any banking corporation or association, trust company, savings and loan association, savings bank, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit;

(10) "Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is ***approved***~~[certified]~~ by the authority to be capitalized with cash contributions pursuant to KRS 154.20-250 to 154.20-284;

(11) "Investment fund manager" means any person or entity that is authorized to act in such capacity by any applicable securities regulator and that has been ***approved***~~[certified]~~ by the

authority to manage one (1) or more investment funds authorized under the provisions of KRS 154.20-250 to 154.20-284;

(12) "Investor" means any person or entity, other than a financial institution or an insurance company that is subject to state tax liability and that makes a cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284;

(13) "Qualified activity" means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any other activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-250 to 154.20-284, or in violation of any law;

(14) "Qualified investment" means a contribution of money to a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that contribution and in consideration for which the investment fund acquires or receives any of the following:

(a) 1. An equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; or

2. An unsecured debt instrument the maturity date of which is longer than one (1) year and which is made or issued by the small business; or

(b) Any other debt instrument issued or made by the small business.

Excluding any investment of money that has not been ***approved***~~[certified]~~ by the authority as a cash contribution under KRS 154.20-250 to 154.20-284, fifty percent (50%) or more of any investment fund shall be held in interests or debt instruments as specified in paragraph (a) of this subsection;

(15) "Small business" means any entity which at the time a qualified investment is made by an investment fund:

(a) Has net worth of three million dollars ($3,000,000) or less and net income after federal income taxes for each of the two (2) preceding fiscal years of two million dollars ($2,000,000) or less;

(b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the making of a qualified investment by an investment fund;

(c) Has no more than one hundred (100) employees; and

(d) Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.

The criteria set forth in paragraphs (a) and (c) of this subsection do not apply to any second or subsequent qualified investments.

Section 10. KRS 154.20-257 is amended to read as follows:

(1) The authority may commence ***approval***~~[certification]~~ of investment funds, cash contributions, and investment fund managers on or after July 1, 1999. No tax credit authorized by KRS 154.20-263 shall become effective until the investment fund to which the cash contribution is made and from which the credit accrues, has been implemented in compliance with applicable state and federal securities laws and regulations. Any investor whose cash contribution to an investment fund has been ***approved***~~[certified]~~ by the authority shall be entitled to a credit equal to forty percent (40%) of that cash contribution as provided in KRS 154.20-263. Except as otherwise provided in KRS 154.20-261(6), any investment of money made to an investment fund shall not be considered a part of the investment fund for purposes of KRS 154.20-250 to 154.20-284 and accordingly shall not be subject to the requirements of KRS 154.20-250 to 154.20-284 unless the investment of money has been ***approved***~~[certified]~~ by the authority as a cash contribution under KRS 154.20-250 to 154.20-284. A person or entity seeking to be ***approved***~~[certified]~~ as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to KRS 154.20-259, in addition to complying with applicable state and federal securities laws and regulations.

(2) (a) ***Subsequent to approval***~~[Concurrent with certification]~~ of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. If an investment fund manager or any investor in an investment fund fails to comply with their respective obligations under the agreement, the authority may, at its option do any one (1) or more of the following:

1. Suspend the availability of the credits;

2. Pursue any remedy provided under the agreement, including termination of the agreement; or

3. Pursue any other remedy at law to which it may be entitled.

(b) All remedies provided in this subsection are cumulative.

(3) At least one million dollars ($1,000,000) in cash contributions approved for tax credits shall be transferred into the investment fund within ninety (90) days from the effective date of the agreement between the authority and the investment fund manager. The effective date of the agreement shall be the date of ***approval***~~[certification]~~ of the investment fund and the investment fund manager by the authority. All cash contributions in excess of one million dollars ($1,000,000) that have been approved for tax credits as provided in KRS 154.20-250 to 154.20-284 in connection with the initial ***approval***~~[certification]~~ of the investment fund shall be transferred into the investment fund within one (1) year of the effective date of the agreement.

(4) An investment fund shall invest cash contributions in qualified investments according to the following schedule:

(a) On average during the second year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;

(b) On average during the third year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;

(c) On average during the fourth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;

(d) On average during the fifth year after the effective date of the agreement, at least ninety percent (90%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;

(e) On average during the sixth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses;

(f) On average during the seventh year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses; and

(g) On average during the eighth year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses.

For purposes of determining the percentage invested in small businesses on average during any particular year pursuant to this section, the amount invested in small businesses shall be the average amount so invested at the end of each calendar month during the year, and the amount of the investment fund required to be invested shall be the aggregate amount of cash contributions ***approved***~~[certified]~~ by the authority.

(5) No tax credits shall be awarded by the authority for cash contributions to investment funds after December 31, 2004. No investment funds or investment fund managers shall be ***approved***~~[certified]~~ by the authority after December 31, 2003.

Section 11. KRS 154.20-259 is amended to read as follows:

(1) The ***approval***~~[certification]~~ of investment funds and investment fund managers shall be made pursuant to an application to the authority, upon compliance with any applicable state and federal securities laws and regulations or a statement by the investment fund and the investment fund manager that such compliance will be obtained either simultaneously with or prior to submission of such application to the authority. In the application, the applicant shall disclose to the authority the following information, all of which shall be considered by the authority in ***approving***~~[certifying]~~ investment funds and investment fund managers:

(a) The applicant's business plan, including the maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;

(b) The total amount of commitments for cash contributions the applicant has received from potential investors, including receipt of not less than one million dollars ($1,000,000) in cash contributions deposited in an escrow account established in accordance with KRS 154.20-261(6);

(c) The name, address, and tax identification or Social Security number of each potential investor and the amount of cash contributions each potential investor has committed to the proposed investment fund;

(d) The relevant experience of the applicant or the applicant's management, and their demonstrated ability to manage the proposed investment fund;

(e) A process for disclosing to investors the tax credits available to investors pursuant to KRS 154.20-250 to 154.20-284, which shall include, but not be limited to, the disclosures described in KRS 154.20-261(7);

(f) The location and account number of an escrow account that has been established for investors for the period of time between receipt of cash contributions by the applicant and the ***approval***~~[certification]~~ of the investment fund and the investment fund manager by the authority;

(g) The disclosure documents to be used in connection with the offering and investment in the investment fund;

(h) The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to such offering, in compliance with applicable state and federal securities laws and regulations; and

(i) Any additional information the authority deems necessary or appropriate. An investment fund manager seeking to have ***approved***~~[certified]~~ additional cash contributions to ***an approved***~~[a certified]~~ investment fund shall submit to the authority a written amendment to the application in a form acceptable to the authority.

(2) The contents of applications submitted to the authority by applicants shall be treated as confidential by the Commonwealth and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.

(3) The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of KRS 154.20-250 to 154.20-284, including, but not limited to, power to:

(a) Require consultation, advisory, and legal fees and other expenses the authority deems necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;

(b) Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and

(c) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

Any payments made by an investment fund manager pursuant to this subsection may be passed on to such investment fund manager's investment fund.

(4) An investment fund's stated purpose shall be to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.

(5) The criteria considered by the authority for the ***approval***~~[certification]~~ of investment fund managers shall include, but not be limited to, compliance by those persons with applicable state and federal securities laws and regulations, a review of the applicant and its business plan, the investment strategy for the investment fund, the relevant experience of the applicant or the applicant's management, and the applicant's demonstrated ability to manage the investment fund, and the receipt by the applicant of aggregate cash contributions from investors to the investment fund of not less than one million dollars ($1,000,000).

(6) Following ***approval***~~[certification]~~ of an investment fund and an investment fund manager and execution of the agreement by the authority and the investment fund manager, the authority shall provide each investor whose cash contribution has been ***approved***~~[certified]~~ by the authority with a certificate setting forth the amount of the tax credits the investor shall be entitled to receive under KRS 154.20-263. Following ***approval***~~[certification]~~ of any additional cash contributions to an investment fund after the initial ***approval***~~[certification]~~ of the investment fund, the authority shall provide each investor making an additional cash contribution with a certificate setting forth the amount of additional credits the investor shall be entitled to receive under KRS 154.20-263. Each investor shall file a copy of the certificate with the investor's state tax return~~[in accordance with KRS 154.20-269]~~.

(7) The authority may establish additional procedures and standards as it deems necessary for the ***approval***~~[certification]~~ of investment funds and investment fund managers by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

Section 12. KRS 154.20-261 is amended to read as follows:

(1) An investment fund manager shall have a business office located within the Commonwealth. That office shall have a listed telephone number and shall be open to the public during normal business hours.

(2) The initial capitalization of an investment fund with cash contributions from investors shall not be less than one million dollars ($1,000,000). Any investment of moneys received by the investment fund in excess of the maximum amount of cash contributions proposed to be solicited in the application shall not be eligible for tax credits. In no event shall any investment of money received by the investment fund in excess of ten million dollars ($10,000,000) be eligible for credits. Cash contributions for all investment funds shall be raised after July 15, 1998.

(3) Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using

approved~~[certified]~~ cash contributions shall not exceed twenty-five percent (25%) of the cash contributions in the investment fund; provided that this restriction shall not apply to investments of money that have not been ***approved***~~[certified]~~ as cash contributions under KRS 154.20-250 to 154.20-284.

(4) An investment fund manager may operate separate investment funds pursuant to separate applications submitted to and approved by the authority, and assuming this activity is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.

(5) Following the initial ***approval***~~[certification]~~ of an investment fund, any additional cash contributions to that investment fund shall be ***approved***~~[certified]~~ by the authority.

(6) An investment fund manager seeking to establish an investment fund, or to increase the amount of cash contributions to an existing investment fund, shall establish an escrow account with a financial institution located within the Commonwealth into which cash contributions shall be deposited and held for the period of time between their receipt by the investment fund manager and either ***approval***~~[certification]~~ by the authority of the investment fund, or the ***approval***~~[certification]~~ by the authority of the increased cash contributions, whichever is later. No qualified investments shall be made using cash contributions until the new or expanded investment fund is ***approved***~~[certified]~~ by the authority. If the authority denies ***approval***~~[certification]~~ of the new or expanded investment fund, all cash contributions received by the applicant relating to the new or expanded investment fund shall be returned to investors within ten (10) calendar days.

(7) An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an expanded investment fund, shall disclose in advance in writing to each investor, in addition to any other items required by law, that:

(a) No tax credit will be available under the provisions of KRS 154.20-250 to 154.20-284 until the investment fund and the investment fund manager have complied with applicable state and federal securities laws and regulations, have been ***approved***~~[certified]~~ by the authority, and an agreement between the authority and the investment fund manager on its behalf and on behalf of the investors has been executed, and the terms of that agreement have been disclosed in writing to each investor;

(b) No tax credit will be available under the provisions of KRS 154.20-250 to 154.20-284 until the investor's cash contribution to the investment fund has been ***approved***~~[certified]~~ by the authority; and

(c) The Commonwealth shall be immune from liability for any losses or damages investors may incur in connection with any cash contributions made to an investment fund or any qualified investments made by an investment fund in small businesses.

Section 13. KRS 154.20-263 is amended to read as follows:

(1) An investor shall be entitled to a nonrefundable credit against the income tax imposed by KRS 141.020 or 141.040, or the corporation license tax imposed by 136.070 in any tax year after December 31, 1998, during which a cash contribution to ***an approved***~~[a certified]~~ investment fund is made. The aggregate tax credit amount available to any investor shall not

exceed forty percent (40%) of the cash contribution made by the investor to an investment fund. The aggregate tax credit amount available to each investor shall be ***approved***[~~certified~~] by the authority as provided in KRS 154.20-259(6).

(2) The tax credit amount that may be claimed by an investor in any tax year shall not exceed twenty-five percent (25%) of the initial aggregate credit amount ***approved***[~~certified~~] by the authority as available to the investor.

(3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section exceeds the investor's combined income tax and corporate license tax liabilities for that year, the investor may carry the excess tax credit forward until the tax credit is used, provided that the carry forward of any excess tax credit shall not increase the twenty-five percent (25%) limitation established by subsection (2) of this section, and provided further that any tax credits not used within fifteen (15) years of the initial ***approval***[~~certification~~] by the authority of the aggregate tax credit amount available to the investor shall be lost.

(4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, or any other additions to the investor's tax liability.

(5) ***Except as set forth in this subsection,*** the tax credits allowed by this section are not transferable. ***If an individual investor dies, the estate or beneficiaries may withdraw the initial investment from the investment fund with no penalty from the investment fund and no requirement to repay the Revenue Cabinet any credits which the investor may have taken, provided the investor has complied with the provisions of KRS 154.20-250 to 154.20-284. If the investor is other than an individual and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.***

Section 14. KRS 154.20-267 is amended to read as follows:

(1) The total amount of credits ***approved***[~~certified~~] by the authority for any single investment fund shall not exceed, in the aggregate, four million dollars ($4,000,000) for all investors and all taxable years. If aggregate cash contributions to a single investment fund exceed ten million dollars ($10,000,000) for all investors for all taxable years, the authority shall allocate credits to investors in the order that cash contributions are made by investors to the investment fund.

(2) The total credits ***approved***[~~certified~~] by the authority for all investors in all investment funds shall not exceed:

(a) Five million dollars ($5,000,000), in the aggregate, during the period from July 1, 1999, through June 30, 2000;

(b) Ten million dollars ($10,000,000), in the aggregate, during the period from July 1, 2000, through June 30, 2001, including credits authorized by the authority in the prior year;

(c) Fifteen million dollars ($15,000,000), in the aggregate, during the period from July 1, 2001, through June 30, 2002, including credits authorized by the authority in prior years; and

(d) Twenty million dollars ($20,000,000), in the aggregate, from July 1, 2002, and thereafter, including credits authorized by the authority in prior years.

The authority shall approve the credits to investors in the order that investment funds and investment fund managers are ***approved***~~[certified]~~ by the authority.

Section 15. KRS 154.20-269 is amended to read as follows:

(1) To receive the credit provided by KRS 154.20-263, an investor ***shall*** ~~[must:~~

~~(a)~~]claim the credit on the investor's annual state tax returns in the manner prescribed by the Revenue Cabinet~~[;~~

~~(b) File with the Revenue Cabinet and with the investor's annual state tax returns a copy of the disclosure form submitted by the investment fund manager under subsection (2) of this section; and~~

~~(c) File with the Revenue Cabinet and with the investor's annual state tax returns a copy of the certification of the investor's credit, issued by the authority under KRS 154.20-259(6) at the time of certification of the investment fund and of the investment fund manager and at the time of certification of additional cash contributions, as applicable]~~.

(2)~~[Each investment fund manager shall complete disclosure forms promulgated by the Revenue Cabinet as administrative regulations under KRS Chapter 13A, detailing the following information with respect to each cash contribution:~~

~~(a) The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;~~

~~(b) The name, address, and Social Security number or employer identification number, as applicable, of each investor; and~~

~~(c) The total amount of all cash contributions made by each investor.~~

~~(3) The disclosure forms required under subsection (2) of this section shall be filed by the investment fund manager with the Revenue Cabinet and the authority within thirty (30) days after receipt of certification from the authority. Copies of these forms shall be mailed to each investor by the investment fund manager on or before that same date.~~

~~(4)]~~ The contents of an investor's filings under subsection (1) of this section~~[and the disclosure form required under subsection (2) of this section]~~ shall be treated by the authority and by the Revenue Cabinet as confidential and shall not be considered public records under the Kentucky Open Records Act, KRS 61.870 to 61.884.

Section 16. KRS 154.20-271 is amended to read as follows:

(1) Subject to KRS 154.20-257(4), if a cash contribution which is the basis for a credit under the provisions of KRS 154.20-250 to 154.20-284 is redeemed by the investment fund, or if the investment fund allows the cash contribution to be withdrawn by the investor within five (5) years after the date of ***approval***~~[certification]~~ of the cash contributions by the authority, the credit provided by KRS 154.20-263 for that cash contribution shall be disallowed, and the investor shall pay to the State Treasurer an amount equal to the amount of credits previously claimed with respect to those cash contributions, plus interest at the rate of two percent (2%) per month, compounded monthly from the date credits were taken by the investor. This payment shall be included with the investor's state tax return or returns for the

period in which the redemption or withdrawal occurred. When payments are made to the State Treasurer under this section, the amount remitted shall be handled in the same manner as if no credit had been allowed.

(2) An investment fund that fails to make or maintain investments in small businesses pursuant to KRS 154.20-250 to 154.20-284, or that otherwise violates the provisions of KRS 154.20-250 to 154.20-284, shall pay to the State Treasurer a penalty in an amount equal to the amount of all credits claimed by the investors making cash contributions to the investment fund, plus interest at the rate of two percent (2%) per month, compounded monthly, from the date the cash contributions were ***approved***~~[certified]~~ by the authority. If the investment fund fails to pay the penalty and interest in full as required by the Revenue Cabinet, each investor shall be personally liable to the Revenue Cabinet for that investor's pro rata share of the unpaid penalty and the investment fund manager shall be liable to the Revenue Cabinet for all such interest. Any payment of unpaid penalty by an investor shall be included with the investor's state tax return for the period in which the failure or violation occurred. An investor's pro rata share shall be determined by dividing the total amount of cash contributions made by the investor in the investment fund, by the total amount of cash contributions made by all investors in the investment fund. The secretary of the Revenue Cabinet shall give notice in writing to the authority, the investment fund manager, and the investors of any penalties imposed. The secretary of the Revenue Cabinet may abate any imposed penalty upon written request, if the investment fund manager establishes reasonable cause for the failure to make qualified investments in small businesses under the provisions of KRS 154.20-250 to 154.20-284, or to otherwise comply with the provisions of KRS 154.20-250 to 154.20-284. The State Treasurer shall deposit any amounts received pursuant to this section in the Commonwealth's general fund.

(3) The administration of this section shall be the responsibility of the Revenue Cabinet.

Section 17. KRS 154.20-273 is amended to read as follows:

(1) Each investment fund manager shall file semiannual reports with the secretary of the Revenue Cabinet and with the authority, on or before the sixtieth day, and the two-hundred-fortieth day, of each fiscal year of the investment fund. These reports shall include information that the authority prescribes from time to time, including, but not limited to, the following:

(a) For each small business in which qualified investments are made by the investment fund during the reporting period, the name and address of the small business, the amount of qualified investments made by the investment fund in the small business during the reporting period, and the job creation anticipated and achieved by the small business during the reporting period;

(b) An affidavit from each small business in which a qualified investment was made during the reporting period, prepared by any authorized officer, partner, trustee, member, or manager of the small business, which sets forth:

1. That the small business qualifies as a small business under KRS 154.20-250 to 154.20-284; and

2. A brief description of the activities of the small business;

(c) An affidavit prepared by the investment fund manager or, if the investment fund is an entity, by an authorized officer, partner, trustee, member, or manager of the investment fund manager pertaining to:

1. Each small business in which a qualified investment has been made, including, without limitation, qualified investments made prior to the reporting period, that sets forth:

a. That each small business is or continues to be, as applicable, actively and principally engaged in a qualified activity; and

b. That each small business qualifies as a small business under the provisions of KRS 154.20-250 to 154.20-284;

2. The amount of each distribution to an investor and redemption of cash contributions made by the investment fund during the reporting period and in the aggregate since the date of ***approval***~~[certification]~~ of the investment fund;

3. The name and address of each investor, and the amount and date of the cash contribution to the investment fund of each investor who is entitled to the credit; and

4. The continued compliance by the investment fund and the investment fund manager with all applicable state and federal securities laws and regulations; and

(d) A statement from the investment fund manager as to the securities exemption or registration provision relied upon by the small business with respect to the qualified investment by the investment fund in the small business.

(2) The authority shall provide quarterly written status reports to the standing Appropriations and Revenue Committee of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate, concerning the activities of the Kentucky Investment Fund for each three (3) month period beginning July 1, 1999. On or before November 1 of each year, the authority shall make an annual report for the fiscal year ending the preceding June 30 to the Governor and the Legislative Research Commission. The quarterly status report and the annual report shall include, but not be limited to, the following information:

(a) The total number of investors and the aggregate amount of cash contributions to all investment funds, categorized by the types of entities through which investors conduct business, amounts of cash contributions, and geographical distribution of investors, including area development districts; and

(b) The total number and amounts of qualified investments made by each investment fund, categorized by type of businesses, amount of investment, job creation anticipated and achieved, geographical distribution, including area development districts, and new products and technologies developed.

(3) The contents of the semiannual reports from investment fund managers to the authority described in subsection (1) of this section shall be treated by the authority as confidential, and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.

(4) The authority may charge a fee in connection with the administration and processing of semiannual reports made by investment fund managers.

Section 18. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a financing agreement with respect to its economic development project***, upon adoption of a resolution authorizing the financing agreement***. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each financing agreement shall be determined by negotiations between the authority and the approved company.

(1) If an eligible company, at the time of submission of its application to the authority to become an approved company, requests the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with the issuance of bonds by the authority shall include the following provisions:

(a) The term of a financing agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and, if the authority owns the economic development project, the authority may grant to the approved company or its affiliate an option to purchase, for the consideration the authority may approve, the economic development project from the authority upon the termination of the financing agreement. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise.

(b) All proceeds of any bonds incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of bonds incurred in connection with the economic development project are not fully expended within the three (3) year period, the amount of the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.

(c) The financing agreement shall specify that the annual obligations of the approved company pursuant to KRS 154.22-010 to 154.22-080 shall equal in each year the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.

(d) 1. In consideration for financing agreement payment, the approved company may be permitted the following during the period of time not to exceed fifteen (15) years from the activation date in which the financing agreement is in effect, which period of time shall commence for purposes of the following upon the date of the financing agreement.

a. A one hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, the credit not to exceed the total debt service paid under the respective financing agreement; plus

b. The aggregate assessment withheld by the approved company in each year.

2. The income tax credited to the approved company referred to herein shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.

(e) 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax herein granted, shall not exceed the total financing agreement annual payment by the approved company in any year; however, to the extent that financing agreement annual payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year.

3. If in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(f) The financing agreement shall provide in substance that:

1. It may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to such effect; and

2. Upon default by the approved company in any obligations under the financing agreement or other documents evidencing, securing, or related to the approved company's obligations, the authority, or any of its assignees, shall have the right, at its option, to declare the financing agreement or other such documents in default; and

   a. Accelerate and declare the total of all such payments due by the approved company and sell the economic development project at public, private, or judicial sale;

   b. Pursue any remedy provided under the financing agreement or other such documents;

   c. Pursue all other remedies available to it under the Kentucky Uniform Commercial Code;

   d. Be entitled to the appointment of a receiver by the Circuit Court wherein any part of the economic development project is located; and

   e. Pursue any other remedy at law to which it appears entitled.

3. All remedies provided in subsection (1)(f)2. of this section shall be deemed cumulative.

(2) If an eligible company, at the time of submission of its application to the authority to become an approved company, does not request the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with loans or other financing (other than bonds issued by the authority for which subsection (1) of this section shall be used) shall include the following provisions:

(a) The term of a financing agreement, which shall commence on the date of the financing agreement, shall not be longer than:

1. The maturity of any loan or other financing incurred in connection with the economic development project, except that the financing agreement may terminate upon the earlier prepayment of all loans or other financing incurred in connection with the economic development project; or

2. Fifteen (15) years from the activation date.

3. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refinancing of the loans or other financing. The authority shall not own an economic development project that is the subject of this form of financing agreement.

(b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.

(c) 1. The approved company may be permitted the following during the term of the financing agreement:

a. A one-hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, such credit not to exceed the total debt service paid with respect to the loans or other financing incurred in connection with the economic development project; plus

b. The aggregate assessment withheld by the approved company in each year.

2. The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.

(d) 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax as provided in KRS 154.22-060, shall not exceed the total annual debt service payments of the approved company with respect to the loans or other financing incurred in connection with the economic development project in any year; however, to the extent that such annual debt service payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If, in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company, plus the assessment collected from the wages of the employees, equals the annual debt service payments with respect to the loans or other financing incurred in connection with the economic development project, and if all excess payments with respect to the loans or other financing incurred in connection with the economic development project accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year.

3. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees

shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees wages next succeeding the first date when the approved company collected excess assessments.

(e) The financing agreement shall provide in substance that it may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(f) The financing agreement shall provide that an approved company shall require of any lender to the approved company funding the loans or other financing incurred in connection with the economic development project written evidence to be provided to the authority of payments of all annual debt service to such lender. Such evidence shall be provided to the authority within forty-five (45) days after the end of each fiscal year of the financing agreement.

(g) The financing agreement shall provide that if an approved company fails to comply with its respective obligations under the financing agreement, or that the lender to an approved company fails to comply with its requirements set forth in subsection (2)(f) of this section, or is declared in default under the loans or other financing incurred in connection with the economic development project, then the authority, or any of its assignees, shall have the right, at its option, to:

1. Suspend the availability of the income tax credits and job development assessment fees to the approved company;

2. Pursue any remedy provided under the financing agreement, including termination thereof; and

3. Pursue any other remedy at law to which it appears entitled.

(3) All remedies provided in subsection (2)(g) of this section shall be deemed cumulative.

(4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Revenue Cabinet, and the approved company's employees of the activation date when the implementation of the inducements authorized in the financing agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

Section 19. KRS 154.22-060 is amended to read as follows:

(1) The approved company shall be entitled to a credit against the Kentucky income tax liability mandated by KRS Chapter 141, on any income that may result from the operation of the approved economic development project; the credit shall be equal to the total amount of the tax liability, and together with the aggregate assessments not to exceed the total debt service paid:

(a) Under the financing agreement in connection with the economic development project financed by bonds as described in KRS 154.22-050(1); or

(b) On loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project, as described in KRS 154.22-050(2).

(2) ***By October 1 of each year***[~~Ninety (90) days after the filing of the tax return of the approved company~~], the Revenue Cabinet of the Commonwealth shall certify to the authority ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year, and assessments taken by approved companies with respect to their economic development projects during the prior calendar year under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements***[~~the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed with respect to an economic development project financed through the issuance of bonds, loans or other financing incurred in connection with the economic development project and the amounts of any tax credits and job development assessment fees taken pursuant to KRS 154.22-010 to 154.22-080~~].

Section 20. KRS 154.24-110 is amended to read as follows:

(1) The approved company shall be entitled to an income tax credit equal to one hundred percent (100%) of the income tax that would otherwise be due to the Commonwealth by the approved company attributable to the economic development project, as limited by the provisions of this section and KRS 154.24-130. The amount of the approved company's income that is attributable to the economic development project shall be determined under KRS 141.407.

(a) The income tax credit allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the approved company for which the tax return of the approved company is filed; and

(b) ***By October 1 of each year***[~~Ninety (90) days after the filing of the income tax return of the approved company~~], the Revenue Cabinet ***of the Commonwealth*** shall certify to the authority***, in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year, and assessments taken by approved companies with respect to their economic development projects during the prior calendar year under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits and assessments equal to its total inducements***[~~the Kentucky income tax liability of the approved company with respect to an economic development project for the preceding fiscal year of the approved company for which~~

~~the return was filed, and the amounts of any tax credit allowed pursuant to KRS 141.407 and service and technology job development assessment fees taken pursuant to KRS 154.24-010, 154.24-090, 154.24-100, 154.24-120, 154.24-140, and 154.24-150, and this section~~].

(2) The approved company may require each employee, subject to state tax imposed by KRS 141.020, as a condition of employment, to agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages exclusive of any noncash benefits provided to an employee for each employee whose job has been deemed by the authority to be created as a result of the economic development project, provided that the service and technology job creation assessment fee shall not exceed the amount determined in accordance with KRS 154.24-150(5) if the circumstances in that subsection apply. Where a person is already employed by the approved company at a site other than the site of the economic development project and where that employee is subject to state tax imposed by KRS 141.020, the employee's job shall be deemed to have been created when the employee is transferred to the site of the economic development project, provided that the employee's existing job is filled with a new employee.

(a) Each employee paying the assessment shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to four-fifths (4/5) of the assessment;

(b) If the assessment has been approved by the local jurisdiction as provided in KRS 154.24-150, each employee paying the assessment also shall be entitled, in the local jurisdiction in which the economic development project is located, to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-fifth (1/5) of the assessment. If more than one (1) local tax is incurred, the one-fifth (1/5) assessment shall be prorated proportionately among the taxes unless one (1) local jurisdiction agrees to forego the receipt of these taxes in an amount equal to the one-fifth (1/5) assessment, in which case no proration need be made;

(c) If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee;

(d) No credit, or portion thereof, shall be allowed against any occupational license fee imposed by or dedicated solely to the board of education in a local jurisdiction;

(e) The approved company collecting an assessment shall make its payroll, books, and records available to the authority when the authority shall request, and shall file with the authority documentation pertaining to the assessment as the authority may require; and

(f) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall permanently cease at the expiration of the agreement.

(3) Notwithstanding subsection (2) of this section, if a local government in which the project is located has a local occupational license fee that is less than one percent (1%) and agrees to forego all of its local occupational license fee, then the assessment shall be four

percent (4%), all of which shall be contributed by the Commonwealth, plus the percentage of the local occupational license fee that the local government has agreed to forego. Each employee paying the assessment under this subsection shall be entitled to a credit against Kentucky income tax, under KRS 141.350, equal to four percent (4%) and a credit against the local occupational license fee equal to the local occupational license fee that the local jurisdiction has agreed to forego.

Section 21. KRS 154.24-150 is amended to read as follows:

(1) Before any agreement as prescribed in KRS 154.24-120 shall become effective, the legislative body of any local jurisdiction which may lose revenue as a result of the inducements offered pursuant to KRS 154.24-010 to 154.24-150 and which assesses a local occupational license fee shall approve by official action the granting of inducements to the approved company. If a local jurisdiction which satisfies the requirements of the previous sentence of this subsection does not approve the granting of the inducements or does not elect to provide in lieu of credits as described in subsection (2) of this section, then an approved company shall not be permitted to impose assessments against the wages of its employees.

(2) Subject to the prior written approval of the authority of any proposed in lieu of credits, the local government may elect, by vote of its legislative body, to provide for in lieu of credits for the approved company and its economic development project.

(3) If the local government elects to provide in lieu of credits as described in subsection (2) of this section, the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS 141.350.

(4) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and does not elect to provide in lieu of credits as described in subsection (2) of this section, the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS to KRS 141.350.

(5) If a local jurisdiction in which the economic development project is to be located, approves the inducements in accordance with subsection (1) of this section, assesses less than a one percent (1%) local occupational license fee, and does not elect to provide in lieu of credits as described in subsection (2) of this section, then the approved company may require that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a service and technology job creation assessment fee~~[in an amount determined by the percentage local occupational license fee, which shall be one-fifth (1/5) of the total service and technology assessment fee, but in no event to exceed five percent (5%) of the gross wages]~~ as prescribed in KRS 154.24-110(2) ***or (3), as applicable***, provided that each employee paying the assessment shall only be entitled to credits against his Kentucky income tax as prescribed in subsection (2)(a) ***or (3) of Section 20 of this Act, as applicable***~~[of KRS 154.24-110]~~ and to credits against his local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction.

(6) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and elects to provide in lieu of credits as described in subsection (2) of this section, then the assessment shall be in accordance with subsection (3) of this section.

(7) Subsection (4) of this section shall apply only to those approved companies which enter into service and technology agreements with the authority after July 15, 1996.

Section 22. KRS 154.26-100 is amended to read as follows:

(1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment, not to exceed, during any fiscal year of the approved company, six percent (6%) of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project. However, if the appropriation agreement is consummated, the assessment shall be five percent (5%) of each employee's gross wages subject to the income tax imposed by KRS 141.020.

(2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to two-thirds (2/3) of the assessment; or if the appropriation agreement is consummated, the credit shall be equal to four-fifths (4/5) of the assessment.

(3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-sixth (1/6) of the assessment, unless the appropriation agreement is consummated.

(4) If an approved company shall elect to impose the assessment as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.

(5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.

(6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall permanently lapse upon expiration or termination of the agreement.

(7) ***By October 1 of each year***[~~Ninety (90) days after the filing of the tax return of the approved company~~], the Revenue Cabinet ***of the Commonwealth*** shall certify to the authority***, in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and job revitalization assessment fees taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements***[~~the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed of each approved company with respect to an economic development project financed through the issuance of bonds, loans, or other financing incurred in connection with the economic development project and the amounts of any tax credits and job revitalization assessment fees taken pursuant to KRS 154.26-010, 154.26-080, 154.26-090, and this section~~].

Section 23. KRS 154.28-090 is amended to read as follows:

(1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) The term of an agreement, which shall commence on the date of the agreement, shall not be longer than the earlier of the following:

1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or

2. Ten (10) years from the activation date of the original agreement.

(b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.

(c) In consideration for the execution and during the term of the agreement, the approved company shall be permitted either of the following during the term of the agreement:

1. A credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400; or

2. The aggregate assessment withheld by the approved company in each year.

(2) The agreement shall provide that:

(a) 1. The assessments, if applicable, shall not exceed the annual payments of the total financing agreement by the approved company in any year; however, to the extent that the financing agreement annual payments exceed assessments collected in any year, the excess payment may be recouped from assessment collections in succeeding years.

2. If in any fiscal year of the approved company during which the financing agreement is in effect the total assessments collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax withholdings from employees' wages for the remainder of that fiscal year.

(b) The Kentucky income tax credit, in any fiscal year of the approved company, shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project;

however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.

(c) The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042.

(d) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(e) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.

(f) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(e) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:

1. Suspend the availability of the income tax credits or job development assessment fees, as applicable;

2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and

3. Pursue any other remedy at law to which it may appear entitled.

(3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.

(4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement which shall be at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, and the approved company's employees of the activation date on which implementation of the inducements authorized in the financing agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of an economic development project under KRS 154.28-010(9) shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company will not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies these requirements; however, the ten (10) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

(5) ***By October 1 of each year***~~[Ninety (90) days after the filing of the tax return of the approved company]~~, the Revenue Cabinet shall certify to the authority***, in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and assessments taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits and assessments equal to its total inducements***~~[the income tax liability, for the preceding fiscal year of the approved company for which the return was filed, of the approved company with respect to an economic development project receiving inducements under the provisions of KRS 154.28-010 to 154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-010 to 154.28-090 and KRS 141.400]~~.

Section 24. KRS 154.29-050 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:

(a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company;

(b) A date certain by which the approved company shall have completed the tourism attraction project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority; and

(c) The following provisions:

1. The term shall be ten (10) years from the later of:

a. The date of the final approval of the project; or

b. The completion date specified in the agreement, if this completion date is within two (2) years of the date of the final approval of the project;

2. Within forty-five (45) days after the end~~[of each half]~~ of each fiscal year of the approved company, ***during the term of the agreement,*** the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 154.29-010 to 154.29-060. Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Revenue Cabinet that the approved company is in compliance with this section; and

3. The approved company shall not receive a sales tax refund as prescribed by KRS 139.536 with respect to any fiscal year if:

a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; or

b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days.

(2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.

(3) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 154.29-010.

Section 25. The following KRS section is repealed:

154.22-055 Financing agreement -- Adoption -- Publication.

Section 26. Subsections (4) and (5) of Section 4 and subsections (2) and (3) of Section 7 of this Act shall apply to taxable years beginning after December 31, 1999.

Approved April 3, 2000

CHAPTER 301

(HB 571)

AN ACT adopting the Uniform Electronic Transactions Act, and making changes incidental thereto.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 20 of this Act may be cited as the Uniform Electronic Transactions Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 20 of this Act, unless the context requires otherwise:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts of records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction;

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by Sections 1 to 20 of this Act and other applicable law;

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

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual;

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means;

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

(9) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state;

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like;

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information;

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity;

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

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures;

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and

(16) "Transaction" means an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial, or governmental affairs.

SECTION 3. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in subsection (2) of this section, Sections 1 to 20 of this Act applies to electronic records and electronic signatures relating to a transaction.

(2) Sections 1 to 20 of this Act does not apply to a transaction to the extent it is governed by:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(b) KRS Chapter 355 other than KRS 355.1-107 and 355.1-206, and Articles 2 and 2A of KRS Chapter 355;

(c) A law governing the conveyance of any interest in real property; and

(d) A law governing the creation or transfer of any negotiable instrument or any instrument establishing title or an interest in title.

(3) Sections 1 to 20 of this Act applies to an electronic record or electronic signature otherwise excluded from the application of Sections 1 to 20 of this Act under subsection (2) of this section to the extent it is governed by a law other than those specified in subsection (2) of this section.

(4) A transaction subject to Sections 1 to 20 of this Act is also subject to other applicable substantive law.

SECTION 4. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 20 of this Act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) Sections 1 to 20 of this Act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) Sections 1 to 20 of this Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in Sections 1 to 20 of this Act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of Sections 1 to 20 of this Act of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by Sections 1 to 20 of this Act and other applicable law.

SECTION 6. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 20 of this Act must be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of Sections 1 to 20 of this Act among states enacting it.

SECTION 7. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

SECTION 8. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than Sections 1 to 20 of this Act requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in subsection (4)(b) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law.

(c) The record must contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than Sections 1 to 20 of this Act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than Sections 1 to 20 of this Act to send, communicate, or transmit a record by United States mail may be varied by agreement to the extent permitted by the other law.

SECTION 9. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

SECTION 10. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subsection (1) of this section nor subsection (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Subsections (2) and (3) of this section may not be varied by agreement.

SECTION 11. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

SECTION 12. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) of this section by using the services of another person if the requirements of that subsection are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1) of this subsection.

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1) of this subsection.

(6) A record retained as an electronic record in accordance with subsection (1) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of Sections 1 to 20 of this Act specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

SECTION 13. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

SECTION 14. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agency and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

SECTION 15. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (4) of this section.

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or recipient has more than one (1) place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) of this section even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware than an electronic record purportedly sent under subsection (1) of this section, or purportedly received under subsection (2) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

SECTION 16. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) In this section, "transferable record" means an electronic record that:

(a) Would be a note under Article 3 of KRS Chapter 355 or a document under Article 7 of KRS Chapter 355 if the electronic record were in writing; and

(b) The issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f) of this subsection, unalterable;

(b) The authoritative copy identifies the person asserting control as:

1. The person to which the transferable record was issued; or

2. If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies of revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in KRS 355.1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under KRS Chapter 355, including, if the applicable statutory requirements under KRS 355.3-302(1), 355.7-501, or 355.9-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writing under KRS Chapter 355.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

SECTION 17. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

Each governmental agency of this Commonwealth shall determine whether, and the extent to which it will create electronic records. The Kentucky Department of Libraries and Archives shall determine whether, and the extent to which, the Commonwealth will retain electronic records and convert written records to electronic records.

SECTION 18. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in subsection (6) of section 12 of this Act, each governmental agency of this state, in compliance with standards established by the Governor's Office for Technology, shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(***2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1) of this section:***

(a) The Governor's Office for Technology, giving due consideration to security, may specify the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) If electronic records must be signed by electronic means, each governmental agency, giving due consideration to security, may specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) The Governor's Office for Technology and the Department for Libraries and Archives, giving due consideration to security, may specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) Each governmental agency, giving due consideration to security, may specify any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in subsection (6) of Section 12 of this Act, Sections 1 to 20 of this Act does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

SECTION 19. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

The Governor's Office for Technology which adopts standards pursuant to subsection (2)(a) of Section 18 of this Act may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which

governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

SECTION 20. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

If any provision of Sections 1 to 20 of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of Sections 1 to 20 of this Act which can be given effect without the invalid provision or application, and to this end the provisions of Sections 1 to 20 of this Act are severable.

Section 21. The following KRS sections are repealed:

369.010 Legislative intent of KRS 369.010 to 369.030.

369.020 Definitions for KRS 369.010 to 369.030.

369.030 Use of electronic record or electronic signature -- Construction and scope of KRS 369.010 to 369.030.

Section 22. Sections 1 to 20 of this Act applies to contracts created or renegotiated on and after the effective date of this Act. To the extent that Sections 1 to 20 of this Act may be inconsistent, and notwithstanding the repeal of KRS 369.010 to 369.030 contained in Section 21 of this Act, contracts based on those statutes shall continue in force under their terms until they expire or are renegotiated, and the application of those statutes to such contracts shall continue as if the specified statutes had not been repealed.

Section 23. If the General Assembly enacts the revised version of Article 9 of the Uniform Commercial Code during this 2000 Regular Session and that legislation becomes law, the reference to KRS 355.9-308 in subsection (4) of Section 16 of this Act shall be changed to 355.9-330, as of the effective date of revised Article 9, to reflect the location of the relevant text in the revised Article 9.

Section 24. In the event that the Governor's Executive Order 99-1359, dated October 6, 1999, creating the Governor's Office for Technology, is not confirmed by the 2000 General Assembly, references in Sections 18 and 19 of this Act to the Governor's Office for Technology shall be deleted, and in codification the Chief Information Officer shall be inserted in lieu thereof.

Section 25. This Act shall take effect August 1, 2000.

Approved April 3, 2000

CHAPTER 302

(HCR 36)

A CONCURRENT RESOLUTION confirming the appointment of Hilda Gay Legg to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Ms. Hilda Gay Legg as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2005; and

WHEREAS, the Senate and the House of Representatives find that Ms. Legg meets the requirements of KRS 164.011, being a resident and qualified voter of Kentucky, not holding an official relationship to any institution of higher education in Kentucky, and not engaging in any occupation or business inconsistent with her duties as a member of the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and Senate, pursuant to KRS 164.011, do confirm the appointment of Ms. Hilda Gay Legg to the Council on Postsecondary Education for a term expiring December 31, 2005.

Section 2. That the Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Hilda Gay Legg, 330 Pumphouse Road, No. 6, Somerset, Kentucky 42503, and to Governor Paul Patton, Room 100, State Capitol, Frankfort Kentucky 40601.

Approved April 3, 2000

CHAPTER 303

(HCR 82)

A CONCURRENT RESOLUTION directing the Interim Joint Committee on Education to study the issue of the instruction of the principles of economics and the need for promoting economic education in public schools.

WHEREAS, the General Assembly of the Commonwealth of Kentucky has expressed its intent to create a system of public education which shall allow and assist all students to acquire knowledge to make economic, social, and political choices; and

WHEREAS, the principles of economics are in evidence throughout many aspects of human personal and social activity; and

WHEREAS, a survey by the National Council for Economic Education revealed that most Americans have no formal education in basic economics or personal finance, even as they are confronted with making economic decisions in their roles as consumers, investors, members of the workforce, and participants in the global economy; and

WHEREAS, sixty-six percent of high school students and forty-nine percent of adults failed a test of their knowledge of basic economic principles conducted by the National Council on Economic Education during 1998 and 1999; and

WHEREAS, these results are evidence that the level and quality of economic education in public schools is woefully inadequate to prepare students to address the challenges and opportunities they will face upon graduation; and

WHEREAS, a firm understanding of economics and the economy are important to assist students in making good decisions regarding their personal future, and in fulfilling their obligations as responsible citizens, workers, community members, and family members;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Interim Joint Committee on Education is directed to study the issue of the instruction of the principles of economics and the need for promoting economic education in public schools during the 2000-2002 legislative interim.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and designate a study completion date.

Approved April 3, 2000

CHAPTER 304

(HB 692)

AN ACT relating to the Board of Claims.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 44 IS CREATED TO READ AS FOLLOWS:

No claim shall be brought before the board unless the value of the total amount of damages claimed therein is one hundred dollars ($100) or greater.

Section 2. KRS 44.086 is amended to read as follows:

(1) The board may require affected state agencies to investigate claims and the incidents on which they are based and to furnish to the board and the claimant in writing the facts learned by investigation. Such response shall be sufficiently specific to support a decision by the board to pay or deny the claim. If the agency believes the state should refute a claim, the agency shall cite the facts about the incident that support its belief.

(2) If the claim is under one thousand dollars ($1,000) it will be investigated by the board in-house and if the board believes it needs additional facts before deciding the claim, the parties may provide the needed information by letter or as directed by the board.

(3) The board shall hold hearings on contested claims whose value is ***one thousand***~~[five hundred]~~ dollars ***($1,000)***~~[($500)]~~ or greater but may decide claims under ***one thousand***~~[five hundred]~~ dollars ***($1,000)***~~[($500)]~~ without a hearing.

(4) At its hearings, the board, or any of its members, or any of its hearing officers shall hear the parties at issue and their representatives and witnesses.

(5) The award or order shall be made by the board or by a member assigned by the chairman within thirty (30) days after final submission, except in cases involving large or complicated records or unusual questions of law, and shall be made within ninety (90) days after final submission in any event. The order or award, together with a statement of the findings of fact, rulings of law and other matters pertinent to the question at issue shall be filed with the record of the claim and a copy of the order or award shall immediately be sent to the parties in dispute.

(6) If an application for review is made to the board within fourteen (14) days from the date of the order or award, the full board, if the first decision was not made by the full board, shall, as soon as practicable, review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses, and shall make an order or award and file it as specified in subsection (5) above.

Section 3. 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***~~[five hundred]~~ dollars ***($1,000)***~~[($500)]~~. 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 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***~~[five hundred]~~ dollars ***($1,000)***~~[($500)]~~ 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 4. KRS 44.070 is amended to read as follows:

(1) A Board of Claims, composed of the members of the Crime Victims Compensation Board as hereinafter provided, is created and vested with full power and authority to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets,

departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies; provided, however, regardless of any provision of law to the contrary, the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, and employees, while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, shall not be liable for collateral or dependent claims which are dependent on loss to another and not the claimant, damages for mental distress or pain or suffering, and compensation shall not be allowed, awarded, or paid for said claims for damages. Furthermore, any damage claim awarded shall be reduced by the amount of payments received or right to receive payment from workers' compensation insurance, social security programs, unemployment insurance programs, medical, disability or life insurance programs, or other federal or state or private program designed to supplement income or pay claimant's expenses or damages incurred. Any claim against the Commonwealth, its departments, agencies, officers, agents, or employees, or a school district board of education, its members, officers, agents, or employees for damages sustained as the result of exposure to asbestos before, during or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims. Except as herein provided, the board shall be independent of all agencies, cabinets, and departments of the Commonwealth except as provided in KRS 44.070 to 44.160.

(2) The board shall be composed of the members of the Crime Victims Compensation Board. The members shall not be entitled to additional compensation for their services on the Board of Claims.

(3) The Governor shall designate a member of the board to serve as chairman for a term of four (4) years. Any vacancy in the chairmanship shall be filled by the Governor. No member shall, at the same time, serve as chairman of the Crime Victims Compensation Board and as chairman of the Board of Claims.

(4) The employees of the Crime Victims Compensation Board, without additional compensation, shall be ex officio employees of the Board of Claims.

(5) Regardless of any provision of law to the contrary, the jurisdiction of the board is exclusive, and a single claim for the recovery of money or a single award of money shall not exceed ***two***~~[one]~~ hundred thousand dollars ***($200,000)***~~[($100,000)]~~, exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed ***three***~~[two]~~ hundred fifty thousand dollars ***($350,000)***~~[($250,000)]~~, to be equitably divided among the claimants, but in no case may any claimant individually receive more than ***two***~~[one]~~ hundred thousand dollars ***($200,000)***~~[($100,000)]~~.

(6) The Governor shall appoint the necessary number of hearing officers, each of whom shall be an attorney admitted to practice law in Kentucky and shall have practiced law for at least three (3) years. These officers, upon the direction of the chairman or the board, shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by the chairman or the board, except that such hearing officers shall not render final decisions, orders, or awards. However, such hearing officers may, in receiving evidence on behalf of the board, make such rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

(7) The board may at any time recommend the removal of any hearing officer upon filing with the Governor a full written statement of its reasons for such removal.

(8) Upon recommendation to the board by the attorney for the Commonwealth, its cabinet, department, bureau, agency, or employee thereof, that a settlement has been reached between the parties to the claim, and upon approval by the board that the settlement is reasonable for all parties concerned, the agreed judgment or dismissal may be entered accordingly, even without a party's admission to liability.

Approved April 3, 2000

CHAPTER 305

(HB 439)

AN ACT relating to retirement.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 21 IS CREATED TO READ AS FOLLOWS:

(1) As a pilot project to determine the effectiveness of using senior retired judges to combat backlog and delay in Kentucky courts, there is hereby created a "Senior Status Program for Special Judges." The program shall be implemented as follows:

(a) KRS 21.400(1) and any other provision in KRS Chapter 21 to the contrary notwithstanding, a member who retires at a time when combining his total years of judicial service credit and his age equals or exceeds the number seventy-five (75), may elect, within ninety (90) days following retirement, to participate in the "Senior Status Program for Special Judges," if he complies with the provisions of this subsection. In that event, the member shall be entitled to a service retirement allowance, commencing at the member's normal retirement age, payable monthly during his lifetime in an amount equal to five percent (5%) of his final compensation multiplied by the number of years of his judicial service, not to exceed twenty (20) years of judicial service at the five percent (5%) factor, not to exceed one hundred percent (100%) of final compensation. "Final compensation" is as defined in KRS 21.400. Any nonjudicial time shall be counted as is otherwise provided in KRS Chapter 21; but in no event shall service retirement allowance exceed one hundred percent (100%) of final compensation.

1. In the event the retiring judge elects to retire as a "Senior Status Special Judge" under this subsection, he shall commit to serve, upon appointment by the Chief Justice of the Commonwealth, as special judge for one hundred twenty (120) work days per year for a term of five (5) years without compensation other than the retirement benefits under this subsection. The Senior Status Special Judge may agree to work more than one hundred twenty (120) days in any year within the five (5) years of service; however, the Senior Status Special Judge shall be compensated as otherwise provided by law, in addition to his retirement benefits, for any days served in excess of one hundred twenty (120) in that year. If the Senior Status Special Judge has not

served a total of six hundred (600) days within the five (5) year period outlined in this subsection, the Chief Justice shall require the Senior Status Special Judge to serve at no additional compensation to the Senior Status Special Judge, until the six hundred (600) day period is served by the Senior Status Special Judge. The Senior Status Special Judge and the Chief Justice may agree in writing to serve less than the one hundred twenty (120) days in any one or more of the five (5) years; however, any of the days not served in a given year shall be served at the end of the five (5) year period set forth in this subsection.

2. Should any member electing to retire under the Senior Status Program for Special Judges fail, when ordered by the Chief Justice to serve the requisite number of days not to exceed one hundred twenty (120) days a year for the five (5) year period outlined in this subsection, unless otherwise agreed in writing, he shall no longer be eligible for benefits computed under this subsection and shall return to the benefits otherwise provided under this chapter.

3. Subject to the Section 110(5)(b) of the Kentucky Constitution, the Chief Justice shall give due regard, when practical, to the desirability of appointing Senior Status Special Judges to serve within their judicial region as defined by the regional administration charter.

(b) The inviolable contract provisions of Kentucky law, KRS 21.480, shall apply during the period of time that Section 1 of this Act is effective; however, no other provisions of this Act shall be considered subject to an inviolable contract of the Commonwealth.

(c) Nothing contained in this section shall be construed to invalidate provisions in the current law which require a penalty for retiring before the normal retirement age.

(2) The Senior Status Program for Special Judges created by this section shall be open to any member who is a judge in office on the effective date of this Act and who subsequently retires as a Senior Status Special Judge on or before June 30, 2007.

Section 2. KRS 21.400 is amended to read as follows:

(1) A member who retires on or after his normal retirement date shall receive a service retirement allowance, payable monthly during his lifetime, in an amount per month equal to two and seventy-five hundredths percent (2.75%) of his final compensation multiplied by the number of years of his service, but in no event to exceed one hundred percent (100%) of final compensation, except that for any service performed while a member prior to July 1, 1978, any service prior to July 1, 1962, creditable under KRS 21.345, and any service performed in continued membership (or allowable under KRS 21.410 or 21.420) after June 30, 1978, by a person who was a member on that date, the monthly percentage figure shall be five percent (5%) of his final compensation multiplied by the number of years of his service, and except that for any service performed by a member who elected membership at an annual accrual rate of four and fifteen one hundredths percent (4.15%) and for any service performed in continued membership thereafter (or allowable under KRS 21.410 to 21.420), the benefit, payable monthly during his lifetime shall be an amount equal to four and fifteen one-hundredths percent (4.15%) of his final compensation multiplied by the number of years of his service, and except that allowances heretofore granted, and rights related thereto, shall not be affected by the 1978 or 1980 amendments to this section. For

this purpose, "final compensation" means the average monthly compensation of the member for the sixty (60) months of service immediately preceding his retirement, including, in the case of a Circuit Judge, compensation received as special commissioner of the former Court of Appeals. If, at the time of retirement or death of a member his total period of service in one or more positions covered by the system has not amounted to sixty (60) months, his "final compensation" shall be computed as if he had served in the first position he occupied under the system for such period of time as to bring his total service (in all positions) to sixty (60) months. If that category of position was not in existence for that period, it shall be treated as though it had been in existence for that period and as if the compensation paid for the presumed period of existence was at the rate provided for the category when it in fact first was created.

(2) A member who retires before his normal retirement date shall be vested with the right to receive, when he reaches his normal retirement age, a service retirement allowance computed ***on the basis of the number of years of his actual service,*** and payable in accordance with***:***

(a) The provisions of subsection (1) of this section***; or***

(b) ***Section 1 of this Act if the member retires as a Senior Status Special Judge while the pilot program created in Section 1 of this Act is in effect***[~~, on the basis of the number of years of his actual service~~].

(3) In lieu of the right provided for in subsection (2) of this section, a member who retires before his normal retirement age may elect, at any time before reaching his normal retirement age, to be paid commencing as of the time of the election a monthly service retirement allowance equal in amount to the monthly allowance that would have become payable under subsection (2) of this section when he reached his normal retirement age, reduced at the rate of five percent (5%) for each year by which his actual age at the time the election is made is lower than the normal retirement age.

(4) A member who retires before his normal retirement date when his benefit is based on twenty-seven (27) years or more of service in the Judicial Retirement Plan, or if his judicial service credit, when combined with service he has in, or for which he is receiving benefits from, the Legislators' Retirement Plan, the Kentucky Employees Retirement System, County Employees Retirement System, State Police Retirement System, or the Teachers' Retirement System, is equal to twenty-seven (27) years, shall be vested with the right to receive a service retirement allowance computed ***on the basis of the number of years of his actual service,*** and payable in accordance with***:***

(a) The provisions of subsection (1) of this section***; or***

(b) ***Section 1 of this Act if the member retires as a Senior Status Special Judge while the pilot program created in Section 1 of this Act is in effect***[~~on the basis of the number of years of his actual service~~].

(5) In lieu of the right provided for in subsection (2) of this section, a member who retires before his normal retirement age may elect, at any time before reaching his normal retirement age, to be paid commencing as of the time of the election, a monthly service retirement allowance equal in amount to the monthly allowance that would have become payable under subsection (2) of this section when he reached normal retirement age, reduced

at the rate of five percent (5%) for each year by which his years of service or combined service pursuant to subsection (4) of this section are lower than twenty-seven (27).

Section 3. On the effective date of this Act, and annually thereafter the Judicial Retirement System shall provide a written report to the Legislative Research Commission and to the Chief Justice of the Kentucky Supreme Court containing: (1) Number of judges who have retired as Senior Status Special Judges since the effective date of the Act, (2) Compensation and other benefits paid to those Senior Status Special Judges; (3) Number of days each Senior Status Special Judge has served as a special judge; (4) The fiscal impact on the judicial retirement system and the General Fund as a result of the retirement of the Senior Status Special Judges; and (5) Any other relevant information that may be requested.

Section 4. Section 1 of this Act is repealed effective July 1, 2007.

Approved April 4, 2000

CHAPTER 306

(HB 165)

AN ACT relating to kinship care for children.

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

Section 1. KRS 605.120 is amended to read as follows:

(1) The cabinet is authorized to expend available funds to provide for the board, lodging, and care of children ***who would otherwise be placed in foster care or who are*** placed by the cabinet in a foster home or boarding home, or may arrange for payments or contributions by any local governmental unit, or public or private agency or organization, willing to make payments or contributions for such purpose. The cabinet may accept any gift, devise, or bequest made to it for its purposes.

(2) The cabinet shall establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children. The cabinet shall consider providing additional reimbursement for foster parents who obtain additional training, and foster parents who have served for an extended period of time. In establishing a reimbursement system, the cabinet shall, to the extent possible within existing appropriation amounts, address the additional cost associated with providing care to children with exceptional needs.

(3) The cabinet shall review reimbursement rates paid to foster parents on a biennial basis and shall issue a report in October of each odd-numbered year to the Legislative Research Commission comparing the rates paid by Kentucky to the figures presented in the Expenditures on Children by Families Annual Report prepared by the United States Department of Agriculture and the rates paid to foster parents by other states. To the extent that funding is available, reimbursement rates paid to foster parents shall be increased on an annual basis to reflect cost of living increases.

(4) The cabinet is encouraged to develop pilot projects both within the state system and in collaboration with private child caring agencies to test alternative delivery systems and nontraditional funding mechanisms.~~[Pilot projects may include but not be limited to kinship care]~~

(5) To the extent funds are available, the cabinet may establish a program for kinship care that provides a more permanent placement with a qualified relative for a child that would otherwise be placed in foster care due to abuse, neglect, or death of both parents.

(6) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provision of subsection (5) of this section. The administrative regulations shall include uniform conditions and requirements regarding:

(a) Eligibility requirements for the kinship caregiver and the child;

(b) Financial assistance and payment rates; and

(c) Support services and case management services that may be provided to the kinship caregiver or the child.

Section 2. KRS 610.010 is amended to read as follows:

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:

(a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

(b) Has not subjected himself to the reasonable control of his parent or guardian, school personnel, or other person exercising custodial control or supervision of the child;

(c) Is an habitual truant from school;

(d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;

(e) Is dependent, neglected, or abused; or

(f) Is mentally ill.

(2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.

(3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.

(4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.

(5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.

(6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights. The court shall have no jurisdiction to make permanent awards of custody of a child, but if the court finds an emergency to exist affecting the welfare of a child, ***or if the child is eligible for kinship care as established in Section 1 of this Act,*** it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.

(7) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence or the county wherein the offense was committed, as the case may be.

(8) Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.

(9) Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.

(10) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.

(11) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct dispositional hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Approved April 4, 2000

CHAPTER 307

(SB 186)

AN ACT relating to child-caring facilities.

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

Section 1. KRS 199.641 is amended to read as follows:

(1) As used in this section, unless the context otherwise requires:

(a) "Allowable costs ***report***" means ***a report from each child-caring facility that contracts with the department for services and includes*** all allowable costs as defined by the Federal Office of Management and Budget circular A-122, "cost principles for nonprofit organizations," ***and other information the department may require,*** utilizing cost data from ***each***~~[the]~~ child-caring facility's most recent yearly audited financial statement;

(b) "Child-caring facility" means any institution or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility;~~[and]~~

(c) "Department" means the Department for Social Services of the Cabinet for Families and Children***;***

(d) "Model program cost analysis" means a report based on a time study, the allowable costs report, and other information required by the department from each child-caring facility that contracts with the department for services that determines a statewide median cost for each licensed program category of service provided by child-caring facilities; and

(e) "Time study" means the process of reporting the work performed by employees of child-caring facilities in specified time periods.

(2) ***Subject to the limitations set forth in subsection (4) of this section,*** when the department~~[for Social Services]~~ chooses to ***contract with***~~[place a child in]~~ a nonprofit child-caring facility ***for services to a child committed to the department***, the department shall ***make payments to***~~[reimburse]~~ that facility ***based on the rate setting methodology developed from the model program cost analysis. The department shall also assure that the methodology:***~~[the allowable cost of the child's care, subject to the limitation set forth in subsection (3) of this section]~~

(a) Provides payment incentives for moving children as quickly as possible to a permanent, continuous, stable environment;

(b) Provides children who require out-of-home care or alternative treatment with placements that are as close as possible to their home geographic area; and

(c) Provides appropriate placement and treatment services that effectively and efficiently meet the needs of the child and the child's family as close as possible to the child's home geographic area.

(3) ***The department shall use the model program cost analysis as a basis for cost estimates for the development of the department's biennial budget request***[~~When the Department for Social Services chooses to place a child in a nonprofit child-caring facility, the rate of reimbursement for the child's care shall not exceed seventy-five percent (75%) of the average cost in the most comparable residential facility operated by the department. The rate shall be based on actual total facility occupancy for the most recent audited year or ninety percent (90%) of the facility capacity for the audited year, whichever is greater~~].

(4) The secretary shall, to the extent funds are appropriated, ***establish and*** implement the ***rate setting***[~~reimbursement~~] methodology ***and rate of payment by promulgation of***[~~set forth in this section, or may promulgate~~] administrative regulations in accordance with KRS Chapter 13A ***that***[~~to establish the rate of reimbursement for child-caring facilities which~~] are consistent with the level ***and quality*** of service provided ***by child-caring facilities. The administrative regulations shall also include the forms and formats for the model program cost analysis***.[~~ If funds are insufficient in any given fiscal year to fully fund this provision, rates shall be adjusted by determining the reimbursement schedule and adjusting by the ratio of available funds to estimated full cost.~~]

Approved April 4, 2000

CHAPTER 308

(HB 706)

AN ACT relating to early childhood development.

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

PART I

EARLY CHILDHOOD DEVELOPMENT AUTHORITY

SECTION 1. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The Early Childhood Development Authority is established as a public agency and political subdivision of the Commonwealth with all powers, duties, and responsibilities conferred upon it by statute and essential to perform its functions including, but not limited to, employing other persons, consultants, attorneys, and agents. The authority shall be attached to the Office of the Governor, Office of Early Childhood Development, for administrative purposes and shall establish necessary advisory councils. The authority shall have the ability to make expenditures from the early childhood development fund and shall ensure that expenditures made from the early childhood development fund are in conformance with its duties as established by the General Assembly.

(2) The authority shall consist of the following seventeen (17) members:

(a) The executive director of the Governor's Office of Early Childhood Development, who shall serve as chair;

(b) The secretary of the Education, Arts, and Humanities Cabinet;

(c) The secretary of the Cabinet for Health Services;

(d) The secretary of the Cabinet for Families and Children;

(e) One (1) nonvoting ex officio member from the House of Representatives who shall be appointed by and serve at the pleasure of the Speaker of the House;

(f) One (1) nonvoting ex officio member from the Senate who shall be appointed by and serve at the pleasure of the President of the Senate;

(g) Seven (7) private sector members knowledgeable about the health, education, and development of preschool children who shall be appointed by the Governor. At least one (1) private sector member shall be appointed from each congressional district;

(h) Three (3) citizens at large of the Commonwealth who shall be appointed by the Governor; and

(i) One (1) early childhood development advocate.

(3) No later than thirty (30) days after the effective date of this Act, the governing bodies of each of the following organizations shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, as candidates for initial appointment by the Governor as private sector members to the authority:

(a) The Kentucky AFL-CIO;

(b) The Kentucky Chamber of Commerce;

(c) The Kentucky League of Cities;

(d) The Kentucky Medical Association;

(e) The Louisville Urban League and Lexington Urban League;

(f) The Kentucky County Judge/Executives Association; and

(g) The Kentucky Council on Postsecondary Education.

(4) The Governor shall select the private sector members of the authority by selecting one (1) nominee from each list of the three (3) nominees submitted to the Governor by each organization listed under subsection (3) of this section. The Governor shall fill a vacancy occurring before the expiration of the appointed term from the appropriate list of nominees. If there are no nominees remaining on the appropriate list, the Governor shall request a list of additional nominees from the appropriate organization.

(5) (a) The initial terms of the private sector and citizen at-large members of the authority shall be for:

1. One (1) year for two (2) of the initial terms;

2. Two (2) years for three (3) of the initial terms;

3. Three (3) years for two (2) of the initial terms; and

4. Four (4) years for four (4) of the initial appointments.

(b) All succeeding appointments shall be for four (4) years from the expiration date of the preceding appointment.

(c) Members shall serve until a successor has been appointed.

(6) Private sector and citizen at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.

(7) In making appointments to the authority, the Governor shall assure broad geographical, ethnic, and gender diversity representation from the major sectors of Kentucky's early childhood development community. In filling vacancies, the Governor shall attempt to assure the continuing representation on the authority of broad constituencies of Kentucky's early childhood development community.

(8) Upon the expiration of the term of any member, the governing body of the organization that made the original recommendation shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, between sixty (60) and thirty (30) days before the expiration of the term of any authority member who is appointed as a result of a previous recommendation. The Governor shall, during March of the year that any organization is to recommend three (3) persons, request the organization to recommend three (3) persons for possible appointment to the authority. If there is no response, the Governor shall make the appointment from the population of the Commonwealth.

(9) The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.

(10) Members of the authority shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

SECTION 2. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The authority shall establish priorities for programs and the expenditure of funds that include, but are not limited to, the following:

(a) Implementation of public health initiatives identified by the General Assembly;

(b) Provision of preconceptional and prenatal vitamins, with priority for folic acid for the prevention of neural tube defects;

(c) Voluntary immunization for children not covered by public or private health insurance;

(d) Availability of high-quality, affordable early child-care and education options; and

(e) Increased public awareness of the importance of the early childhood years for the well-being of all Kentucky's citizens.

(2) The authority shall develop a state plan on a biennial basis that identifies early childhood development funding priorities. Every two (2) years the authority shall review its priorities and make necessary adjustments to its state plan. The state plan shall incorporate priorities included in "KIDS NOW: Kentucky Invests in Developing Success, a Report from the Governor's Early Childhood Task Force, November 1999," and recommendations identified by the community early childhood councils. The authority shall file a report on the state plan with the Governor and the Legislative Research Commission by July 15 of odd-numbered years.

(3) Programs funded by the authority shall be implemented by the appropriate agencies within the Cabinet for Health Services, the Cabinet for Families and Children, the Education, Arts, and Humanities Cabinet, the Finance and Administration Cabinet, or other appropriate administrative agency.

(4) The authority shall assure that a public hearing is held on the expenditure of funds. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing.

(5) The authority shall promulgate administrative regulations in accordance with KRS Chapter 13A to:

(a) Coordinate and improve early childhood development services, outcomes, and policies;

(b) Establish procedures that relate to its governance;

(c) Designate service areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve;

(d) Establish procedures that relate to the monitoring of grants, services, and activities of the community early childhood councils and their governance;

(e) Establish procedures for accountability and measurement of the success of programs that receive funds from the authority; and

(f) Establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. These standards shall include requirements relating to:

1. The financial management of funds paid to grantees;

2. The maintenance of records; and

3. An independent audit of the use of grant funds.

(6) The authority may disband or suspend a council, and may remove one (1) or more members for nonperformance or malfeasance. The authority may also recover funds that have been determined by the authority to have been misappropriated or misspent in relation to a grant award.

(7) An appeal to the authority may be made by a council as to a decision made by the authority on the disbanding or suspension of a council, service provider, or grantee on a determination that funds have been misappropriated or misspent and are subject to recovery. The appeal shall be conducted in accordance with KRS Chapter 13B.

(8) The authority, councils established by the authority, and initiatives funded by the authority with expenditures from the early childhood development fund shall expire when:

(a) Funds are no longer designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states or related federal legislation; or

(b) Funds are no longer designated to the early childhood development fund from gifts, grants, or federal funds to fund the authority, the councils established by the authority or any programs that had been funded by the authority with expenditures from the early childhood development fund.

(9) (a) The authority shall establish a Healthy Babies Work Group, consisting of representatives from the Cabinet for Families and Children, the Cabinet for Health Services, public schools, local libraries, the Kentucky March of Dimes, family resource centers, agencies that provide benefits under the Special Supplementation Food Program for Women, Infants, and Children, the Folic Acid Awareness Campaign, physicians, secondary health education and consumer sciences teachers, the Spina Bifida Association of Kentucky, and other persons as appropriate. Representatives shall reflect the geographic, racial, and gender diversity of the Commonwealth.

(b) The Healthy Babies Work Group shall collaborate on development and implementation of a public awareness campaign to inform the citizens of the Commonwealth about the benefits of good nutrition, folic acid, smoking cessation, and healthy lifestyle choices that lead to healthy babies, the effects of alcohol and substance abuse on fetal and early childhood development, and the need for a vision examination of children at age three (3). The work group shall work with local health departments for the vision examination outreach program.

(10) The authority shall work with local entities, including but not limited to health departments and service providers, to establish to the extent of available funding a vision examination program for children who are not eligible for the Kentucky Children's Health Insurance Program or Medicaid, and who do not have insurance coverage for a vision examination.

(11) The authority shall develop a request for proposal process by which local early childhood councils may request any funding appropriated to the authority for use by the councils.

SECTION 3. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

The Office of Early Childhood Development in the Office of the Governor shall provide staffing and administrative support to:

(1) The Early Childhood Development Authority;

(2) The Early Childhood Business Council;

(3) The Early Childhood Professional Development Council; and

(4) The Kentucky Early Intervention System Interagency Coordinating Council.

PART 2

ADVISORY COUNCILS

2A. COMMUNITY EARLY CHILDHOOD COUNCILS

SECTION 4. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The family resource center and the child-care resource and referral agency in the service area shall form a community early childhood council and appoint members to the council for each service area designated under Section 2 of this Act. A council shall be composed of no fewer than seven (7) and no more than twenty-seven (27) members. Members may be appointed who represent local agencies and organizations, including but not limited to the organizations or agencies listed below, with no more than one (1) member from each:

(a) Early childhood advocate;

(b) Faith community;

(c) School district;

(d) Family resource center;

(e) Military establishment;

(f) Head Start or Early Head Start;

(g) Child-care (profit, nonprofit, or family child-care);

(h) Child-care resource and referral agency or child-care subsidy agent;

(i) Child-care consumer or parent;

(j) County cooperative extension service;

(k) Department for public health;

(l) University, college, or technical school;

(m) United Way;

(n) Kentucky Early Intervention System;

(o) Agency administering services to children with disabilities;

(p) Home visitation agency;

(q) Family literacy agency;

(r) Civic organization;

(s) Public library;

(t) Regional training center;

(u) Community action agency;

(v) Government;

(w) Business community;

(x) Home schooling association;

(y) Health care professional;

(z) Foster care parent; or

(aa) Adoptive parent.

(2) Members shall serve on a community early childhood council on a voluntary basis and receive no compensation or expense reimbursement for their service.

(3) (a) Members shall serve for a term of two (2) years and until their successors are appointed, except that for those members initially appointed, the terms shall be as follows:

1. One-third (1/3) of the members shall be appointed for three (3) years;

2. One-third (1/3) shall be appointed for two (2) years; and

3. One-third (1/3) shall be appointed for one (1) year.

(b) Vacancies shall be appointed for unexpired terms in the same manner as original appointments.

(4) A community early childhood council shall collaborate with the District Early Intervention Committee, the Preschool Interagency Planning Council, and other existing interagency groups in the service area.

(5) A community early childhood council may apply for a competitive grant from the authority, consistent with a state plan for grant participation as established by the authority. Grant proposals shall:

(a) Include a needs assessment and budget proposal for the respective service area served by a council;

(b) Not include administrative costs that exceed five percent (5%); and

(c) Contain a signed statement from each member of the council certifying that no program, agency, or individual that may receive part of an award would constitute a conflict of interest under KRS Chapter 11A for the council member. Issues concerning conflicts of interest shall be submitted to the Executive Branch Ethics Commission for resolution.

(6) A community early childhood council shall submit a quarterly report to the authority that details the activities and services of the council, including the progress that the council has made toward addressing the early childhood development goals for its designated service area and recommendations that may be included in the state plan.

(7) Any records that are in the custody of a community early childhood council, a designated service provider, or a grantee that contain personal and identifying information relating to a family or children receiving services through the council shall be confidential and not subject to public disclosure, except as otherwise authorized by law.

2B. THE EARLY CHILDHOOD BUSINESS COUNCIL

SECTION 5. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The Early Childhood Business Council is created and attached to the Office of Early Childhood Development, Office of the Governor, for administrative purposes. The function of the council shall be to:

(a) Involve the corporate community, county judge/executives, and mayors in supporting issues of importance to working families with young children in the Commonwealth; and

(b) Collect and disseminate information about the various ways business and local government can become involved in supporting early childhood.

(2) (a) The Early Childhood Business Council shall consist of fifteen (15) members appointed by the Governor, who shall also appoint the chair. Members shall serve for a term of two (2) years and until their successors are appointed and qualify, except that for those members initially appointed, the terms are as follows:

1. Five (5) members shall be appointed for three (3) years;

2. Five (5) members shall be appointed for two (2) years; and

3. Five (5) members shall be appointed for one (1) year.

(b) Vacancies shall be appointed for unexpired terms in the same manner as original appointments. Members may not serve more than a total of three (3) terms.

(c) Members who are eligible to be appointed shall have demonstrated an investment or interest in early childhood development.

(3) Members of the Early Childhood Business Council shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

(4) The Early Childhood Business Council shall meet at least once every three (3) months and shall make reports in accordance with requirements established by the authority that include recommendations for the state plan.

2C. EARLY CHILDHOOD

PROFESSIONAL DEVELOPMENT COUNCIL

SECTION 6. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The Early Childhood Professional Development Council is created and attached to the Office of Early Childhood Development, Office of the Governor, for administrative purposes. The Early Childhood Professional Development Council shall be composed of fifteen (15) members appointed by the Governor, who shall also appoint the chair. Members shall be appointed for a term of four (4) years and the council shall cease to exist four (4) years after the effective date of this Act, unless reauthorized by the General Assembly. Members of the council shall have experience in early child care and education.

(2) The Early Childhood Professional Development Council, in collaboration with the Council on Postsecondary Education, shall:

(a) Work with existing entities to develop an early child care and education credential system to facilitate the attraction and retention of persons who provide early child-care and education services;

(b) Work to develop a seamless system of professional development beginning with entry level employment in early child care and education and proceeding through a master's degree-level program.

(3) The Early Childhood Professional Development Council shall make reports in accordance with requirements established by the authority that include recommendations for the state plan.

(4) Members of the Early Childhood Professional Development Council shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

2D. KENTUCKY EARLY INTERVENTION SYSTEM

INTERAGENCY COORDINATING COUNCIL

Section 7. KRS 200.658 is amended to read as follows:

(1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the ***Early Childhood Development Authority***~~[Cabinet for Health Services]~~. Pursuant to federal law and regulations, the membership shall be as follows:

(a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;

(b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;

(c) At least one (1) member shall be a member of the Kentucky General Assembly;

(d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;

(e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;

(f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;

(g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;

(h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Social Services;

(i) At least one (1) member shall be the commissioner or designee of the Department of Education;

(j) At least one (1) member shall be the commissioner or designee of the Department of Insurance; and

(k) At least one (1) member shall be a representative of the Commission for ~~[Handicapped]~~Children ***with Special Health Care Needs***.

(2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including, but not limited to, the following:

(a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;

(b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;

(c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;

(d) Resolution of disputes, to the extent deemed appropriate by the cabinet;

(e) Provision of appropriate services for children from birth to ***three (3)***~~[five (5)]~~ years of age;

(f) Identify sources of fiscal and other support services for early intervention programs;

(g) Preparing applications to Part ***C***~~[H]~~ of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications; and

(h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.

(3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.

(4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

PART 3

EARLY CHILDHOOD HEALTH INITIATIVE

Section 8. KRS 156.160 is amended to read as follows:

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and KRS 158.6453 and distributed to local school districts and schools. They shall include the following: The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. Student scores from any

assessment administered under KRS 158.6453 that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;

(d) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(g) ***A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that the child is enrolled in public school, public preschool, or Head Start program;***

(h) The transportation of children to and from school;

(i)~~[(h)]~~ The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(j)~~[(i)]~~ The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(k)~~[(j)]~~ A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(l)~~[(k)]~~ The disposal of real and personal property owned by local boards of education.

(2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any

administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:

1. An alternative approach will achieve the same result required by the administrative regulation;

2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or

3. There is a finding of good cause for the waiver.

(b) The following shall not be subject to waiver:

1. Administrative regulations relating to health and safety;

2. Administrative regulations relating to civil rights;

3. Administrative regulations required by federal law; and

4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Section 9. KRS 211.645 is amended to read as follows:

As used in KRS 211.647 and ***Section 11 of this Act***~~[213.046]~~, unless the context requires otherwise:

(1) "Cabinet" means the Cabinet for Health Services;

(2)~~["Certificate" means the certificate of birth required by KRS 213.046;~~

~~(3)]~~ "Commission" means the Commission for Children with Special Health Care Needs;

(3)~~[(4)]~~ "Hard of hearing infant" means a child at birth with a significant hearing loss which prevents the acquisition of speech and language through normal channels;

(4)~~[(5)]~~ ***"Auditory screening report" means a written evaluation of an auditory screening as required under Section 11 of this Act***~~["Hearing risk certificate" means the certificate that includes questions which identify newborn babies with a higher risk than normal for hearing loss]~~;

(5)~~[(6)]~~ ***"Infant at high risk of hearing loss***"~~[High-risk infant"]~~ means a child at birth who is at a higher risk than normal of being hard of hearing due to one (1) or more of the following factors present at birth:

(a) Family history of a congenital hearing loss;

(b) Rubella or virus during pregnancy;

(c) Congenital ear, nose, or throat anomalies;

(d) Below-normal birth weight;

(e) Abnormal level of jaundice;

(f) Anoxia or apnea;~~[and]~~

(g) A low APGAR score derived from the evaluation of the infant's color, muscle tone, reflexes, pulse rate, and respiration***; or***

(h) An auditory screening indicating a hearing loss.

Section 10. KRS 211.647 is amended to read as follows:

(1) The commission, on receipt of ***an auditory screening report of an infant from a hospital or alternative birthing center in accordance with Section 11 of this Act shall review each auditory screening report that indicates a potential hearing loss. The commission shall contact the parents to schedule follow-up evaluations or make a referral for evaluations within three (3) business days***~~[the hearing risk certificates from the cabinet, shall conduct activities necessary to identify high-risk infants. It shall establish a program to provide medical and educational information to the families, assist the families in securing screening, diagnostic, and medical services at a minimal cost at a center or at a location as close to the child's residence as possible and refer the parents to agencies or organizations which provide educational programs for the child and the family]~~.

(2) ~~[The commission's process for identifying high-risk infants shall include a timely review of all hearing risk certificates to identify the presence of factors determined to occur frequently with hearing loss in newborn infants.]~~The commission shall secure information missing from ***birth*** certificates ***or hospital referral reports*** which is relevant to identifying~~[high-risk]~~ infants ***with a hearing loss***.

(3) ***If the hearing evaluation performed by the commission contains evidence of a hearing loss, within forty-eight (48) hours the commission shall:***

(a) Contact the attending physician and parents; and

(b) Make a referral to the Kentucky Early Intervention System point of entry in the service area of the child's residence for services under KRS 200.664.

(4) The commission shall forward a report of a hearing evaluation that indicates a hearing loss, with no information that personally identifies the child, to:

(a) The Kentucky Commission on the Deaf and Hard of Hearing for census purposes; and

(b) The Kentucky Birth Surveillance Registry for information purposes.

(5) ~~[The commission shall involve agencies and organizations which provide services to deaf and hard of hearing children, including, but not limited to, the Department of Education, the Cabinet for Health Services, and the Commission on the Deaf and Hard of Hearing, in~~

~~planning for and implementation of this section.]~~Cumulative demographic data of identified~~[high-risk]~~ infants ***with a hearing loss*** shall be made available to agencies and organizations ***including, but not limited to, the Cabinet for Health Services and the Early Childhood Development Authority,*** requesting the information for planning purposes.

SECTION 11. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) As a condition of licensure or relicensure, all hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year shall provide an auditory screening for all infants using one (1) of the methods approved by the Early Childhood Development Authority by administrative regulation promulgated in accordance with KRS Chapter 13A.

(2) An auditory screening report that indicates a finding of potential hearing loss shall be forwarded by the hospital or alternative birthing center within twenty-four (24) hours of receipt to the:

(a) Attending physician;

(b) Parents; and

(c) Commission for Children with Special Health Care Needs for evaluation or referral for further evaluation in accordance with Section 10 of this Act.

(3) An auditory screening report that does not indicate a potential hearing loss shall be forwarded within one (1) week to the Commission for Children with Special Health Care Needs with no information that personally identifies the child.

PART 4

EARLY CHILDHOOD PARENTING SUPPORT

SECTION 12. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) There is established within the Cabinet for Health Services the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday. The HANDS program recognizes that parents are the primary decision-makers for their children. The goals of the HANDS program are to:

(a) Facilitate safe and healthy delivery of babies;

(b) Provide information about optimal child growth and human development;

(c) Facilitate the safety and health of homes; and

(d) Encourage greater self-sufficiency of families.

(2) The cabinet shall administer the HANDS program in cooperation with the Cabinet for Families and Children and the local public health departments. The voluntary home visitation program may supplement, but shall not duplicate, any existing program that provides assistance to parents of young children.

(3) Participants in the HANDS program shall express informed consent to participate by written agreement on a form promulgated by the Cabinet for Health Services.

PART 5.

ACCESS TO QUALITY CHILD CARE

SECTION 13. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) It is the intent of the General Assembly to create a seamless system to upgrade the professional development of persons who are employed or provide training in a child-care or early childhood setting through scholarships, merit awards, and monetary incentives, to assist these persons in obtaining a child development associate credential, post-secondary certificate, diploma, degree, or specialty credential in an area of study determined by the authority as recommended by the professional development council.

(2) Eligibility for scholarship funds shall be for individuals who do not have access to professional development funds from other education programs that receive state or federal funds, and who are:

(***a) Employed at least twenty (20) hours per week providing services in a child-care or early childhood setting; or***

(b) Involved in providing professional development training for teachers in an early childhood setting.

(3) The Kentucky Higher Education Assistance Authority, after consultation with the Early Childhood Development Authority and the Cabinet for Families and Children, shall promulgate administrative regulations, including a system of monetary incentives for scholarship program participants for completing classes, in accordance with KRS Chapter 13A as necessary to implement this section.

SECTION 14. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

(1) The Early Childhood Development Authority shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish a program of monetary incentives including but not limited to an increased child-care subsidy and a one-time merit achievement award for child-care centers and certified family child-care homes that are tied to a quality rating system for child care as established under Section 15 of this Act.

(2) The monetary incentive program shall be reviewed annually by the authority for the purpose of determining future opportunities to provide incentives.

(3) Participation in the program of monetary incentives and in the quality rating system by child-care centers and certified family child-care homes is voluntary.

(4) The Cabinet for Families and Children shall encourage the professional development of persons who are employed or provide training in a child-care or early childhood setting by facilitating their participation in the scholarship program for obtaining a child development associate credential, postsecondary certificate, diploma, degree, or specialty credential as established under Section 13 of this Act.

SECTION 15. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

(1) The Early Childhood Development Authority shall, in consultation with child-care providers, the Cabinet for Families and Children, the Cabinet for Health Services, and others, including but not limited to child-care resource and referral agencies and family resource centers, develop a voluntary quality-based graduated child-care rating system for licensed child-care and certified family child-care homes based on, but not limited to:

(a) Child to caregiver ratios;

(b) Child-care staff training;

(c) Program curriculum; and

(d) Program regulatory compliance.

(2) The Cabinet for Families and Children shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement:

(a) The voluntary quality-based graduated child-care rating system for child-care and certified family child-care homes developed under subsection (1) of this section;

(b) Agency time frames of reviews for rating;

(c) An appellate process under KRS Chapter 13B; and

(d) The ability of providers to request reevaluation for rating.

SECTION 16. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

(1) The secretaries of the Cabinet for Families and Children and Cabinet for Health Services, or their designees, shall collaborate on the expansion of the Healthy Start in Child Care Program. The goals of the Healthy Start in Child Care program are:

(a) To train and educate child-care providers in health and safety;

(b) Provide nutrition consultation to parents;

(c) Increase awareness of methods for the prevention of communicable diseases in child-care settings; and

(d) Provide information to parents of children who attend child care.

(2) The Cabinet for Families and Children shall establish technical assistance positions dedicated to child care within the Kentucky child-care resource and referral agencies in order to offer technical assistance to child-care providers to upgrade quality in early child-care and education facilities.

Section 17. KRS 199.894 is amended to read as follows:

As used in KRS 199.892 to 199.896, unless the context otherwise requires:

(1) "Cabinet" means the Cabinet for Families and Children;

(2) "Secretary" means secretary for families and children;

(3) "***Child***~~[Day]~~-care center" means any child-care ***center***~~[facility]~~ which provides full or part-time care, day or night, to at least seven (7) children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the operator. "***Child***~~[Day]~~-care center" shall not include any child-care facility operated by a religious organization while religious

services are being conducted, or a youth development agency. For the purposes of this section, "youth development agency" means a program with tax-exempt status under 26 U.S.C. sec. 501(c)(3), which operates continuously throughout the year as an outside-school-hours center for youth who are six (6) years of age or older, and for which there are no fee or scheduled-care arrangements with the parent or guardian of the youth served***;***

(4) "Department" means the Department for Community Based Services; and

(5) "Family child-care home" means a private home that provides full or part-time care day or night for six (6) or fewer children who are not the children, siblings, stepchildren, grandchildren, nieces, nephews, or children in legal custody of the provider.

Section 18. KRS 199.896 is amended to read as follows:

(1) No person, association, or organization shall conduct, operate, maintain, or advertise any ***child***~~[day]~~-care center~~[or home]~~ without obtaining a license as provided in KRS 199.892 to 199.896.

(2) The secretary may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may establish standards of care and service for ***a child***~~[the day]~~-care center***, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care,*** and procedures for enforcement of penalties~~[; provided, however, any administrative regulations promulgated pursuant to KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense]~~.

(3)~~[If the day-care center does not meet the standards prescribed for licensing by the secretary, a provisional license may be issued and remain in effect for a period of six (6) months.~~

~~(4)]~~ Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee of not more than fifty dollars ($50) and shall~~[, excepting provisional licenses,]~~ be renewable annually upon expiration and reapplication when accompanied by a fee of twenty-five dollars ($25). Regular licenses and renewals thereof shall expire one (1) year from their effective date.

(4)~~[(5)]~~ No ***child***~~[day]~~-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.

(5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:

(a) A statement of fact;

(b) A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and

(c) The time frame, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health,

safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.

(6) The Cabinet for Families and Children, in consultation with the Cabinet for Health Services, Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process containing at least two (2) separate levels of review through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.

(7) A child-care center shall have the right to appeal to the Cabinet for Health Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.

(8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:

(a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;

(b) The number and type of previous violations of the child-care center;

(c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and

(d) The amount of assessment necessary to assure immediate and continued compliance.

(9) Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:

(a) Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;

(b) Institute injunctive proceedings in Circuit Court to terminate the operation of the center;

(c) Institute action to discontinue payment of child-care subsidies; or

(d) Suspend or revoke the license or impose other penalties provided by law.

(10)[~~(6)~~] Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of ***child***[~~day~~]-care ***center*** license of the operator. Identifying information regarding children and their families shall remain confidential.

(11)[~~(7)~~] The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the ***child***[~~day~~]-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the ***child***[~~day~~]-care center upon the parent's, custodian's, guardian's, or other interested person's request.

(12)[~~(8)~~] All fees collected under the provisions of KRS 199.892 to 199.896 ***for license and certification applications*** shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.

(13)[~~(9)~~] Any advertisement for child-care services shall include the address of where the service is being provided.

(14)[~~(10)~~] All inspections of licensed and unlicensed ***child***[~~day~~]-care centers by the Cabinet for Families and Children and the Cabinet for Health Services shall be unannounced.

(15)[~~(11)~~] All employees and owners of a ***child***[~~day~~]-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:

(a) Basic health, safety, and sanitation;

(b) Recognizing and reporting child abuse; and

(c) Developmentally appropriate child-care practice.

(16)[~~(12)~~] All employees and owners of a ***child***[~~day~~]-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

(17)[~~(13)~~] The Cabinet for Families and Children shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection ***(15)***[~~(11)~~] of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection ***(15)***[~~(11)~~] of this section.

(18)[~~(14)~~] Child[~~ day~~]-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(19)[~~(15)~~] Directors ***and employees*** of child[~~ day~~]-care centers ***in a position that involves supervisory or disciplinary power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with Section 25 of this Act. The application shall be denied if the applicant has been found by the Cabinet for Families and Children or a court to have abused or neglected a child or has been convicted of a violent crime or sex crime as defined in Section 25 of this Act***[~~ shall not have been found by the cabinet or a court to have abused or neglected a child~~].

(20) A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

Section 19. KRS 199.8982 is amended to read as follows:

~~[(1) As used in this section, unless the context requires otherwise:~~

~~(a) "Cabinet" means the Cabinet for Families and Children;~~

~~(b) "Department" means the Department for Social Services; and~~

~~(c) "Family child-care home" means a private home which provides full or part-time care day or night for six (6) or fewer children who are not the children, ***siblings, stepchildren,*** grandchildren, nieces, nephews, or children in legal custody of the provider.]~~

(1)~~[(2)]~~ (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;

2. Provide a written statement from a physician that the applicant is in good health;

3. Submit to a criminal record check ***in accordance with Section 25 of this Act. The application shall be denied if the applicant has been convicted of a violent crime or sex crime as defined in Section 25 of this Act***~~[as provided by KRS 17.165]~~;

4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;

5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and

6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:

   a. Basic health, safety, and sanitation;

   b. Recognizing and reporting child abuse; and

   c. Developmentally appropriate child-care practice.

(b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar ($10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining

the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars ($10).

(c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.

(d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.

(e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.

(f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home ***and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care***[~~; provided, however, any administrative regulations promulgated in accordance with KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense~~]. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:

1. Certification requirements and procedures;

2. Information about available child-care training; and

3. Child-care food sponsoring organizations.

(2)[~~(3)~~] Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

(3)[~~(4)~~] The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (2)(a)6. of this section. The cabinet shall develop or

approve the model training curriculum and training materials to cover the areas specified in subsection (2)(a)6. of this section.

Section 20. KRS 199.899 is amended to read as follows:

(1) The Cabinet for Families and Children shall conduct a market-rate survey at least biennially to ***set the minimum***~~[determine the]~~ rates paid by the cabinet for child-care services receiving public funds in the Commonwealth. The market-rate survey shall:

(a) Survey all child-care programs in the Commonwealth licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982;

(b) Determine market rates; and

(c) Make public its findings.

(2)~~[By October 1, 1993, the cabinet shall report to the General Assembly on the feasibility of paying a higher rate for child-care programs which attain accreditation from a national organization that the cabinet determines has accreditation standards that contribute to high-quality child care.~~

~~(3)]~~ In counties containing no more than two (2) child-care programs of the same type regulated by the cabinet, the cabinet shall pay the rate charged by the program up to the maximum allowable market rate, set in accordance with federal regulations, paid to a program of the same type in that area development district.

(3) The Cabinet for Families and Children shall evaluate, at least annually, the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care.

Section 21. KRS 199.8992 is amended to read as follows:

(1) To the extent possible with available funds, the Cabinet for Families and Children shall develop through a system of contracts, a statewide network of community-based child-care resource and referral services. The network shall include one (1) resource and referral agency per area development district as designated by the cabinet. To avoid duplication of services, priority for receiving designation by the cabinet shall be given to existing child-care resource and referral organizations which are public or private, nonprofit, community-based agencies. Each resource and referral agency shall:

(a) Maintain a uniform database in a format developed by the cabinet of all child-~~[day-]~~care providers licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 in the service area, including information on the availability of care;

(b) Provide consumer education to families seeking child-~~[day-]~~care services;

(c) Provide timely referrals of available child-~~[day-]~~care providers to families seeking child-~~[day-]~~care services;

(d) Recruit child-~~[day-]~~care providers in areas where there is an identified need as identified pursuant to paragraph (f) of this subsection;

(e) Coordinate, with the cabinet, training for child-~~[day-]~~care providers and provide technical assistance to employers, current and potential child-~~[day-]~~care providers, and the community at large;

(f) Collect and analyze data on the supply of, and demand for, child-~~[day-]~~care in the community;

(g) Stimulate employer involvement in improving the affordability, availability, safety, and quality of child care for their employees and for the community;

(h) Provide written educational materials to parents and child-~~[day-]~~care providers;~~[and]~~

(i) Not operate a child-~~[day-]~~care center on behalf of an employer or on their own unless no existing provider is willing or able to provide the service at the current market rate. This paragraph shall not apply to child care provided by a resource and referral agency to an employer prior to July 14, 1992***; and***

(j) Form community early childhood councils in cooperation with family resource centers and other local organizations or agencies.

(2) To the extent possible with available funds, the cabinet shall award contracts in accordance with KRS Chapter 45A to:

(a) Coordinate existing resource and referral services;

(b) Expand resource and referral services to unserved areas; and

(c) Improve services provided by the designated resources and referral agency.

(3) When awarding the contracts provided for in subsection (2) of this section, priority shall be given to agencies which demonstrate the ability to provide local matching funds in an amount equal to twenty-five percent (25%) of the total amount of the contract. Contracts shall be awarded for a minimum period of up to one (1) year. Start-up contracts may be awarded in up to four (4) area development districts per year until each area development district has one (1) designated child-care resource and referral agency. The awarding of a contract pursuant to this section shall not create a continuing obligation for the cabinet to fund a resource and referral agency. The cabinet shall require applicants to submit a plan for providing the services required by subsection (1) of this section.

Section 22. KRS 199.8994 is amended to read as follows:

(1) All child-day-care funds administered by the cabinet, including Title XX of the Social Security Act, shall be administered by the Cabinet for Families and Children to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. To the extent permitted by federal law or regulations, requirements relating to application, eligibility, provider agreements, and payment for child-care services shall be the same regardless of the source of public funding.

(2) The cabinet shall, to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served, develop a system which provides a single intake point in each county through which parents seeking public subsidies for child-care services can make application.

(3) The cabinet shall, subject to the extent funds are available, cooperate with the Cabinet for Health Services to fund ***and*** establish dedicated child-care licensing surveyor positions within the Division of Licensing and Regulation to conduct all the cabinet's child-care licensing activities. ***The cabinet shall have the authority to request the transfer of funds to establish these positions.*** Where possible, dedicated child-care surveyors shall have expertise or experience in child-care or early childhood education.

(4) The targeted ratio of dedicated child-care licensing surveyor positions shall be one (1) surveyor for each fifty (50) child-care facilities in order to allow for the provision of an expedient, constructive, and thorough licensing visit.

(5) The cabinet shall, in cooperation with the Division of Licensing and Regulation, Cabinet for Health Services, provide appropriate specialized training for child-care surveyors.

(6) (a) The cabinet shall evaluate ways to improve the monitoring of unregulated child-care providers that receive a public subsidy for child care, and promulgate administrative regulations in accordance with KRS Chapter 13A that establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child-care provider that receives a child-care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care.

(b) If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, it may take emergency action to deny a public subsidy for child-care services under KRS 13B.125.

Section 23. KRS 199.8996 is amended to read as follows:

The Cabinet for Families and Children shall prepare the following reports to the General Assembly on child-care programs, and shall make them available to the public:

(1) A quarterly report detailing the number of children and amounts of child-care subsidies provided in each area development district;

(2) A quarterly report on administrative expenses incurred in the operation of child-care subsidy programs;

(3) A quarterly report on disbursements of federal child-care block grant funds for training, resource and referral, and similar activities; and

(4) Beginning July 15, 1993, an annual report summarizing the average child-care subsidy activities per month in all Kentucky counties.

(5) The cabinet shall file an annual report on its evaluation of the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care with the Early Childhood Development Authority and the Legislative Research Commission.

(6) The cabinet shall file an annual report on the number of dedicated child-care licensing surveyor positions and the ratio of surveyors to child-care facilities with the Early Childhood Development Authority and the Legislative Research Commission.

Section 24. KRS 199.990 is amended to read as follows:

(1) Any person violating any of the provisions of KRS 199.380 to 199.400 shall be guilty of an offense, and upon conviction thereof, shall be fined not more than five hundred dollars ($500) or imprisoned for not more than twelve (12) months, or be both fined and imprisoned, in the discretion of the court.

(2) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570 and 199.590 except subsection (2), or 199.640 to 199.670, or any rule or regulation under

such sections the violation of which is made unlawful shall be fined not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.

(3) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections or in subsection (1) of this section, or in any other applicable statute, shall be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned for not more than thirty (30) days, or both.

(4) Any ***violation of the regulations, standards, or requirements of the cabinet under***~~[person who violates any of]~~ the provisions of KRS 199.896 ***that poses an immediate threat to the health, safety, or welfare of any child served by the child-care center shall be subject to a civil penalty of no more than one thousand dollars ($1,000) for each occurrence. Treble penalties shall be assessed for two (2) or more violations within twelve (12) months. All money collected as a result of civil penalties assessed under the provisions of KRS 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of the Early Childhood Scholarship Program created in accordance with Section 13 of this Act. The balance of the fund shall not lapse to the general fund at the end of each biennium***.

(5) A person who commits a violation of the regulations, standards, or requirements of the cabinet under the provisions of Section 18 of this Act shall be fined not less than one thousand dollars ($1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.

(6)~~[(5)]~~ Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.

Section 25. KRS 17.165 is amended to read as follows:

(1) As used in this section, "sex crime" means a conviction or a plea of guilty for a violation or attempted violation of KRS 510.040 to 510.140, 529.020 to 529.050, 530.020, 530.065, 531.310, 531.320, and 531.340 to 531.370. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

(2) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(4) No child-care center as defined in KRS 199.894 shall employ, in a position which involves supervisory or disciplinary power over a minor, ***or direct contact with a minor,*** any person who is a violent offender or has been convicted of a sex crime ~~[classified as a felony.~~

~~Operators of child-care centers may employ persons convicted of sex crimes classified as a misdemeanor at their discretion~~]. Each child-care center shall request all conviction information for any applicant for employment from the Justice Cabinet ***or the Administrative Office of the Courts*** prior to employing the applicant.

(5) ***No child-care provider that is required to be certified under Section 19 of this Act or that receives a public child-care subsidy administered by the cabinet or an adult who resides on the premises of the child-care provider and has direct contact with a minor shall have been convicted of a violent crime, or a sex crime, or have been found by the Cabinet for Families and Children or a court to have abused or neglected a child.***

(6) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(7)[~~(6)~~] Any request for records under subsection (4) of this section shall be on a form approved by the Justice Cabinet ***or the Administrative Office of the Courts***, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(8)[~~(7)~~] The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988.

Section 26. KRS 17.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 17.320 to 17.340 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500).

(2) Any public official or employee who knowingly or intentionally makes, or causes to be made, a false return of information to the department shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding five hundred dollars ($500), or both.

(3) (a) Any child-care center which violates subsection (4) of KRS 17.165 ***or child-care provider that violates subsection (5) of KRS 17.165*** may be liable for license ***or certification*** revocation and the imposition of a civil penalty of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) to be imposed and collected by the Cabinet for Families and Children; and

(b) In addition to penalties listed in this subsection, any child-care center which violates subsection (4) of KRS 17.165 ***or child-care provider that violates subsection (5) of KRS 17.165*** shall be fined not less than five hundred dollars ($500) or more than one thousand dollars ($1,000).

Section 27. KRS 213.046 is amended to read as follows:

(1) A certificate of birth for each live birth which occurs in the Commonwealth shall be filed with the local registrar within ten (10) days after such birth and shall be registered if it has been completed and filed in accordance with this section.[~~ A hearing risk certificate provided by the Commission for Children with Special Health Care Needs, with questions pertaining to hearing loss in newborn infants, shall accompany the certificate of birth for use pursuant to KRS 211.645 and 211.647.~~] All certificates shall be typewritten. No certificate shall be held to be complete and correct that does not supply all items of information called

for in this section and in KRS 213.051, or satisfactorily account for their omission except as provided in KRS 199.570(3). If a certificate of birth~~[or the hearing risk certificate]~~ is incomplete, the local registrar shall immediately notify the responsible person and require that person to supply the missing items, if that information can be obtained.

(2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or that person's designated representative, shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in subsection (1) of this section or as otherwise directed by the state registrar within the required ten (10) days. The physician or other person in attendance shall provide the medical information required for the certificate and certify to the fact of birth within ten (10) days after the birth. If the physician or other person in attendance does not certify to the fact of birth within the ten (10) day period, the person in charge of the institution shall complete and sign the certificate.

(3) When a birth occurs in a hospital or en route thereto to a woman who is unmarried, the person in charge of the hospital or that person's designated representative shall immediately before or after the birth of a child, except when the mother or the alleged father is a minor:

(a) Meet with the mother prior to the release from the hospital;

(b) Attempt to ascertain whether the father of the child is available in the hospital, and, if so, to meet with him, if possible;

(c) Provide written materials and oral, audio, or video materials about paternity;

(d) Provide forms necessary to voluntarily establish paternity;

(e) Provide a written and an oral, audio, or video description of the rights and responsibilities, the alternatives to, and the legal consequences of acknowledging paternity;

(f) Provide written materials and information concerning genetic paternity testing;

(g) Provide an opportunity to speak by telephone or in person with staff who are trained to clarify information and answer questions about paternity establishment;

(h) If the parents wish to acknowledge paternity, require the voluntary acknowledgment of paternity obtained through the hospital-based program be signed by both parents and be authenticated by a notary public;

(i) Provide the unmarried mother, and, if possible, the father, with the affidavit of paternity form;

(j) Upon both the mother's and father's request, help the mother and father in completing the affidavit of paternity form;

(k) Upon both the mother's and father's request, transmit the affidavit of paternity to the local registrar in the county in which the birth occurred; and

(l) In the event that the mother or the alleged father is a minor, information set forth in this section shall be provided in accordance with Civil Rule 17.03 of the Kentucky Rules of Civil Procedure.

If the mother or the alleged father is a minor, the paternity determination shall be conducted pursuant to KRS Chapter 406.

(4) The voluntary acknowledgment-of-paternity forms designated by the Office of Vital Statistics shall be the only documents having the same weight and authority as a judgment of paternity.

(5) The Cabinet for Health Services shall:

(a) Provide to all public and private birthing hospitals in the state written materials and audio or video materials concerning paternity establishment forms necessary to voluntarily acknowledge paternity;

(b) Provide copies of a written description and an audio or video description of the rights and responsibilities of acknowledging paternity; and

(c) Provide staff training, guidance, and written instructions regarding voluntary acknowledgment of paternity as necessary to operate the hospital-based program.

(6) When a birth occurs outside an institution, the certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:

(a) The physician in attendance at or immediately after the birth; or, in the absence of such a person,

(b) Any other person in attendance at or immediately after the birth; or, in the absence of such a person,

(c) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred or of the institution to which the child was admitted following the birth.

(7) No physician, midwife, or other attendant shall refuse to sign or delay the filing of a birth certificate.

(8) If a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, and the place where the child is first removed shall be considered the place of birth. If a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, but the certificate shall show the actual place of birth insofar as can be determined.

(9) The following provisions shall apply if the mother was married at the time of either conception or birth or anytime between conception and birth:

(a) If there is no dispute as to paternity, the name of the husband shall be entered on the certificate as the father of the child. The surname of the child shall be any name chosen by the parents; however, if the parents are separated or divorced at the time of the child's birth, the choice of surname rests with the parent who has legal custody following birth.

(b) If the mother claims that the father of the child is not her husband and the husband agrees to such a claim and the putative father agrees to the statement, a three (3) way affidavit of paternity may be signed by the respective parties and duly notarized. The state registrar of vital statistics shall enter the name of a nonhusband on the birth

certificate as the father and the surname of the child shall be any name chosen by the mother.

(c) If a question of paternity determination arises which is not resolved under paragraph (b) of this subsection, it shall be settled by the District Court.

(10) The following provisions shall apply if the mother was not married at the time of either conception or birth or between conception and birth or the marital relationship between the mother and her husband has been interrupted for more than ten (10) months prior to the birth of the child:

(a) The name of the father shall not be entered on the certificate of birth. The state registrar shall upon acknowledgment of paternity by the father and with consent of the mother pursuant to KRS 213.121, enter the father's name on the certificate. The surname of the child shall be any name chosen by the mother and father. If there is no agreement, the child's surname shall be determined by the parent with legal custody of the child.

(b) If an affidavit of paternity has been properly completed and the certificate of birth has been filed accordingly, any further modification of the birth certificate regarding the paternity of the child shall require an order from the District Court.

(c) In any case in which paternity of a child is determined by a court order, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(d) In all other cases, the surname of the child shall be any name chosen by the mother.

(11) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate. In all cases, the maiden name of the gestational mother shall be entered on the certificate.

(12) Any child whose surname was restricted prior to July 13, 1990, shall be entitled to apply to the state registrar for an amendment of a birth certificate showing as the surname of the child, any surname chosen by the mother or parents as provided under this section.

(13) The birth certificate of a child born as a result of artificial insemination shall be completed in accordance with the provisions of this section.

(14) Each birth certificate filed under this section shall include all Social Security numbers that have been issued to the parents of the child.

(15) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within ten (10) days prescribed in subsection (1) of this section.

(16) When a birth certificate is filed for any birth that occurred outside an institution, the Cabinet for Health Services shall forward information regarding the need for an auditory screening for an infant and a list of options available for obtaining an auditory screening for an infant. The list shall include the Commission for Children with Special Health Care Needs, local health departments as established in KRS Chapter 212, hospitals offering obstetric services, alternative birthing centers required to provide an auditory screening under Section 11 of this Act, and licensed audiologists, and shall specify the hearing methods approved by the Early Child Development Authority in accordance with Section 11 of this Act.

Section 28. The following KRS sections are repealed:

199.8984 Child-Care Policy Council.

157.317 Development of statewide Early Childhood Education Program -- Kentucky Early Childhood Advisory Council.

Section 29. As used in subsection (1) of Section 1 of this Act, "early childhood development fund" means the fund with that name created in House Bill 583 of this 2000 Regular Session from a distribution of moneys in the tobacco settlement agreement fund established by KRS 248.654, or created in other legislation of this 2000 Regular Session.

Section 30. This Act may be cited as the Early Childhood Development Act.

Approved April 4, 2000

CHAPTER 309

(SB 257)

AN ACT relating to limitation of actions.

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

Section 1. KRS 413.140 is amended to read as follows:

(1) The following actions shall be commenced within one (1) year after the cause of action accrued:

(a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice or servant.

(b) An action for injuries to persons, cattle or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216.

(c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation or breach of promise of marriage.

(d) An action for libel or slander.

(e) An action against a physician, surgeon, dentist or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice.

(f) ***A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A.***

(g) An action for the escape of a prisoner, arrested or imprisoned on civil process.

(h)~~[(g)]~~ An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either.

(i)~~[(h)]~~ An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession.

(j)~~[(i)]~~ An action for the recovery of damages or the value of stolen property, against the thief or any accessory.

(2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.

(3) ***In respect to the action referred to in paragraph (f) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.***

(4) In respect to the action referred to in paragraph ***(h)***~~[g]~~ of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.

(5)~~[(4)]~~ In respect to the action referred to in paragraph ***(i)***~~[(h)]~~ of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.

(6)~~[(5)]~~ In respect to the action referred to in paragraph ***(j)***~~[(i)]~~ of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.

Approved April 4, 2000

CHAPTER 310

(SB 339)

AN ACT relating to hospitals and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

As used in this section and Sections 2 and 3 of this Act, unless the context otherwise requires:

(1) "Acute care hospital" means an acute care hospital, critical access hospital, or comprehensive physical rehabilitation hospital licensed under KRS Chapter 216B;

(2) "Private psychiatric hospital" means a psychiatric hospital licensed under KRS Chapter 216B that is not a state mental hospital;

(3) "State mental hospital" means a psychiatric hospital licensed under KRS Chapter 216B that is owned and operated by the Commonwealth; and

(4) "University hospital" means a state university teaching hospital, owned and operated by either the University of Kentucky School of Medicine or the University of Louisville School of Medicine.

Section 2. KRS 205.640 is amended to read as follows:

(1)~~[For purposes of this section, "hospital" includes all hospitals licensed in this state to provide acute care, psychiatric care, and rehabilitative services.~~

~~(2)~~] The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.

(2)[~~(3)~~] The "Medical Assistance Revolving Trust Fund" (MART) shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.359 shall be deposited in the State Treasury ***and transferred on a quarterly basis to the Department for Medicaid Services for use as specified in this section***[~~to the credit of the fund~~]. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.359 shall be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.

(3) (a) Beginning in state fiscal year 2000-2001 and continuing annually thereafter,[~~(4) The "Medical Assistance Indigent Trust Fund" (MAIT) shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of Medicaid services in accordance with the provisions of subsection (2) of this section. All investment earnings of the fund shall be credited to the fund. Notwithstanding the provisions of KRS 48.500 and 48.600, the MAIT fund shall be exempt from any state budget reduction acts.~~

~~(5) An amount, necessary to result in a total fund of ninety-three million dollars ($93,000,000) for fiscal year 1998-99, and ninety-four million dollars ($94,000,000) for fiscal year 1999-2000 including~~] provider tax revenues and ***state and*** federal matching funds[~~, to the extent possible without exceeding Kentucky's federal disproportionate share hospital cap,~~] shall be ***used to fund***[~~transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding~~] the disproportionate share program established by the commissioner of Medicaid services. ***Disproportionate share funds shall be divided into three (3) pools for distribution as follows:***

1. Forty-three and ninety-two hundredths percent (43.92%) of the total disproportionate share funds shall be allocated to acute care hospitals;

2. Thirty-seven percent (37%) of the total disproportionate share funds shall be allocated to university hospitals; and

3. Nineteen and eight hundredths percent (19.08%) of the total disproportionate share funds shall be allocated to private psychiatric hospitals and state mental hospitals, with the allocation to each respective group of hospitals established by the biennial budget.

If, in any year, one (1) or both university hospitals fail to provide state matching funds necessary to secure federal financial participation for the funds allocated to university hospitals under this subsection, the portion of the funding allocation applicable to the hospital or hospitals that fail to provide state matching funds shall be made available to acute care hospitals.

(b)[~~(a)~~] The ***MART***[~~MAIT~~] fund shall be used to compensate ***acute care hospitals, private psychiatric hospitals, and university*** hospitals qualifying for the disproportionate share program for ***uncompensated*** service provided by the hospitals to[~~ Medicaid recipients beyond the covered days and~~] individuals and families with total annual incomes and resources up to one hundred[~~ fifty~~] percent ***(100%)***[~~(150%)~~] of the federal poverty level, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Health Services in accordance with this section.

(c)[~~(b)~~] An individual hospital shall receive distributions[~~ from the MAIT fund~~] for indigent care provided by that hospital ***that***[~~if the care~~] meets the guidelines established in ***paragraph***[~~paragraphs~~] (a)[~~ and (b)~~] of this subsection[~~ and is documented to the Department for Medicaid Services, as reimbursed at the hospital's Medicaid rate; provided, however, that the Medicaid rate shall not exceed the Medicare upper limit~~].

(d)[~~(c)~~] Distributions ***to acute care and private psychiatric hospitals shall be made as follows:***

1. The department shall calculate an indigent care factor for each hospital annually. The indigent care factor shall be determined by calculating the percentage of each hospital's annual indigent care costs toward the sum of the total annual indigent care costs for all hospitals within each respective pool. For purposes of this paragraph, "indigent care costs" means the hospital's inpatient and outpatient care as reported to the department multiplied by the hospital's Medicaid rate, or at a rate determined by the department in administrative regulation that, when multiplied by the hospital's reported indigent care, is equivalent to the amount that would be payable by the department under the fee-for-service Medicaid program for the hospital's total reported indigent care.

2. Each hospital's annual distribution shall be calculated by multiplying the hospital's indigent care factor by the total fund allocated to all hospitals within the respective pool under paragraph (a) of this subsection.[~~to hospitals from the MAIT fund shall be made on a quarterly basis. One-fourth (1/4) of each share established pursuant to paragraphs (a) and (b) of this subsection shall be the maximum amount available for distribution at the close of each quarter. The amount of distributions to each hospital shall be determined as follows:~~]

a.[~~1.~~] Hospitals shall report ***uncompensated*** care provided to ***qualified***[~~Medicaid recipients beyond the covered days and to~~] individuals and families with total annual incomes and resources up to one hundred[~~ fifty~~] percent ***(100%)***[~~(150%)~~] of the federal poverty level, including care rendered to indigent persons age twenty-two (22) to sixty-four (64) in a psychiatric hospital to the Cabinet for Health Services on a quarterly basis***. However, all data for care provided during the state fiscal year shall be submitted no later than August 15 of each year***.[~~The first report shall be due on or before October 20, 1994, and shall document care provided for the quarter beginning July 1, and ending September 30. Subsequent reports shall be due on or before January 20, April 20, July 20, and October 20, of each year thereafter.~~]

b. The department shall use indigent care data for services delivered from October 1, 1998, through September 30, 1999, as reported by hospitals to calculate each hospital's indigent care factor for state fiscal year 2000-2001. For state fiscal year 2001-2002 and each year thereafter, the department shall use data reported by the hospitals for indigent care services rendered for the twelve (12) month period ending June 30 of each year as reported by the hospital to the department by August 15 in calculating each hospital's indigent care factor. The hospital shall, upon request by the Cabinet for Health Services, submit any supporting documentation to verify the indigent care data submitted for the calculation of an indigent care factor and annual payment[~~2. Within sixty (60) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Health Services, Department for Medicaid Services shall review all reports filed and shall determine the maximum compensation authorized for each hospital filing reports, with payment for documented qualifying services provided at the hospital's Medicaid rate as established annually by the Department of Medicaid Services~~].

c. By September 1 of each year, the department shall calculate a preliminary indigent care factor and preliminary annual payment amount for each hospital, and shall notify each hospital of their calculation. The notice shall contain a listing of each hospital's indigent care costs, their indigent care factor, and the estimated annual payment amount. Hospitals shall notify the department by September 15 of any adjustments in the department's preliminary calculations. The department shall make adjustments identified by hospitals and shall make a final determination of each hospital's indigent care factor and annual payment amount by October 1[~~3. Within ninety (90) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Health Services, Department for Medicaid Services shall remit to each hospital the amount determined to be due pursuant to the provisions of subparagraph 2. of this paragraph. If the total amount due all hospitals entitled to compensation in any quarter exceeds the funds available in any quarter, the distribution received by each hospital shall be proportionately reduced. If the total amount due all hospitals entitled to compensation in any quarter is less than the funds available for distribution in that quarter, the excess funds may be carried forward to satisfy future claims~~].

(e) For fiscal year 2000-2001 and continuing annually thereafter, the department shall issue to each hospital one (1) lump sum payment on October 15, or later as soon as federal financial participation becomes available, for the disproportionate share funds available during the corresponding federal fiscal year[~~(d) For purposes of this section, the Medicaid rate for hospitals with less than two hundred (200) licensed acute care beds means the cost of providing indigent care services as calculated by the department by applying each hospital's cost-to-charge ratio to allowable indigent charges. By July 1 of each year, the Department for Medicaid Services shall calculate~~

~~the cost-to-charge ratio for each hospital by dividing the hospital's total allowable operating expenses by the hospital's total gross patient charges~~].

(4) Notwithstanding any other provision to contrary, total annual disproportionate share payments made to state mental hospitals, university hospitals, acute care hospitals, and private psychiatric hospitals in each state fiscal year shall be equal to the maximum amount of disproportionate share payments established under the Federal Balanced Budget Act of 1997 and any amendments thereto. Disproportionate share payments shall be subject to the availability of adequate state matching funds and shall not exceed total uncompensated costs.

(5)[~~(6)~~] Hospitals receiving reimbursement[~~ from the MAIT fund~~] shall not bill patients for services ***submitted for reimbursement under this section and Section 3 of this Act. Services provided to individuals who are eligible for medical assistance or the Kentucky Children's Health Insurance Program do not qualify for reimbursement under this section and Section 3 of this Act. Hospitals shall make a reasonable determination that an individual does not qualify for these programs and shall request the individual to apply, if appropriate, for medical assistance or Kentucky Children's Health Insurance on forms supplied by and in accordance with procedures established by the Department for Medicaid Services. The hospital shall document any refusal to apply and shall inform the patient that the refusal may result in the patient being billed for any services performed. The hospital shall not be eligible for reimbursement if the patient was eligible for medical assistance or Kentucky Children's Health Insurance and did not apply. Hospitals receiving reimbursement under this section and Section 3 of this Act shall not bill patients for services*** provided to patients not eligible for medical assistance with family incomes up to one hundred[~~ fifty~~] percent ***(100%)***[~~(150%)~~] of the federal poverty level.

(6)[~~(7)~~] The secretary of the Cabinet for Health Services shall promulgate administrative regulations necessary, pursuant to KRS Chapter 13A, for the administration and implementation of this section.

(7)[~~(8)~~] All hospitals receiving reimbursement ***under this section and Section 3 of this Act***[~~from the MAIT fund~~] shall:

(a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay."; ***and***

(b) Accept benefits of state health insurance coverage described in KRS 18A.229 and KRS 42.800 to 42.825[~~;~~

~~(c) Provide to Medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the Medicaid program; and~~

~~(d) Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for Medicaid recipients. The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section~~].

SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Disproportionate share funds paid to acute care hospitals and private psychiatric hospitals for state fiscal year 1999-2000 shall not exceed one hundred thirty-one million fourteen thousand nine hundred fifty dollars and thirty-one cents ($131,014,950.31). Within forty-five (45) days following the effective date of this Act, acute care hospitals shall be paid the remaining balance of disproportionate share funds available under the federal fiscal year 2000 disproportionate share cap. Payments shall be calculated as follows:

(a) Forty-six percent (46%) of the available disproportionate share funds shall be allocated to acute care hospitals having one hundred (100) or more inpatient days attributable to Medicaid patients who were hospitalized over fourteen (14) days during the period October 1, 1998, through September 30, 1999, as reported to the department. Each hospital shall receive a lump sum payment to be distributed as follows:

1. The department shall calculate the percentage that each acute care hospital's indigent care costs constitutes of the sum of total indigent care costs for all acute care hospitals in this category. For purposes of this subsection, "indigent care costs" means the hospital's inpatient and outpatient care delivered from October 1, 1998, through September 30, 1999, to persons not eligible for medical assistance with family incomes up to one hundred fifty percent (150%) of the federal poverty level, as reported to the department, multiplied by the hospital's inpatient Medicaid rate.

2. Each acute care hospital's distribution shall be calculated by multiplying the acute care hospital's indigent care percentage by the total disproportionate share funds allocated to all hospitals within this group less the minimum payment adjustment required under paragraph (c) of this subsection.

(b) Fifty-four percent (54%) of the available disproportionate share funds shall be allocated to acute care hospitals having less than one hundred (100) inpatient days attributable to Medicaid patients who were hospitalized over fourteen (14) days during the period October 1, 1998, through September 30, 1999, as reported to the department.

1. The department shall calculate the percentage that each acute care hospital's indigent care costs constitutes of the sum of total indigent care costs for all acute care hospitals in this category. For purposes of this subsection, "indigent care costs" means a hospital's inpatient and outpatient care delivered from October 1, 1998, through September 30, 1999, to persons not eligible for medical assistance with family incomes up to one hundred fifty percent (150%) of the federal poverty level, as reported to the department, multiplied by the hospital's inpatient Medicaid rate.

2. Each hospital's distribution shall be calculated by multiplying the hospital's indigent care percentage by the total disproportionate share funds allocated to all hospitals within this group less the minimum payment adjustment required under paragraph (c) of this subsection.

(c) The payment made to each hospital under paragraphs (a) and (b) of this subsection shall be at least equal to one hundred fifty thousand dollars ($150,000) but no

greater than the hospital's actual indigent care costs reported to the department for services rendered to persons who met the program requirements for eligibility from July, 1999, through March, 2000, that were not reimbursed under the disproportionate share program.

(2) If federal law governing disproportionate share hospital payments changes, the Department for Medicaid Services shall have authority to promulgate administrative regulations in accordance with KRS Chapter 13A to comply with the changes.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of law to the contrary, if the Federal Health Care Financing Administration issues a final regulation establishing an outpatient Medicare prospective payment system for hospitals that requires that an outpatient health facility operated by the hospital be under the same license as the hospital to achieve provider-based status, the cabinet shall, at the hospital's request, issue a new license to a hospital that owns and operates an existing or newly established outpatient health facility that lists each location operated by the hospital.

(2) Any outpatient health facility listed on the hospital's license under subsection (1) of this section shall:

(a) Comply with the applicable licensure regulations that pertain to the type of health services provided; and

(b) Prior to the establishment of a health facility, the operation of a health facility, or the provision of health services or the addition of a health service at a location other than the hospital's main campus, obtain a certificate of need if a certificate of need would otherwise be required in the absence of subsection (1) of this section. Licensure of the outpatient health facility or service under the same license as the hospital pursuant to subsection (1) of this section shall not eliminate the requirement for a certificate of need.

Section 5. Whereas the burden of uncompensated and undercompensated care is increasing on a daily basis upon hospitals in the Commonwealth and the financial viability of hospitals is at stake, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 4, 2000

CHAPTER 311

(HB 44)

AN ACT relating to postsecondary education.

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

Section 1. KRS 164.740 is amended to read as follows:

As used in KRS 164.740 to 164.785, the terms listed below shall have the following meanings:

(1) "Authority" means the Kentucky Higher Education Assistance Authority.

(2) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority.

(3) "Business school" means any business school which is accredited by the Association of Independent Colleges and Schools, the commission for business schools, or any successor, and which provides a program of study leading to the granting of a postsecondary degree or diploma.

(4) "College" means any postsecondary educational institution of higher learning which is accredited by the Southern Association of Colleges and Schools, the commission on colleges, or any successor, ***or other equivalent regional accrediting association,*** and which provides a program of study leading to the granting of a postsecondary degree or diploma.

(5) "Eligible institution" means any educational institution or class of institutions designated pursuant to the federal act or this chapter as eligible to participate in authority-administered programs, provided that no right of participation shall be deemed vested pursuant to this subsection in any institution, including, but not by way of limitation, any college, school of nursing, vocational school, or business school.

(6) "Eligible lender" means any entity described as eligible pursuant to the federal act to make or originate insured student loans, provided that no right of participation shall be deemed vested hereby in any lender.

(7) "Eligible student" means any student enrolled or accepted for enrollment at a participating institution, meeting the criteria established by the federal act and this chapter for the various authority administered programs.

(8) "Endorser" means a person who signs a student loan promissory note as an accommodation party, in the manner of KRS 355.3-419, and is secondarily liable for payment on such note.

(9) "Federal Act" means the Higher Education Act of 1965, Public Law 89-329, as amended.

(10) "Grant" means a gift of money, tuition discount, waiver of tuition and fees, or other monetary award that requires neither employment nor repayment, except under conditions prescribed by the board, and is based on demonstrated financial need and such other terms and conditions as the board may prescribe.

(11) "Honorary scholarship" means a certificate of merit or achievement or other appropriate document which may be issued by the board to students in recognition of superior academic ability or achievement or a special talent.

(12) "Insured student loan" means a loan to an eligible borrower, who is qualified under the federal act, on which the payment of principal and interest is insured as evidenced by a loan guarantee issued by the authority and reinsured by the secretary under the federal act.

(13) "Loan" means an advance of money, to be used exclusively for payment of educational expenses, evidenced by a promissory note or similar instrument requiring repayment under specified conditions.

(14) "Loan guarantee" means the certificate, document, or endorsement issued by the authority as evidence of insurance of a loan as to both principal and interest and of reinsurance by the secretary under the federal act.

(15) "Participating institution" means any eligible institution, to the extent that it offers an eligible program of study, having a contract in force with the authority, if required by the authority, on such terms as the authority may deem necessary or appropriate to the administration of its programs.

(16) "Participating lender" means any eligible lender, including the authority and the Kentucky Higher Education Loan Corporation, which has in force a contract with the authority providing for loan guarantee to be issued by the authority under the federal act and this chapter.

(17) "Penal institution" means any penitentiary, detention facility, adult correctional facility, jail, or other similar institution operated by the state, local, or federal government or by private business.

(18) "Recognition award" means an advance of money to or on behalf of a student in recognition of superior academic ability, achievement or special talent.

(19) "Scholarship" means a gift of money to provide an incentive for fulfillment of a particular public purpose which may be based on financial need and superior academic ability or achievement or a special talent and such other terms and conditions as the board may prescribe.

(20) "School of nursing" means any training program in the field of nursing, including one regarding nurse aides, which is accredited by the Kentucky Board of Nursing Education and Nurse Registration, or any successor, and which provides a program of study leading to the granting of a postsecondary degree or diploma.

(21) "Secretary" means the United States Secretary of Education.

(22) "Vocational school" means any public vocational school, technical institution, or technology center which is managed and controlled by the board of regents for the Kentucky Community and Technical System and which provides a course of study leading to the granting of a postsecondary certificate or diploma, or a vocational technical school accredited by the national association of trade and technical schools, or any successor, which provides a program of study leading to the granting of a postsecondary degree, diploma, or certificate.

(23) "Work study" means an award of money disbursed by the board at specified intervals to students, or as reimbursement to employers of students, who provide needed services for a specified number of hours in a capacity approved by the board.

Approved April 4, 2000

CHAPTER 312

(HB 474)

AN ACT relating to professional counselors.

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

Section 1. KRS 335.500 is amended to read as follows:

As used in KRS 335.500 to 335.599, unless the context requires otherwise:

(1) "Board" means the Kentucky Board of Certification for Professional Counselors;

(2) "Certified professional counselor" means a person who has completed a master's or doctoral degree in counseling from an accredited educational institution, and is certified by the board;

(3) ***"Certified professional counselor associate" means an individual who has a minimum of four hundred (400) hours of experience under the supervision of an approved supervisor and has met the requirements for certification under subsection (1)(a) to (d) of Section 2 of this Act;***

(4) "Certificate holder" means a professional counselor who is certified under the provisions of KRS 335.500 to 335.599;

(5)[~~(4)~~] "Approved supervisor" means a person who has been approved by the board to supervise and is qualified under Kentucky law as a licensed psychiatrist, licensed or certified psychologist, licensed clinical social worker, certified professional counselor, nurse with a master's degree and psychiatric certification, certified marriage and family therapist, or certified professional art therapist. The board may approve as supervisor a person from another state with a substantially equivalent certificate or license who is in good standing with the certifying or licensing state and meets, at a minimum, the requirements set out in KRS 335.525; and

(6)[~~(5)~~] "Relative" means a person's father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, daughter-in-law, grandparent, grandchild, stepparent, or stepchild.

Section 2. KRS 335.525 is amended to read as follows:

(1) The board shall issue a "professional counselor" certificate to an applicant who:

(a) Has paid the application fee and the appropriate examination fee to the board;

(b) Is of good moral character;

(c) Has received a master's or doctoral degree in counseling from a regionally-accredited institution;

(d) Has completed a minimum of sixty (60) graduate semester hours in the following:

1. The helping relationship, including counseling theory and practice;

2. Human growth and development;

3. Lifestyle and career development;

4. Group dynamics, process, counseling, and consulting;

5. Assessment, appraisal, and testing of individuals;

6. Social and cultural foundations, including multicultural issues;

7. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

8. Research and evaluation; and

9. Professional orientation and ethics;

(e) Has completed a minimum of three thousand (3,000) hours of experience in the practice of counseling, two thousand (2,000) hours of which must have been obtained

since obtaining the master's degree and must be under approved supervision~~[. The experience shall have been performed under the general supervision of an approved supervisor]~~ and shall include, but not be limited to, a minimum of one thousand two hundred (1,200) hours of direct counseling with individuals, couples, families, or groups and a minimum of one hundred (100) hours of individual, face-to-face weekly clinical supervision with an approved supervisor. Up to one thousand (1,000) hours of the supervised experience may be obtained from a supervised practicum or internship. ***After January 1, 2001, the board shall issue certificates only to applicants who have obtained all three thousand (3000) hours of experience since obtaining the master's degree. All***~~[After January 1, 1998, all previously uncertified]~~ applicants shall complete an organized practicum or internship consisting of at least four hundred (400) hours; and

(f) Has achieved passing scores on all portions of the examinations required by the board.

(2) ***The board may issue a professional counselor associate certificate to an applicant as provided under Section 1 of this Act. An associate may apply for professional counselor certification upon completion of the hours of experience required under paragraph (e) of subsection (1) of this section.***

(3) The application fee for certification and the examination fee shall be established pursuant to administrative regulation promulgated by the board.

Approved April 4, 2000

CHAPTER 313

(HB 618)

AN ACT relating to physical therapy practitioners.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

(1) The board shall establish an impaired physical therapy practitioners committee to promote the early identification, intervention, treatment, and rehabilitation of physical therapists and physical therapists' assistants who may be impaired by reason of illness or of alcohol or drug abuse, or as a result of any physical or mental condition.

(2) The board may enter into a contractual agreement with a nonprofit corporation, physical therapy professional organization, or similar organization for the purpose of creating, supporting, and maintaining an impaired physical therapy practitioners committee.

(3) The board may promulgate administrative regulations in accordance with KRS Chapter 13A to effectuate and implement a committee formed by the provisions of this section.

(4) Beginning January 1, 2001, the board shall collect an assessment fee not to exceed twenty dollars ($20) per licensee or certificate holder, payable to the board, to be added to each licensure and certification renewal application fee. Proceeds from the assessment shall be expended on the operation of an impaired physical therapy practitioner committee formed by the provisions of this section. The fee shall be set by the promulgation of administrative regulations.

(5) Members of an impaired physical therapy practitioners committee, any administrator, staff member, consultant, agent, volunteer, or employee of the committee acting within the scope of their duties and without actual malice, and all other persons who furnish information to the committee in good faith and without actual malice shall not be liable of any claim or damages as a result of any statement, decision, opinion, investigation, or action taken by the committee or by an individual member of the committee.

(6) All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the impaired physical therapy practitioners committee, all communication to or from the committee, and all proceedings, findings, and conclusions of the committee including those relating to intervention, treatment, or rehabilitation, which in any way pertain or refer to a physical therapist or physical therapist's assistant who is or may be impaired, shall be privileged and confidential.

(7) All records and proceedings of the committee that pertain or refer to a licensee or a certificate holder who may be, or actually is, impaired shall be privileged and confidential and shall be used by the committee and its members only in the exercise of the proper function of the committee and shall not be considered public records and shall not be subject to court subpoena and subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except as described in subsection (8) of this section.

(8) The committee may disclose information relative to an impaired physical therapist or physical therapist's assistant only when:

(a) It is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired practitioner;

(b) Its release is authorized in writing by the impaired physical therapist or physical therapist's assistant; or

(c) The information is subject to court order.

(9) The impaired physical therapy practitioners committee shall make an annual report to the board.

SECTION 2. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

Any physical therapist, physical therapist's assistant, or employer of physical therapy practitioners having knowledge of facts by actual or direct knowledge shall report to the board of physical therapy a physical therapist or physical therapist's assistant who:

(1) Has been convicted of a felony that involved acts that bear directly on the qualifications or ability of the applicant, licensee, or certificate holder to practice physical therapy;

(2) Is suspected of fraud or deceit in procuring or attempting to procure a license to practice physical therapy or of negligently performing actions that justify action against a physical therapist or physical therapist's assistant's license as identified in subsection (2) of Section 7 of this Act;

(3) Has had a license to practice as a physical therapist or a certificate as a physical therapist's assistant denied, limited, suspended, probated, or revoked in another

jurisdiction on grounds sufficient to cause a license or certificate to be denied, limited, suspended, probated, or revoked in this Commonwealth; or

(4) Is practicing physical therapy without a current active license, certificate, or valid temporary permit issued by the board.

Section 3. KRS 327.030 is amended to read as follows:

There is hereby established a State Board of Physical Therapy which shall consist of ***seven (7)***~~[five (5)]~~ members who shall be appointed by the Governor.

(1) One (1) member shall be a citizen at large who is not affiliated with and does not have more than five percent (5%) financial interest in any one (1) health care profession or business.

(2) All other~~[At least three (3) of the]~~ members shall be appointed ***and vacancies shall be filled*** from a list of five (5) persons ***per position*** submitted by the Kentucky ***Physical Therapy Association.***~~[chapter of the American Physical Therapy Association,]~~ All~~[of whom]~~ shall be residents of Kentucky and shall have engaged in the ***unrestricted*** practice of physical therapy within this state for at least two (2) years ***without disciplinary action***~~[One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated]~~.

(3) All appointments to the board after the effective date of this Act shall be for a term of four (4)~~[Members shall be appointed for a term of three (3)]~~ years and until their successors are appointed and qualify. ***No member shall serve for more than two (2) successive terms, or for more than ten (10) consecutive years. The Governor may remove any member of the board for misconduct, incompetence, or neglect of duty***~~[Vacancies of physical therapist members shall be filled by the Governor in like manner from a list of five (5) submitted by the Kentucky chapter of the American Physical Therapy Association]~~.

(4) The board shall annually elect a chairman***,***~~[and]~~ a secretary***, and a chairman-elect***~~[A member may be removed from the board only for cause. Failure to attend at least half of the board meetings in a fiscal year shall constitute cause]~~.

(5) 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 functioning within the scope of board duties, acting without malice and with the reasonable belief that the actions taken by him or her are warranted by law.

(6) Each board member shall receive, in addition to travel, lodging, and other actual and necessary expenses, a per diem not to exceed one hundred twenty dollars ($120) for each day the member is actually engaged in the discharge of official duties approved by the board. The board shall, by promulgation of administrative regulations, set the amount of the per diem.

Section 4. 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)***~~[Three (3)]~~ 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***~~[Upon majority vote by the board, the board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents in connection with any investigations conducted by the board]~~. In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. ***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~~[shall be notified by a licensee or certificate holder]~~ 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***~~[licensees and certificate holders]~~.

(9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.

(10) 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.

(11) The board shall promulgate by administrative regulation a code of ethical standards and standards of practice.

(12) 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.

(13) 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 5. KRS 327.050 is amended to read as follows:

(1) Before applying for licensure by the board as a physical therapist, a person shall have successfully completed an accredited program in physical therapy~~[and be a graduate of an accredited school of physical therapy]~~ approved by the board and shall have fulfilled the requirements of KRS 214.615(1). No school shall be approved by the board unless it has been approved for the educational preparation of physical therapists by the recognized national accrediting agency for physical therapy educational programs.

(2) Any person who possesses the qualifications required by this chapter and who desires to apply for licensure as a physical therapist in Kentucky shall make written application to the board, on forms to be provided by the board. The application shall be accompanied by a nonrefundable application fee in an amount to be determined by the board, but not to exceed two hundred fifty dollars ($250).~~[Upon acceptance by the board of the application, the applicant shall pay an examination fee in an amount sufficient to cover the actual cost of the examination and shall successfully complete the board-approved examination.]~~

(3) If it appears from the application that the applicant possesses the qualifications required by this chapter and has not yet successfully completed the board-approved examination, the applicant shall be ***allowed to sit for the***~~[admitted to the next scheduled]~~ examination and tested in the subjects the board may determine to be necessary.

(4) Examinations shall be held within the state at least once a year at the time and place as the board shall determine.

(5) An applicant who is admitted to the examination or an applicant who has submitted satisfactory evidence that he has been accepted as a candidate for licensure by examination in a state which offers an examination approved by the board may be granted a temporary permit which shall be valid until his examination is graded and he is notified by the board of his score. ***The board may summarily withdraw a temporary permit upon determination that the person has made any false statement to the board on the application, or the person fails to pass an examination approved by the board.***

(6) An applicant who receives a passing score as determined by the board and who meets the other qualifications required by this chapter shall be licensed as a physical therapist.

(7) An applicant who fails to receive a passing score on his examination shall not be licensed; but the board may, by administrative regulation, permit applicants to take the examination more than once.

(8) All licenses ***and certificates*** shall be renewed biennially, upon payment on or before March 31 of each uneven numbered year of a renewal fee ***in an amount*** to be ***promulgated***~~[fixed]~~

by the board ***by administrative regulations***[~~in an amount not to exceed one hundred dollars ($100)~~]. Any licensed ***or certified*** person seeking renewal shall ***retain for three (3) years***[~~include~~] proof of the completion of the course described in KRS 214.610(1) on the form provided by the cabinet.

(9) Licenses ***and certificates*** which are not renewed by March 31 of each uneven numbered year shall lapse.

(10) This chapter shall not be construed to affect or prevent:

(a) A student of physical therapy from engaging in clinical practice under the supervision of a licensed physical therapist, as part of the student's educational program;

(b) A physical therapist who is licensed to practice in another state or country from conducting or participating in a clinical residency under the supervision of a physical therapist licensed in Kentucky and for a period of not more than ninety (90) days;

(c) A physical therapist who is licensed to practice in another state or country from conducting or participating in the teaching of physical therapy in connection with an educational program and for a period of not more than ninety (90) days;[~~ or~~]

(d) ***A physical therapist licensed in another state or country from performing therapy on members of the out-of-state sports or entertainment group they accompany to Kentucky; or***

(e) The practice of chiropractic as defined in KRS 312.015(3).

Section 6. KRS 327.060 is amended to read as follows:

The board shall issue a license to:

(1) An individual who holds a valid license from another state, who meets requirements specified in KRS 327.050 and who has no imposed or pending disciplinary actions.

(2) An individual who has been ***educated as a physical therapist outside the United States and who has***[~~trained in a foreign country, subject to the following requirements~~]:

(a) ***Completed the application process;***[~~Graduation from a physical therapy program.~~]

(b) ***Provided satisfactory evidence to the board that his or her education is substantially equivalent to the requirements for physical therapists educated in United States accredited educational programs;***[~~Evaluation of the individual's educational credentials by a credentials evaluation service acceptable to the board.~~]

(c) ***Provided written proof that the school of physical therapy education outside the United States is recognized by its own ministry of education;***[~~Approval by the board of the individual's educational credentials.~~]

(d) ***Successfully completed***[~~Successful completion of~~] the ***examinations***[~~examination~~] provided for in KRS 327.050***;***[~~.~~]

(e) ***Passed the board approved English language proficiency examinations if English is not his or her native language;***[~~Demonstration of proficiency in the English language.~~]

(f) ***Successfully completed, prior to licensure, a board-approved, supervised practice period of not less than three (3) months nor more than six (6) months, under the***

direct supervision of a physical therapist who holds an unrestricted Kentucky license~~[Successful completion of one (1) year of board approved supervised practice under a physical therapist licensed under this chapter]~~. This requirement may be satisfied by ***at least three (3) months***~~[one (1) year]~~ of supervised practice as a~~[licensed]~~ physical therapist in a state with license requirements comparable to or more stringent than those of Kentucky.

(g) Fulfilled the requirements of KRS 214.615(1);

(h) Provided proof of legal authorization to reside and seek employment in the United States or its territories;

(i) Provided proof of authorization to practice as a physical therapist without limitations in the country where the professional education occurred;

(j) Submitted to a prescreening process by an agency approved by the board; and

(k) Submitted educational credentials to the board for evaluation by an agency approved by the board.

(3) The board may approve an agency to prescreen applicants for initial licensure under this section.

(4) The board may approve one or more services to provide an evaluation of the applicant's educational credentials for board approval for licensing under this section.

(5) The board may waive the requirements of paragraphs (c), (j), and (k) of subsection (2) of this section if the applicant is a graduate of a professional physical therapy education program pre-approved by the board.

Section 7. KRS 327.070 is amended to read as follows:

(1) The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B may ***take any one (1) or a combination of the following actions against any licensee, certificate holder, or applicant:***

(a) Refuse to license or certify any applicant***;***

(b) ~~[, and may]~~Refuse to renew the license or certificate of any person***;***

(c) ~~[, and may]~~Suspend or revoke or place on probation the license or certificate of any person***;***

(d) Impose restrictions on the scope of practice of any person;

(e) ~~[and may]~~Issue an administrative reprimand to any ***person;***~~[licensee or certificate holder:]~~

(f) Issue a private admonishment to any person; and

(g) Impose fines for violations of this chapter not to exceed two thousand five hundred dollars ($2,500).

(2) The following acts by a licensee, certificate holder, or applicant may be considered cause for disciplinary action:

(a)~~[(1)]~~ ***Indulgence***~~[Who indulges]~~ in excessive use of alcoholic beverages or ***abusive use of controlled substances***~~[who is addicted to the use of narcotic drugs]~~;

(b)[~~(2)~~] ***Engaging***[~~Who has engaged~~] in***, permitting, or attempting to engage in or permit***[~~or permitted~~] the performance of substandard patient care by himself or by persons working under his supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;

(c)[~~(3)~~] ***Having***[~~Who has, in the judgment of the board,~~] engaged in ***or attempted to engage in*** a course of lewd or immoral conduct ***with any person:***[~~in connection with the delivery of health care services to patients;~~]

1. While that person is a patient of a health care facility defined by KRS 216B.015(10) where the physical therapist or physical therapist's assistant provides physical therapy services; or

2. While that person is a patient or client of the physical therapist or physical therapist's assistant;

(d) Having sexual contact, as defined by KRS 510.010(7), without the consent of both parties, with an employee or coworker of the licensee or certificate holder;

(e) Sexually harassing an employee or coworker of the licensee or certificate holder;

(f)[~~(4)~~] ***Conviction***[~~Who has been convicted~~] of a felony or misdemeanor in the courts of this state or any other state, territory, or country which affects his ability to continue to practice competently and safely on the public. "Conviction," as used in this subsection, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

(g)[~~(5)~~] ***Obtaining***[~~Who has obtained~~] or ***attempting***[~~attempted~~] to obtain a license or certificate by fraud or material misrepresentation or ***making***[~~who has made~~] any other false statement to the board;

(h)[~~(6)~~] ***Engaging***[~~Who engaged~~] in fraud or material deception in the delivery of professional services, including reimbursement, or ***advertising***[~~has advertised~~] services in a false or misleading manner;

(i)[~~(7)~~] ***Evidence***[~~Who is guilty, in the judgment of the board,~~] of gross negligence or gross ***incompetence***[~~incompetency~~] in his practice of physical therapy;

(j)[~~(8)~~] ***Documentation of being***[~~Who has been~~] declared mentally disabled by a court of competent jurisdiction and[~~ has~~] not thereafter ***having*** had his rights restored;

(k)[~~(9)~~] ***Failing***[~~Who has failed~~] or ***refusing***[~~refused~~] to obey any lawful order or administrative regulation of the board;

(l)[~~(10)~~] ***Promoting***[~~Who has promoted~~] for personal gain an unnecessary device, treatment, procedure, or service, or ***directing***[~~who has directed~~] or ***requiring***[~~required~~] a patient to purchase a device, treatment, procedure, or service from a facility or business in which he has a financial interest; and

(m)[~~(11)~~] ***Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently***[~~Who has been adjudged unfit to practice due to a physical or mental disability. When physical or mental capacity is at issue in a board proceeding, the board may order the practitioner to submit to a reasonable physical or mental examination. Failure to comply shall be grounds for the~~

~~summary denial of an application or the summary revocation of the practitioner's license or certificate to be executed in accordance with KRS 13B.125~~].

(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.

Section 8. 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***[~~not to exceed twenty-five dollars ($25)~~].

(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 in accordance with KRS Chapter 13B.

Section 9. KRS 327.080 is amended to read as follows:

(1) All fees ***received***[~~collected~~] by the board ***and collected under this chapter or the administrative regulations adopted in accordance with this chapter*** shall be ***deposited with***[~~paid into~~] the State ***Treasurer***[~~Treasury~~] and credited to ***the revolving fund of the board, a trust and agency fund, to be used by the board in defraying the costs and expenses of the board in the administration of the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth***[~~an account for the payment of all lawful expenses of the board~~].

(2)[~~ Each member of the board shall be entitled to a per diem to be established by the board but not to exceed sixty dollars ($60) and his reasonable expenses for attending each meeting of the board or for representing the board in an official, board-approved capacity.~~

~~(3)~~] The board may employ ***an executive director and other***[~~such~~] personnel and ***may*** purchase such materials and supplies as it may deem necessary for the proper discharge of its duties[~~, all of which shall be paid for out of its account on vouchers certified by the chairman or, when authorized in writing by the chairman, on vouchers certified by the executive secretary~~].

Approved April 4, 2000

CHAPTER 314

(HB 765)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 13 OF KRS 304 IS CREATED TO READ AS FOLLOWS:

(1) Any policy fee as related to underwriting expenses for a property or casualty insurance contract, issued or renewed on or after the effective date of this Act, by an agent licensed under KRS 304.9-085, shall be deemed fully earned. The fee shall only be collected if coverage is provided.

(2) All fees referred to in subsection (1) of this section shall be submitted to the commissioner for prior approval.

Approved April 4, 2000

CHAPTER 315

(HB 811)

AN ACT relating to tourism development.

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

Section 1. KRS 154.29-050 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:

(a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company;

(b) A date certain by which the approved company shall have completed the tourism attraction project. ***Upon request from any approved company that has received final approval prior to or after July 15, 2000, the authority shall grant an extension or change, which in no event shall exceed three (3) years from the date of final approval, to the completion date as specified in the agreement of an approved company.*** Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority; and

(c) The following provisions:

1. The term shall be ten (10) years from the later of:

a. The date of the final approval of the project; or

b. The completion date specified in the agreement, if this completion date is within ***three (3)***[~~two (2)~~] years of the date of the final approval of the project;

2. Within forty-five (45) days after the end of each half of each fiscal year of the approved company, the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 154.29-010 to 154.29-060. Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Revenue Cabinet that the approved company is in compliance with this section; and

3. The approved company shall not receive a sales tax refund as prescribed by KRS 139.536 with respect to any fiscal year if:

a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; or

b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days.

(2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.

(3) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 154.29-010.

Section 2. KRS 139.536 is amended to read as follows:

(1) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, excluding its lessees, may be granted a sales tax refund from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 154.29-010. The approved company shall have no obligation to refund or otherwise return any amount of this sales tax refund to the persons from whom the sales tax was collected. The term of the agreement granting the sales tax refund shall be ten (10) years, and this time period shall commence on the later of:

(a) The final approval for purposes of the inducements; or

(b) The completion date specified in the agreement.

(2) ***Any sales tax collected by an approved company as defined in KRS 154.29-010 on sales transacted after final approval but prior to the commencement of the term of the agreement, including any approved company that has received final approval prior to July 15, 2000, shall be refundable as if collected after the commencement of the term and***

applied to the approved company's first fiscal year's refund after activation of the term and without changing the term.

(3) The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or twenty-five percent (25%) of the approved costs. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 154.29-010(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire twenty-five percent (25%) of the approved costs have been received through sales tax refunds. By October 1 of each year the Revenue Cabinet shall certify to the authority and the secretary of the Tourism Development Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project, the sales tax liability of the approved companies receiving inducements under this section and KRS 154.29-010 to 154.29-060, and their lessees, and the amount of the sales tax refunds issued pursuant to subsection (1) of this section.

(4)[~~(3)~~] Interest shall not be allowed or paid on any refund made under the provisions of this section.

(5)[~~(4)~~] The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of this section and KRS 154.29-010 to 154.29-060.

Approved April 4, 2000

CHAPTER 316

(HJR 128)

A JOINT RESOLUTION naming the "Robert L. Draper Way" in Muhlenberg County.

WHEREAS, Robert L. Draper was born on June 28, 1919, in Drakesboro, Kentucky; and

WHEREAS, the son of Clyde and Julia Draper, Robert L. Draper was the oldest of three children who lived his earliest years in several coal camps in west Kentucky; and

WHEREAS, active in civic affairs as a young man, Robert L. Draper joined a youth program at the age of fifteen under the New Deal, serving during the depression in Idaho and generously sending $25 of his $30 monthly salary home to his parents in Kentucky; and

WHEREAS, Robert L. Draper followed in his father's footsteps as a coal miner at the age of sixteen to help make ends meet during the depression; and

WHEREAS, on February 14, 1940, Robert L. Draper married his beloved Pauline Hocker before relocating to Chicago seeking employment to support his wife and new son, Larry; and

WHEREAS, a gallant veteran of the battle of Iwo Jima, Robert L. Draper participated in some of the most fierce fighting of World War II as a member of the United States Marine Corps, tenaciously holding ground for American troops during the entire thirty-three day campaign for the island; and

WHEREAS, upon returning to civilian life following World War II, Robert L. Draper moved his family back to the Commonwealth where he worked for fifteen years in the west Kentucky coal mines; and

WHEREAS, Robert L. Draper left the coal fields to work at Green River Steel in Owensboro before starting an auto salvage yard that he helped operate for over a decade; and

WHEREAS, Robert L. Draper was elected to one term as sheriff in 1969, before the citizens of Muhlenberg County selected him in 1973 to champion their causes as County Judge/Executive; and

WHEREAS, Robert L. Draper retired as County Judge/Executive in 1989 but was called out of retirement in 1992 to fill a vacancy in the office; and

WHEREAS, Robert L. Draper was the people's choice to continue to serve out the term as County Judge/Executive; and

WHEREAS, while serving as County Judge/Executive Robert L. Draper dedicated his tenure to providing access to the county water system for as many citizens of Muhlenberg County as possible; and

WHEREAS, Robert L. Draper also diligently worked as County Judge/Executive to provide good roads to all areas of Muhlenberg County; and

WHEREAS, Robert L. Draper will forever be remembered and beloved as Muhlenberg County Judge/Executive for his honesty, integrity, sincerity, and prudent stewardship of the peoples' tax dollars;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name Kentucky Route 189 in Muhlenberg County from United States Route 62 west to north of the City of Greenville ending at the intersection of Airport Road and Spartan Way the "Robert L. Draper Way."

Section 2. The Transportation Cabinet shall, within thirty days of the effective date of this Resolution, erect signs at the junction of Kentucky Route 189 and United States Route 62, and at the junction of Kentucky Route 189 with the intersection of Airport Road and Spartan Way that read the "Robert L. Draper Way."

Approved April 4, 2000

CHAPTER 317

(HB 427)

AN ACT relating to domestic violence and sexual assault.

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

Section 1. KRS 194A.540 is amended to read as follows:

(1) The secretary for health services shall, in consultation with the applicable licensure board, develop domestic violence-related training courses that are appropriate for the following professions:

(a) Mental health professionals licensed or certified under KRS Chapters 309, 319, and 335;

(b) ***Alcohol and drug counselors certified under KRS Chapter 309;***

(c) Physicians who practice primary care, as defined in KRS 164.925, ***or who meet the definition of a psychiatrist under KRS 202A.011,*** and who are licensed under KRS Chapter 311;~~[and]~~

(d)~~[(c)]~~ Nurses licensed under KRS Chapter 314***;***

(e) Paramedics certified under KRS Chapter 311;

(f) Emergency medical technicians certified under KRS Chapter 211; and

(g) Coroners as defined in KRS 72.405 and medical examiners as defined in KRS 72.240.

(2) The courses shall include the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.

(3) ***Any***~~[No later than June 30, 1999, every]~~ health-care or mental health professional ***identified in subsection (1) of this section***~~[licensed or certified under KRS Chapter 309, 311, 314, 319, or 335, on or after July 15, 1996,]~~ shall successfully complete a three (3) hour training course that meets the requirements of subsection (2) of this section. ***Health care or mental health professionals identified in subsection (1) of this section***~~[Persons]~~ who are granted licensure or certification after July 15, 1996, shall successfully complete the training within three (3) years of the date of initial licensure or certification.

SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) The Governor's Council on Domestic Violence and Sexual Assault is created and established for the purpose of planning and direction of legal, protection, and support services related to domestic violence and sexual assault, and to increase the awareness of all Kentuckians regarding the prevalence and impact of these crimes.

(2) Members of the council shall include:

(a) The Attorney General or a designee;

(b) The secretary of the Cabinet for Families and Children or a designee;

(c) The secretary of the Cabinet for Health Services or a designee;

(d) The secretary of the Justice Cabinet or a designee;

(e) The public advocate or a designee;

(f) The executive director of the Governor's Office of Child Abuse and Domestic Violence Services;

(g) The executive director of the Kentucky Criminal Justice Council;

(h) The executive director of the Commission on Women;

(i) At the direction of the Chief Justice of the Supreme Court, the director of the Administrative Office of the Courts;

(j) One (1) Circuit Court Judge, one (1) family court judge, and one (1) District Court Judge, who shall be appointed by the Chief Justice of the Supreme Court;

(k) The executive director of the Kentucky Domestic Violence Association;

(l) The president of the Kentucky Domestic Violence Association or a designee;

(m) The executive director of the Kentucky Association of Sexual Assault Programs;

(n) The president of the Kentucky Association of Sexual Assault Programs or a designee;

(o) Two (2) members of the Senate who shall be appointed by the President of the Senate;

(p) Three (3) members of the House of Representatives who shall be appointed by the Speaker of the House; and

(q) The following members, who shall be appointed by the Governor. To be eligible for appointment under this paragraph, a person shall have an understanding of, and demonstrated commitment to, addressing crimes involved in domestic or sexual violence:

1. One (1) county attorney;

2. One (1) Commonwealth's attorney;

3. One (1) Circuit Court Clerk;

4. One (1) sheriff;

5. One (1) peace officer;

6. Two (2) representatives of local domestic violence coordinating councils or sexual assault response teams;

7. One (1) advocate for adult victims of domestic or sexual violence;

8. One (1) advocate for child witnesses of domestic or sexual violence;

9. One (1) physician;

10. One (1) sexual assault nurse examiner;

11. One (1) mental health professional with demonstrated expertise in treating offenders;

12. One (1) employee of the Department for Community Based Services who provides direct services to victims of domestic violence;

13. One (1) person employed as a probation or parole officer; and

14. Two (2) citizen at-large members.

(3) The Governor shall appoint two (2) co-chairs and two (2) vice chairs of the council. One (1) of the vice chairs shall be a council member who is a criminal justice professional.

The co-chairs and vice chairs shall serve for a term of one (1) year after which they may be reappointed by the Governor.

(4) Council members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment. Members shall not serve longer than two (2) consecutive four (4) year terms.

(5) The council shall establish an executive committee, the membership of which shall be named by the co-chairs of the council.

(6) The duties and responsibilities of the council shall include, but not be limited to, the following:

(a) Promoting coordination among agencies and officials responsible for addressing domestic violence and sexual assault;

(b) Determining the availability of services for victims, children who witness domestic violence or sexual assault, and offenders;

(c) Facilitating the development of local domestic violence councils and sexual assault response teams that shall include publication of model protocols, training, and technical assistance;

(d) Promoting community awareness and the prevention of domestic and sexual violence;

(e) Providing assistance to the Attorney General, the Administrative Office of the Courts, the Justice Cabinet, the Cabinet for Families and Children, and the Cabinet for Health Services in the development of training curricula, treatment programs, and model policies related to domestic violence and sexual assault;

(f) Reviewing and analyzing data and information relating to domestic violence and sexual assault from existing sources including, but not limited to, the Kentucky State Police, the Cabinet for Families and Children, the Cabinet for Health Services, the Department of Corrections, and the Administrative Office of the Courts;

(g) Recommending to the appropriate entity changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards relating to domestic violence and sexual assault; and

(h) Preparing a biennial report to be submitted no later than July 1 of every odd-numbered year to the Governor, the Legislative Research Commission, and the Chief Justice of the Supreme Court.

(7) The council shall establish any committees necessary to carry out its duties.

(8) The council shall be attached to the Governor's Office of Child Abuse and Domestic Violence Services for administrative purposes. Members of the council shall be eligible to receive actual and reasonable travel expenses.

(9) The secretary of the Justice Cabinet, the secretary of the Cabinet for Health Services, and the secretary of the Cabinet for Families and Children shall provide the necessary staff to assist the council in carrying out its duties and responsibilities.

SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) One (1) or more local domestic violence coordinating councils may be established in any jurisdiction or group of counties.

(2) Membership on local domestic violence coordinating councils may include, but not be limited to, judges, Commonwealth's and county attorneys, law enforcement officers, probation or parole officers, spouse abuse center staff, other victim advocates defined under Section 7 of this Act, family service workers employed by the Cabinet for Families and Children, mental health professionals, health care professionals, educators, public advocates, and other persons as deemed appropriate.

(3) The purpose of local domestic violence coordinating councils shall include, but not be limited to, the promotion of public awareness about domestic violence, the facilitation of interagency coordination, and the assessment of service delivery related to domestic violence.

(4) Local domestic violence coordinating councils shall develop a local protocol consistent with the model protocol issued by the Governor's Council on Domestic Violence and Sexual Assault.

(5) Local domestic violence coordinating councils may, if authorized by the local coroner or a medical examiner, create a domestic violence fatality review team, the purpose of which shall be to prevent future deaths and injuries related to domestic violence.

(6) Domestic violence fatality review teams of local domestic violence coordinating councils may:

(a) Analyze information regarding local domestic violence fatalities to identify trends, patterns, and risk factors;

(b) Evaluate the effectiveness of local prevention and intervention strategies; and

(c) Recommend, to the Governor's Council on Domestic Violence and Sexual Assault, changes in the Kentucky Revised Statutes, administrative regulations, policies, budgets, and treatment and service standards that may facilitate the prevention of domestic violence fatalities. The fatality review team may establish a protocol for the investigation of domestic violence fatalities and may establish operating rules and procedures as it deems necessary to carry out the purposes of this section.

(7) The review of a case by a domestic violence fatality review team may include information from reports generated or received by agencies, organizations, or individuals responsible for investigation, prosecution, or treatment in the case.

(8) The proceedings, records, opinions, and deliberations of the domestic violence fatality review team shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil action in any manner that would directly or indirectly identify specific persons or cases reviewed by the local team. Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the domestic violence fatality review team.

Section 4. KRS 403.7505 is amended to read as follows:

(1) The Cabinet for Health Services shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.

(2) The standards created by the cabinet shall be based on the following principles:

(a) Domestic violence is a pattern of coercive control which includes physical, sexual, psychological, and environmental abuse, and is considered to be criminal conduct;

(b) The primary goal of treatment programs for domestic violence offenders shall be the cessation of violence which will provide for the safety of victims and their children; and

(c) Domestic violence offenders are responsible and shall be held accountable for the violence which they choose to perpetrate.

(3) The standards created by the cabinet shall address the following:

(a) Qualifications of providers of court-mandated domestic violence offender treatment services which shall include appropriate requirements for degree, experience, training, and continuing education;

(b) Procedures for application by providers to receive certification which shall include methods of appeal if certification is denied, and sanctions for noncompliance with the standards which may include revocation of certification;

(c) Admittance and discharge criteria for domestic violence offenders to enter court-mandated treatment services provided pursuant to this section;

(d) Written protocols for referral by a court to certified providers and for progress reports to be made to the court by providers;

(e) Contracts for domestic violence offenders to sign prior to entering court-ordered treatment services provided pursuant to this section. The contract shall specify that certified providers may contact the victims of the offender if the victim chooses to be contacted. The contract shall authorize the provider to release information regarding the offender's progress in treatment to the court, victims, probation and parole officers, and other individuals authorized by the court to receive the information;

(f) Written procedures in compliance with KRS 202A.400, 209.030, and 620.030;

(g) Payment protocols which require the offender to pay the actual cost for any court-mandated evaluation or treatment pursuant to this section, subject to the offender's ability to pay; and

(h) Other provisions which shall further the availability and quality of court-mandated domestic violence offender services.

(4) The cabinet shall:

(a) Maintain a list of providers certified pursuant to this section and regularly submit the list to the Administrative Office of the Courts; and

(b) Collect data from certified providers, which shall include the number of domestic violence offenders served by the certified providers, to be compiled annually and

submitted to the Governor, the Chief Justice of the Kentucky Supreme Court, and the Legislative Research Commission.

(5) No person, association, or organization shall conduct, operate, maintain, advise, or advertise any program that provides court-ordered treatment services for domestic violence offenders without first obtaining or maintaining valid certification under this chapter. If the cabinet has cause to believe that court-ordered treatment services for domestic violence offenders are being provided by a person or entity that does not possess valid certification under this chapter, the cabinet may institute proceedings, in the Circuit Court of the county in which the person or entity is located or in Franklin Circuit Court, for injunctive relief to terminate the provision of those services.

Section 5. KRS 403.784 is amended to read as follows:

(1) The Justice Cabinet shall develop initial training courses and continuing education courses, designed to be provided at least once every two (2) years, for law enforcement officers***, police dispatchers, and probation or parole officers*** concerning the dynamics of domestic violence, ***child physical and sexual abuse, rape,*** effects of ***crime***~~[domestic violence]~~ on adult and child victims, legal remedies for protection, lethality and risk issues, ***profiles of offenders,*** model protocols for addressing domestic violence, ***child abuse, rape,*** available community resources and victims services, and reporting requirements. The training shall be developed in consultation with legal, victims services, victim advocacy, and mental health professionals with an expertise in domestic violence***, child abuse, and rape***.

(2) All law enforcement agencies shall provide initial training and, at least once every two (2) years, continuing education courses, developed by the Justice Cabinet pursuant to subsection (1), to all officers employed by them.

(3) The Justice Cabinet shall provide initial training and, at least once every two (2) years, continuing education courses under subsection (1) of this section for police dispatchers and probation or parole officers.

Section 6. KRS 15.718 is amended to read as follows:

(1) The Attorney General shall provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning the dynamics of domestic violence, ***child physical and sexual abuse, rape,*** effects of ***crime***~~[domestic violence]~~ on adult and child victims, legal remedies for protection, lethality and risk issues, ***profiles of offenders,*** model protocols for addressing domestic violence, ***child abuse, rape,*** available community resources and victims services, and reporting requirements. The training shall be developed in consultation with ***prosecutors***~~[legal]~~, victims services, victim advocacy, and mental health professionals with an expertise in domestic violence***, child abuse, and rape***.

(2) Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

Section 7. KRS 421.570 is amended to read as follows:

(1) For the purposes of this section and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500, and includes a victim advocate employed by a

Commonwealth's attorney pursuant to KRS 15.760 and a victim advocate employed by a county attorney pursuant to KRS 69.350.

(2) Each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence***, child physical and sexual abuse, and rape***.

(3) A victim advocate shall not engage in the practice of law as defined in KRS 524.130.

Section 8. The following KRS section is repealed:

15.944 In-service training for prosecutors on child sexual abuse.

Approved April 4, 2000

CHAPTER 318

(HB 449)

AN ACT relating to facilities serving persons with mental illness and mental retardation, and declaring an emergency.

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

Section 1. KRS 210.045 is amended to read as follows:

(1) The Cabinet for Health Services shall:

(a)~~[(1)]~~ Maintain, operate, and assume program responsibility for all state institutions and facilities for mental retardation;

(b)~~[(2)]~~ Provide rehabilitation services for mentally retarded persons through educational and training programs;

(c)~~[(3)]~~ Provide medical and allied services to mentally retarded persons and their families;

(d)~~[(4)]~~ Encourage and assist communities to develop programs and facilities in the field of mental retardation;

(e)~~[(5)]~~ Sponsor or carry out research, or both, in the field of mental retardation;~~[and]~~

(f)~~[(6)]~~ Assist other governmental and private agencies in the development of programs and services for mentally retarded persons and their families and for the prevention of mental retardation, and coordinate programs and services so developed***;***

(g) Provide written notice to the Legislative Research Commission of its intent to propose legislation to permit immediate or gradual closure of any state-owned or operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and

(h) 1. Provide written notice by registered mail to each resident, his or her immediate family, if known, and his or her guardian of its intent to propose legislation to permit immediate or gradual closure of any state-operated facility that

provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and

2. Include in the written notice provided under this paragraph that the resident, the resident's immediate family, his or her guardian, or any other interested party with standing to act on behalf of the resident has the right to pursue legal action relating to the notice provisions of this paragraph and relating to the closure of the facility.

(2) Any state-owned or operated facility or group home that provides residential services to persons with mental retardation or other developmental disabilities and that has been funded by the General Assembly in a specific biennium, shall not be closed, nor shall the Cabinet for Health Services announce the pending closure of the facility, during the same biennium except through the provisions specified by subsection (1) of this section.

(3) The Cabinet for Health Services may close any state-owned or operated facility that provides residential services to persons with mental retardation or other developmental disabilities upon the effective date of an adopted act of legislation.

(4) When a demonstrated health or safety emergency exists for a facility or a federal action that requires or necessitates a gradual or immediate closure exists for the facility, the cabinet may seek relief from the requirements of this section in the Circuit Court of the county where the facility is located. In these situations:

(a) The cabinet shall provide written notice by registered mail to each resident, the resident's immediate family, if known, and his or her guardian, at least ten (10) days prior to filing an emergency petition in the Circuit Court; and

(b) All interested parties, including the cabinet, the resident, his or her immediate family, his or her guardian, or other interested parties with standing to act on behalf of the resident shall have standing in the proceedings under this subsection.

(5) Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident who wishes to challenge the decision or actions of the Cabinet for Health Services regarding the notice requirements of subsection (1) of this section shall have a cause of action in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.

(6) Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident may challenge the decision of the state to close a facility in a de novo hearing in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section..

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

A court hearing as provided under subsection (6) of Section 1 of this Act shall consider each of the following items relevant to the closure of the facility:

(1) Estimated timelines for the implementation of the closure of the facility;

(2) The types and array of available and accessible community-based services for individuals with mental retardation and other developmental disabilities and their families;

(3) The rights of individuals with mental retardation and other developmental disabilities;

(4) The process used to develop a community living plan;

(5) Individual and community monitoring and safeguards to protect health and safety;

(6) The responsibilities of state and local governments;

(7) The process used to transfer ownership or the state's plan to reuse the property; and

(8) Other issues identified by the cabinet, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident that may affect the residents, their families, employees, and the community.

SECTION 3. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

For any facility that the cabinet has announced plans for closure prior to the effective date of this Act , the cabinet shall be subject to the notice provisions of Section 1 of this Act within ten (10) days of the effective date of this Act. The cabinet shall delay proceedings toward closure until the proceedings for all hearings permitted under Section 1 of this Act have been completed.

Section 4. KRS 216B.455 is amended to read as follows:

(1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:

(a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;

(b) Department for Social Services;

(c) Local school districts;

(d) Psychiatric hospitals; and

(e) Any other agency, organization, or facility deemed appropriate by the cabinet.

(2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.

(3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations***, or the Council on Accreditation, or any other accrediting body with comparable standards that is recognized by the state***.

(4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.

(5) The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

Section 5. Whereas the closure of state residential facilities for individuals with mental retardation or other developmental disabilities has an immediate and significant impact on residents and their families, an emergency is declared to exist, and Sections 1 to 3 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Became law April 5, 2000, without Governor's signature

CHAPTER 319

(HB 619)

AN ACT relating to motor vehicle insurance.

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

Section 1. KRS 186A.040 is amended to read as follows:

(1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky. The department shall provide appropriate insurance information to the Department of Information Systems for inclusion in the AVIS database.

(2) Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, the department shall immediately ***make a determination as to the notification of***~~[notify]~~ the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the~~[department or the]~~ county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall revoke the registration of the motor vehicle until:

(a) The person presents proof of insurance to the~~[department or]~~ county clerk and pays the reinstatement fee required by KRS 186.180;

(b) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;

(c) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or

(d) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires a registered motor vehicle in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of subtitle 39 of KRS Chapter 304. The person shall also declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has his or her motor vehicle registration revoked in accordance with this subsection three (3) times within any twelve (12) month period, the revocations shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.

(3) The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by subsection (2) of this section. The notice that the department gives to the county attorney in accordance with subsection (2) of this section shall include a certified copy of the person's driving record which shall include:

(a) The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and

(b) A dated notice that the department sent to the person requiring the person to present proof of insurance to the~~[department or the]~~ county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had his or her motor vehicle registration revoked three (3) times within any twelve (12) month period in accordance with subsection (2) of this section.

(4) The certified copies sent by the department described in subsection (3) of this section, shall be prima facie evidence of a violation of KRS 304.39-080.

(5) If the insured provides proof of insurance to the~~[department or the]~~ clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.

Section 2. KRS 189.285 is amended to read as follows:

(1) A person shall not operate a motorcycle on a highway:

(a) Except when that person is in possession of a valid motorcycle operator's license; and

(b) Unless that person uses an approved eye-protective device, in the manner prescribed by the secretary of the Transportation Cabinet, at all times such vehicle is in motion; and

(c) Unless the motorcycle is equipped with a rear-view mirror.

(2) A person shall not operate or ride as a passenger on a motorcycle:

(a) Except on a seat permanently attached to that vehicle and specifically designed to carry the operator or passenger in a safe manner; and

(b) Except when using a footrest permanently attached to that vehicle and specifically designed to carry that person in a safe manner.

(3) The following persons shall be required to wear protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times the motorcycles they are riding are in motion on a public highway:

(a) A person under the age of twenty-one (21) years who is operating a motorcycle or who is a passenger on a motorcycle or in a sidecar attachment;

(b) A person who possesses a motorcycle instruction permit and who is operating a motorcycle; ***and***

(c) A person who has held a valid motorcycle operator's license, or combination motor vehicle-motorcycle operator's license, for less than one (1) year and who is operating a motorcycle~~[; and~~

~~(d) Any person who does not provide proof of health insurance to the county clerk when registering a motorcycle in accordance with KRS 186.865]~~.

(4) A motorcycle operator authorized to drive a motorcycle on an instruction permit shall not be authorized to carry passengers.

(5) The secretary of the Transportation Cabinet shall by regulation fix minimum standards for approved protective headgear and for approved eye-protective devices, and prescribe the manner in which they shall be used. The secretary shall maintain and cause to be published a list of approved protective headgear and of approved eye-protective devices. The secretary may prescribe by regulation minimum standards for other protective devices and require the use of those devices.

(6) As used in this chapter and KRS Chapter 186, "motorcycle" means any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride in an enclosed cab and excluding a moped as defined in this section.

(7) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

Section 3. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, ***Section 2 of this Act,*** 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390

shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents ($0.02) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents ($0.03) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents ($0.05) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents ($0.07) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents ($0.09) per pound when the excess exceeds five thousand (5,000) pounds, but in no case shall the fine be less than sixty dollars ($60).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100) and, upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which

the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars ($10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.

(27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

~~[(29) Any person who violates the provisions of KRS 189.285 shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).]~~

Section 4. The following KRS section is repealed:

186.865 Motorcycle registration requirements -- Health insurance requirements.

Approved April 5, 2000

CHAPTER 320

(HB 805)

AN ACT relating to the development and use of natural resources.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) There shall be allowed a nonrefundable credit against taxes imposed by the Commonwealth on any taxpayer that:

(a) 1. Is an electric power company as defined in KRS Chapter 136; or

2. Is an entity that owns or operates a coal-fired electric generation plant;

(b) Remits tax to the Commonwealth under KRS 136.070, KRS 136.120, KRS 141.020, or KRS 141.040; and

(c) Purchases coal subject to the tax imposed under KRS 143.020 that is used by the taxpayer, or by a parent company if the taxpayer is a wholly owned subsidiary, for the purpose of generating electricity.

(2) The amount of the allowable credit shall be two dollars ($2) per each incentive ton of coal purchased that is subject to tax under KRS 143.020 and that is used to generate electric power.

(3) Incentive tons are calculated as the tons of coal purchased in the current year for which coal severance tax was paid minus the tons of coal purchased and used during the base year.

(4) The base year amount shall be equal to:

(a) For entities existing on the effective date of this Act that meet the eligibility requirements imposed under subsection (1) of this section, the tons of coal purchased and used to generate electricity during the twelve (12) calendar months ending in December 31, 1999, that were subject to the tax imposed by KRS 143.020; or

(b) For entities that come into existence after the effective date of this Act that meet the eligibility requirements imposed under subsection (1) of this section, the base year amount shall be equal to zero (0). However, no company qualifying for the credit as of the effective date of this Act with a base year calculation as provided under subsection (4)(a) of this section may create an affiliate, subsidiary, or corporation that would qualify for a base year of zero (0).

(5) On or before March 15 of each year, a company eligible for the credit provided under subsection (2) of this section shall file a coal incentive credit claim on forms prescribed by the Revenue Cabinet. At the time of filing for the credit, the taxpayer shall submit verification of the tons of coal purchased in the base year and the tons of coal purchased

in the year for which the credit is being claimed. The Revenue Cabinet shall determine the amount of the eligible credit and issue a credit certificate to the taxpayer.

(6) The taxpayer shall be eligible to apply, subject to the conditions imposed under subsection (7) of this section, the amount identified on the credit certificate issued by the Revenue Cabinet under subsection (5) of this section, against the taxpayer's liability for the taxes, in consecutive order as follows:

(a) KRS 141.040;

(b) KRS 141.020;

(c) KRS 136.070; and

(d) KRS 136.120.

(7) The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order under subsection (6) of this section before applying the remaining credit to the next tax listed in consecutive order. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.

(8) The taxpayer shall maintain records required in subsection (5) of this section for a period of five (5) years.

(9) Acceptable verification of coal purchased during the base year shall include invoices that indicate the tons of coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.

(10) The Revenue Cabinet shall develop the forms required under subsection (5) of this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsection (6) and subsection (7) of this section.

Section 2. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual credits permitted by KRS 141.020(3);

(b) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;

(c) The health insurance credit permitted by KRS 141.062;

(d) The tax paid to other states credit permitted by KRS 141.070;

(e) The credit for hiring the unemployed permitted by KRS 141.065;

(f) The recycling or composting equipment credit permitted by KRS 141.390;

(g) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263;

(h) The low income credit permitted by KRS 141.066;~~[and]~~

(i) The household and dependent care credit permitted by KRS 141.067***; and***

(j) The coal incentive credit permitted under Section 1 of this Act.

(2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual withholding tax credit permitted by KRS 141.350; and

(b) The individual estimated tax payment credit permitted by KRS 141.305.

(3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:

(a) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;

(b) The health insurance credit permitted by KRS 141.062;

(c) The unemployment credit permitted by KRS 141.065;

(d) The recycling or composting equipment credit permitted by KRS 141.390;

(e) The coal conversion credit permitted by KRS 141.041;

(f) The enterprise zone credit permitted by KRS 154.45-090;~~[and]~~

(g) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263***; and***

(h) The coal incentive credit permitted under Section 1 of this Act.

(4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

SECTION 3. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

The Coal Incentive Credit authorized under Section 1 of this Act shall be allowed for ten (10) consecutive years beginning on July 15, 2001. Continuation of the credit authorized under this section shall require reauthorization by the General Assembly.

Approved April 5, 2000

CHAPTER 321

(HB 806)

AN ACT relating to the development and use of natural resources.

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

Section 1. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) "Affiliate" means the following:

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

(2) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products.

(3) "Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal.

(4)~~[(3)]~~ "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080.

(5)~~[(4)]~~ "Approved costs" means:

(a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and

(f) All other costs of a nature comparable to those described above.

(6)[~~(5)~~] "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080.

(7)[~~(6)~~] "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010.

(8)[~~(7)~~] "Bonds" means the revenue bonds, notes, or other debt obligations of the authority authorized to be issued by the authority, eligible companies, or other state agency.

(9)[~~(8)~~] "Commonwealth" means the Commonwealth of Kentucky.

(10)[~~(9)~~] (a) "Economic development project" means and includes:

1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved ***manufacturing or agribusiness*** company, or its affiliate;

2. The present ownership of real estate in a qualified county by the approved ***manufacturing or agribusiness*** company or its affiliate;

3. The acquisition or present ownership of improvements or facilities, as described in paragraph ***(b)***[~~(6)~~] of this subsection, on land which is possessed or is to be possessed by the approved ***manufacturing or agribusiness*** company pursuant to a ground lease having a term of sixty (60) years or more; ***and***

4. The new construction of an electric generation facility.

(b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) or paragraph (b) of this subsection, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention,

installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes***, electric generation,*** or for agribusiness purposes. Pursuant to subparagraph 3. of paragraph (a) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080.

(11)[~~(10)~~] "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing***, electric generation,*** or in agribusiness.

(12)[~~(11)~~] "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter.

(13)[~~(12)~~] "Financing agreement" means any agreement entered into, pursuant to KRS 154.22-010 to 154.22-080, on behalf of the authority or other lenders, or both, and an approved company with respect to an economic development project.

(14)[~~(13)~~] "Inducements" means the assessment and the income tax credits allowed by KRS 154.22-060.

(15)[~~(14)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals.

(16)[~~(15)~~] "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter.

(17)[~~(16)~~] "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080.

(18)[~~(17)~~] "Revenues" shall not be considered state funds.

(19)[~~(18)~~] "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 2. KRS 154.22-020 is amended to read as follows:

(1) The General Assembly hereby finds and declares that the general welfare and material well-being of citizens of the Commonwealth, and particularly those residing in qualified counties, depends in large measure upon the development and growth of industry in the Commonwealth.

(2) The General Assembly hereby finds and declares further that it is in the best interest of the Commonwealth to induce the location of manufacturing facilities***, electric generation,*** and agribusiness operations within the qualified counties of the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs within the qualified counties that but for the inducements to be offered by the authority to approved companies as herein provided would not exist and of creating new sources of tax revenues

for the support of the public services provided by the Commonwealth and qualified counties.

(3) The General Assembly hereby finds and declares further that the authority granted by KRS 154.22-010 to 154.22-070 and the purposes to be accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of manufacturing facilities***, electric generation,*** and agribusiness operations within qualified counties is of paramount importance, mandating that the provisions of KRS 154.22-010 to 154.22-070 be liberally construed and applied in order to advance the public purposes.

Section 3. KRS 154.22-040 is amended to read as follows:

(1) Each year the authority shall under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Department for Employment Services within the Cabinet for Workforce Development, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent twelve (12) consecutive months for which unemployment figures are available, and shall certify those counties as qualified counties. If the authority determines that a county which has previously been certified as a qualified county no longer has an unemployment rate that meets the criteria of this subsection, the authority shall decertify that county. The authority shall not finance any facilities in that county and an approved company shall not be eligible for the incentives offered by KRS 154.22-010 to 154.22-070 unless the financing agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county. ***For economic development projects involving the new construction of electric generation facilities, the authority shall certify every coal producing county as a qualified county. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time.***

(2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) The economic development project shall involve a minimum investment of one hundred thousand dollars ($100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension. No economic development project which will result in the replacement of manufacturing ***or electric generation***

facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:

(a) Rehabilitates a manufacturing ***or electric generation*** facility:

1. Which has not been in operation for a period of ninety (90) or more consecutive days; or

2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;

(b) Replaces a manufacturing ***or electric generation*** facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

(c) Replaces an existing manufacturing ***or electric generation*** facility located in the same qualified county, and the existing manufacturing ***or electric generation*** facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing ***or electric generation*** facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.

(4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval and completion by the eligible company of its bond, loan, or other financing and review thereof by the authority, the authority may by final approval designate an eligible company to be an approved company.

Section 4. KRS 154.22-090 is amended to read as follows:

(1) If the authority gives its preliminary approval designating an eligible company and authorizing the undertaking of an economic development project prior to July 15, 1996, and the authority by final approval approves the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement no later than June 30, 1997, then

the approved company shall not be subject to KRS 154.22-010***(10)***~~[(9)]~~(a)3., and 154.22-050(1)(d), (2)(a)2., and (4), and shall be subject to KRS 154.22-010***(10)***~~[(9)]~~ and 154.22-050(1)(d) and (2)(a)2. as in effect prior to July 15, 1996.

(2) KRS 154.22-070 only applies to those approved companies which enter into financing agreements with the authority after July 15, 1996.

Section 5. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-100, unless the context clearly indicates otherwise:

(1) "Affiliate" means the following:

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation: S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

(2) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;

(3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;

(4) ***"Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;***

(5) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;

(6)[~~(5)~~] "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;

(d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;

(e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

(f) All other costs comparable to those described above;

(7)[~~(6)~~] "Assessment" means the job development assessment fee authorized by this section to KRS 154.28-100;

(8)[~~(7)~~] "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

(9)[~~(8)~~] "Commonwealth" means the Commonwealth of Kentucky;

(10)[~~(9)~~] (a) "Economic development project" or "project" means and includes:

1. The acquisition of ownership in any real estate by the approved ***manufacturing, electric generation, or agribusiness*** company or its affiliate;

2. The present ownership of real estate by the approved ***manufacturing, electric generation, or agribusiness*** company or its affiliate;[~~ or~~]

3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved company pursuant to a ground lease having a term of sixty (60) years or more***; or***

4. The new construction of an electric generation facility in a coal producing county. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time.

(b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) of this subsection, the construction, installation, equipping, and rehabilitating of improvements, including fixtures and equipment directly involved in the manufacturing process, and facilities necessary or desirable for improvement of the real estate shall include: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities or agribusiness operations on the real estate for the use of the approved company or its affiliates for manufacturing or agribusiness operational purposes. Pursuant to paragraphs (a)3. and (b) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-100. An economic development project shall include the equipping of a facility with equipment but, for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-090, only to the extent of ten thousand dollars ($10,000) per job created by and maintained at the economic development project;

(11)[~~(10)~~] "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, trust, or any other entity engaged in manufacturing***, electric generation,*** or agribusiness operations;

(12)[~~(11)~~] "Inducement" means the assessment and the Kentucky income tax credit as set forth in KRS 154.28-090;

(13)[~~(12)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

(14)[~~(13)~~] "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 6. KRS 154.28-015 is amended to read as follows:

The General Assembly hereby finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the development and growth of industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the location of agribusiness***, electric generation,*** or manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs that would not exist if not for the inducements to be offered by the authority to approved companies, and by creating sources of tax revenues for the support of the public services provided by the Commonwealth, and that the authority prescribed by KRS 154.28-015 to 154.28-100, and the purposes to be accomplished under the provisions of KRS 154.28-015 to 154.28-100, are

proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of agribusiness***, electric generation,*** or manufacturing facilities is of paramount importance, mandating that the provisions of KRS 154.28-015 to 154.28-100 be liberally construed and applied in order to advance the public purposes.

Section 7. KRS 154.28-080 is amended to read as follows:

(1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.

(2) The standards for approval of eligible companies and economic development projects shall include, but not be limited to: the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) The economic development project shall involve a minimum investment of one hundred thousand dollars ($100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final resolution authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development projects for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.

(4) No economic development project which will result in the replacement of a manufacturing***, electric generation,*** or agribusiness facility existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that:

(a) Rehabilitates a manufacturing***, electric generation,*** or agribusiness facility:

1. Which has not been in operation for a period of ninety (90) or more consecutive days; or

2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;

(b) Replaces a manufacturing ***or electric generation*** facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

(c) Replaces an existing manufacturing ***or electric generation*** facility located in the same qualified county that cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing ***or electric generation*** facility to be replaced. Any economic development project satisfying the requirements of this subsection shall be eligible only for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing ***or electric generation*** facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the eligible company without the consent of the lessor.

(5) With respect to each eligible company making an application to the authority for inducements, and with respect to these economic development projects described in the application which do not involve an expansion, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and KRS 141.400, the eligible company will not locate its economic development project within the Commonwealth. Upon the review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project.

(6) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company.

(7) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 8. KRS 154.28-090 is amended to read as follows:

(1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) The term of an agreement, which shall commence on the date of the agreement, shall not be longer than the earlier of the following:

1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or

2. Ten (10) years from the activation date of the original agreement.

(b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project

are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.

(c) In consideration for the execution and during the term of the agreement, the approved company shall be permitted either of the following during the term of the agreement:

1. A credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400; or

2. The aggregate assessment withheld by the approved company in each year.

(2) The agreement shall provide that:

(a) 1. The assessments, if applicable, shall not exceed the annual payments of the total financing agreement by the approved company in any year; however, to the extent that the financing agreement annual payments exceed assessments collected in any year, the excess payment may be recouped from assessment collections in succeeding years.

2. If in any fiscal year of the approved company during which the financing agreement is in effect the total assessments collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax withholdings from employees' wages for the remainder of that fiscal year.

(b) The Kentucky income tax credit, in any fiscal year of the approved company, shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project; however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.

(c) The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042.

(d) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(e) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.

(f) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(e) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:

1. Suspend the availability of the income tax credits or job development assessment fees, as applicable;

2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and

3. Pursue any other remedy at law to which it may appear entitled.

(3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.

(4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement which shall be at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, and the approved company's employees of the activation date on which implementation of the inducements authorized in the financing agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of an economic development project under KRS 154.28-010***(10)***~~[(9)]~~ shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company will not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies these requirements; however, the ten (10) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

(5) Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the authority the income tax liability, for the preceding fiscal year of the approved company for which the return was filed, of the approved company with respect to an economic development project receiving inducements under the provisions of KRS 154.28-010 to 154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-010 to 154.28-090 and KRS 141.400.

Section 9. KRS 154.28-120 is amended to read as follows:

(1) If the authority gives its preliminary approval designating an eligible company and authorizing the undertaking of an economic development project prior to July 15, 1996, and the authority by final approval approves the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement not later than June 30, 1997, then the approved company shall not be subject to KRS 154.28-010***(7)***~~[(6)]~~, 154.28-010***(10)***~~[(9)]~~ except to the extent of any reference to a capital lease, 154.28-010***(12)***~~[(11)]~~, 154.28-080(3), 154.28-090, and 154.28-110, and shall be subject to KRS 154.28-010***(10)***~~[(9)]~~, 154.28-080, and 154.28-090, as in effect prior to July 15, 1996.

(2) Subject to those approved companies described in subsection (1) of this section, KRS 154.28-110 shall only apply to those approved companies which enter into financing agreements with the authority after July 15, 1996.

SECTION 10. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The secretary of the Natural Resources and Environmental Protection Cabinet shall facilitate the permitting of coal-fired electric generation plants in the Commonwealth by developing procedures for one (1) stop shopping for environmental permits.

Approved April 5, 2000

CHAPTER 322

(HB 244)

AN ACT relating to a building inspectors training program.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The Board of Housing, Buildings and Construction may establish a building inspectors training program through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The program shall provide training to encourage local governments to establish and improve building code enforcement programs and to encourage all building inspectors to upgrade their skills.

(2) If the board chooses to establish the program authorized in subsection (1) of this section, there shall be created in the Department of Housing, Buildings and Construction, under the Board of Housing, Buildings and Construction, a trust and agency fund to be known as the "Building Inspectors' Financial Incentive Training Program Fund". The fund shall be funded annually with a maximum of one hundred fifty thousand dollars ($150,000) by increasing the department's plan review fees collected for each occupancy classification under KRS 198B.060 by one-half cent ($.005) per calculated square foot. Any funds collected annually in excess of one hundred fifty thousand dollars ($150,000) shall be used solely for the administration of the department's building inspection program. Any unused fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be available only for the purposes specified in this section.

Approved April 6, 2000

CHAPTER 323

(SJR 110)

A JOINT RESOLUTION naming the Hugh E. Spear Memorial Bridge in Cumberland County.

WHEREAS, Hugh E. Spear was born on December 12, 1903, the son of Bal and Mary Branham Spear; and

WHEREAS, Hugh E. Spear was the proud father of two sons: Mayford and Alton Spear, and three daughters: Sylvia Traylor, Juanita Cook, and Mildred Brammer; and

WHEREAS, Hugh E. Spear was an active force in the political and civic history of Cumberland County for the greater part of the twentieth century; and

WHEREAS, Hugh E. Spear served the citizens of Cumberland County as County Judge; and

WHEREAS, Hugh E. Spear served the citizens of the Commonwealth under the administration of Governor A.B. "Happy" Chandler; and

WHEREAS, Hugh E. Spear left this earth on February 4, 1987, with his place in the history of Cumberland County secure; and

WHEREAS, It is fitting and proper that Hugh E. Spear be remembered and honored by the citizens of Cumberland County and of this Commonwealth;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name the bridge on Kentucky Route 61 over the Cumberland River in Cumberland County in memory of Hugh E. Spear.

Section 2. The Transportation Cabinet shall erect signs within thirty (30) days of the effective date of this Resolution at each approach to the bridge on Kentucky Route 61 over the Cumberland River in Cumberland County that read "The Hugh E. Spear Memorial Bridge."

Approved April 6, 2000

CHAPTER 324

(SCR 88)

A CONCURRENT RESOLUTION directing the Interim Joint Committee on Education to study teacher compensation and benefits.

WHEREAS, the Commonwealth of Kentucky has a commitment to improve the education of its citizens to allow each of them to be competitive in a global economy; and

WHEREAS, in spite of all of the intense effort to change and improve the public education system since 1990, Kentucky's teachers are paid approximately $3,000 less than the average teacher earns in the seven surrounding states and approximately $5,000 less than the national average; and

WHEREAS, the Task Force on Teacher Quality found that though significant progress has been made in raising Kentucky's teachers' salaries since 1990, continued efforts to improve base

teachers' salaries are needed to be competitive with surrounding states and to move up in the national rankings; and

WHEREAS, the Task Force on Teacher Quality also found that compensation and benefits beyond the maintenance of a base salary are needed to recognize and reward teachers who stay in the classroom and perform at high levels, or those who assume additional duties or hard-to-fill assignments; and

WHEREAS, there is a problem with providing adequate, affordable health insurance for teachers and other public employees, there is a need to study methods of providing adequate and affordable health insurance for teachers, public employees, and retirees including self-insuring teachers, public employees, and retirees; and

WHEREAS, additional study and funding are needed to implement these and other recommendations that will ensure that Kentucky's teachers are rewarded adequately;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. The Interim Joint Committee on Education through one of its subcommittees is directed to study the issues related to teacher compensation and benefits and to develop recommendations so that by 2004 Kentucky's teachers' salaries and benefits shall mirror the national average.

Section 2. The Interim Joint Committee on Education shall be authorized to contract for consultant services. The Interim Joint Committee on Education and its subcommittee shall report the findings and recommendations, with enabling legislation, to the Legislative Research Commission no later than September 1, 2001.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the identified issues to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 6, 2000

CHAPTER 325

(SB 379)

AN ACT relating to senatorial districts and declaring an emergency.

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

Section 1. KRS 5.107 is amended to read as follows:

The Seventh Senatorial District shall consist of the following territory:

				---CENSUS---		
COUNTY	PREC	SECT	NAME	TRACT	BLCK	SECT
BULLITT						
JEFFERSON	B112		PRECINCT 112 29 DISTRICT			
JEFFERSON	B113		PRECINCT 113 29 DISTRICT			

JEFFERSON	B114	PRECINCT 114 29 DISTRICT		
JEFFERSON	B115	PRECINCT 115 29 DISTRICT		
JEFFERSON	B116	PRECINCT 116 29 DISTRICT		
JEFFERSON	B117	PRECINCT 117 29 DISTRICT		
JEFFERSON	B119	PRECINCT 119 29 DISTRICT		
JEFFERSON	B120	PRECINCT 120 29 DISTRICT		
JEFFERSON	B121	PRECINCT 121 29 DISTRICT		
JEFFERSON	B123	PRECINCT 123 29 DISTRICT		
JEFFERSON	I126	PRECINCT 126 37 DISTRICT		
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***101***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***102***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***103***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***104***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***105***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***106***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***107***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***108***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***109***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***110***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***111***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***112***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***113***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***114***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***201***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***202***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***203***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***204***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***205***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***206***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***207***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***208***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***209***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***210***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***211***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***212***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***216***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***217***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***218***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***219***

JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***220***
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***303***
~~[JEFFERSON~~	~~J123~~	~~PRECINCT 123 38 DISTRICT]~~		
JEFFERSON	J124	PRECINCT 124 38 DISTRICT		
JEFFERSON	P106	PRECINCT 106 45 DISTRICT		
JEFFERSON	P110	PRECINCT 110 45 DISTRICT		
JEFFERSON	P111	PRECINCT 111 45 DISTRICT		
JEFFERSON	P112	PRECINCT 112 45 DISTRICT		
JEFFERSON	P113	PRECINCT 113 45 DISTRICT		
JEFFERSON	P114	PRECINCT 114 45 DISTRICT		
JEFFERSON	P115	PRECINCT 115 45 DISTRICT		
JEFFERSON	P116	PRECINCT 116 45 DISTRICT		
JEFFERSON	Q105	PRECINCT 105 46 DISTRICT		
JEFFERSON	Q113	PRECINCT 113 46 DISTRICT		
JEFFERSON	Q114	PRECINCT 114 46 DISTRICT		
JEFFERSON	Q117	PRECINCT 117 46 DISTRICT		
JEFFERSON	Q118	PRECINCT 118 46 DISTRICT		
JEFFERSON	Q119	PRECINCT 119 46 DISTRICT		
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT		
JEFFERSON	Q121	PRECINCT 121 46 DISTRICT		

Section 2. KRS 5.137 is amended to read as follows:

The Thirty-seventh Senatorial District shall consist of the following territory:

				---CENSUS---		
COUNTY	PREC	SECT	NAME	TRACT	BLCK	SECT
JEFFERSON	A101		PRECINCT 101 28 DISTRICT			
JEFFERSON	A103		PRECINCT 103 28 DISTRICT			
JEFFERSON	A104		PRECINCT 104 28 DISTRICT			
JEFFERSON	A105		PRECINCT 105 28 DISTRICT			
JEFFERSON	A107		PRECINCT 107 28 DISTRICT			
JEFFERSON	A108		PRECINCT 108 28 DISTRICT			
JEFFERSON	A111		PRECINCT 111 28 DISTRICT			
JEFFERSON	A113		PRECINCT 113 28 DISTRICT			
JEFFERSON	A114		PRECINCT 114 28 DISTRICT			
JEFFERSON	A115		PRECINCT 115 28 DISTRICT			
JEFFERSON	A117		PRECINCT 117 28 DISTRICT			
JEFFERSON	A118		PRECINCT 118 28 DISTRICT			
JEFFERSON	A119		PRECINCT 119 28 DISTRICT			

JEFFERSON	B101	PRECINCT 101 29 DISTRICT			
JEFFERSON	B102	PRECINCT 102 29 DISTRICT			
JEFFERSON	B103	PRECINCT 103 29 DISTRICT			
JEFFERSON	B105	PRECINCT 105 29 DISTRICT			
JEFFERSON	B106	PRECINCT 106 29 DISTRICT			
JEFFERSON	B107	PRECINCT 107 29 DISTRICT			
JEFFERSON	B108	PRECINCT 108 29 DISTRICT			
JEFFERSON	B109	PRECINCT 109 29 DISTRICT			
JEFFERSON	B110	PRECINCT 110 29 DISTRICT			
JEFFERSON	B111	PRECINCT 111 29 DISTRICT			
JEFFERSON	I122	PRECINCT 122 37 DISTRICT			
JEFFERSON	I123	PRECINCT 123 37 DISTRICT			
JEFFERSON	I124	PRECINCT 124 37 DISTRICT			
JEFFERSON	I125	PRECINCT 125 37 DISTRICT			
JEFFERSON	J110	PRECINCT 110 38 DISTRICT			
JEFFERSON	J117	PRECINCT 117 38 DISTRICT			
JEFFERSON	J120	PRECINCT 120 38 DISTRICT			
JEFFERSON	J122	PRECINCT 122 38 DISTRICT			
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***301***	
JEFFERSON	***J123***	***PRECINCT 123 38 DISTRICT***	***2003***	***302***	***0201***
JEFFERSON	J126	PRECINCT 126 38 DISTRICT			
JEFFERSON	K118	PRECINCT 118 40 DISTRICT			
JEFFERSON	K119	PRECINCT 119 40 DISTRICT			
JEFFERSON	K120	PRECINCT 120 40 DISTRICT			
JEFFERSON	K123	PRECINCT 123 40 DISTRICT			
JEFFERSON	O105	PRECINCT 105 44 DISTRICT			
JEFFERSON	O107	PRECINCT 107 44 DISTRICT			
JEFFERSON	O109	PRECINCT 109 44 DISTRICT			
JEFFERSON	O111	PRECINCT 111 44 DISTRICT			
JEFFERSON	O112	PRECINCT 112 44 DISTRICT			
JEFFERSON	O113	PRECINCT 113 44 DISTRICT			
JEFFERSON	O114	PRECINCT 114 44 DISTRICT			
JEFFERSON	O115	PRECINCT 115 44 DISTRICT			
JEFFERSON	O117	PRECINCT 117 44 DISTRICT			
JEFFERSON	O119	PRECINCT 119 44 DISTRICT			
JEFFERSON	O120	PRECINCT 120 44 DISTRICT			
JEFFERSON	O121	PRECINCT 121 44 DISTRICT			
JEFFERSON	O122	PRECINCT 122 44 DISTRICT			

JEFFERSON	O123	PRECINCT 123 44 DISTRICT
JEFFERSON	O124	PRECINCT 124 44 DISTRICT
JEFFERSON	O126	PRECINCT 126 44 DISTRICT
JEFFERSON	P104	PRECINCT 104 45 DISTRICT
JEFFERSON	P105	PRECINCT 105 45 DISTRICT

Section 3. Whereas, under KRS 117.056, county boards of election may not change election precinct boundaries from July 15, 2000 until completion of state legislative and congressional redistricting, an emergency is declared to exist, and this Act shall take effect on June 15, 2000.

Approved April 6, 2000

CHAPTER 326

(SB 372)

AN ACT relating to a pilot program for tax increment financing in counties containing a city of the first class.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the context otherwise requires:

(1) "Agency" means an urban renewal and community development agency of a taxing district located within a county containing a city of the first class, established under KRS Chapter 99; a development authority located within a county, containing a city of the first class established under KRS Chapter 99; a nonprofit corporation located within a county containing a city of the first class established under KRS Chapter 58; or a designated department, division, or office of a city of the first class or a county containing a city of the first class;

(2) "Development area" means an area no less than one (1) square mile, nor more than six (6) square miles, designated in need of public improvements by a local or state government in a county containing a city of the first class, a project area as defined in KRS 99.615, or a public project as defined in KRS 58.010 in a county containing a city of the first class. "Development area" includes an existing economic development asset;

(3) "Increment" means that amount of money received by any taxing district or the state that is determined by subtracting the amount of old revenues from the amount of new revenues in any year for which a taxing district or the state and an agency have agreed upon under the terms of a contract of release or a grant contract;

(4) "Local government" means a county containing a city of the first class;

(5) "New revenues" means the revenues received by any taxing district or the state from a development area in any year after the establishment of the development area;

(6) "Old revenues" means the amount of revenues received by any taxing district or the state from a development area in the last year prior to the establishment of the development area;

(7) "Project" means any urban renewal, redevelopment, or public project undertaken in accordance with the provisions of Sections 1 to 5 of this Act, any project undertaken in accordance with KRS 99.610 to 99.680, or any project undertaken in accordance with the provisions of KRS Chapter 58;

(8) "Release" or "contract of release" or "grant contract" means that agreement by which a taxing district or the state permits the payment to an agency of a portion of increments or an amount equal to a portion of increments received by it in return for the benefits accrued to the taxing district or the state by reason of a project undertaken by an agency in a development area; and

(9) "Taxing district" means a county containing a city of the first class or a city of the first class that encompasses all or part of a development area, or the state but does not mean a school district.

(10) "Pilot program" means a tax increment financing program or a grant program created by an agency within a county containing a city of the first class which shall exist for a period of twenty (20) years after which time it shall continue only after reauthorization by the General Assembly.

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) It is found and declared that public improvements, and publicly promoted private improvements, in any development area that result in the increase in the value of property located in the development area or result in increased employment within the development area serve a public purpose for each taxing district possessing the authority, directly or indirectly, to impose ad valorem taxes, sales taxes, income taxes, or occupational license fees in the development area, and for the state with regards to its revenues from ad valorem taxes, sales taxes, and income taxes. The increment in revenues derived by each taxing district and the state from the development area is found and declared to be one of the benefits derived by each taxing district and the state from any local development project or public project undertaken by the agency; and

(2) It is found that the use of tax increment financing or a grant program based upon the use of increment financing as tax revenues has proved to be successful and of great benefit to areas in need of revitalization and development in other parts of the country; therefore, the development of a pilot program within the Commonwealth to test the usefulness of increment financing to assist local governments in restoring and revitalizing their communities is declared to be a most worthy public purpose.

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) A county containing a city of the first class or a city of the first class may establish a development area for the purpose of creating a pilot program to utilize tax increment financing or a grant program based upon the increment in state tax revenues for the redevelopment and revitalization of these development areas within their communities.

(2) A development area in a county containing a city of the first class shall be located within ten (10) miles of the central business district of the largest city within the county and shall be within one (1) mile of one (1) or more economic development assets having employers, with at least one thousand (1,000) employees, who will leverage and promote investment in the zone.

(3) A development area in a county containing a city of the first class shall have adequate roads, sewers, water, rail service, and an interstate highway interchange directly available.

(4) At least fifty percent (50%) of a development area in a county containing a city of the first class, excluding roads, utility easements, and other infrastructure-related improvements, shall be composed of land that is a brownfield site or other land compatible for industrial or commercial uses to permit and facilitate redevelopment and reuse of land in the development area compatible with the adjacent economic development assets.

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) In connection with the establishment of any development area, an agency may enter into contracts with one (1) or more taxing districts for the release to the agency of increments expected to be derived by a taxing district within a development area with an existing development asset as leveraged in part by the undertaking of a project.

(2) No contract shall require the release of less than fifty percent (50%) of the increments, or more than ninety-five percent (95%) of the increments where the revenue is derived solely from ad valorem taxation or solely from occupational license fees, or more than eighty percent (80%) of the increments where the revenue is derived from ad valorem taxes and occupational license fees.

(3) An agency may enter into a contract with the state, acting by and through the Governor, for an annual grant to the agency in an amount equal to not less than fifty percent (50%) nor more than eighty percent (80%) of the increment in ad valorem, sales, and income taxes derived by the state within the development area with an existing economic development asset as leveraged in part by the undertaking of a project.

(4) Any amount derived by the agency under the terms of a release shall be used solely for the purposes of the project and in the development area.

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) Each taxing district is authorized to execute a contract of release with any agency in acknowledgment of benefits to be derived by it within the development area with an existing economic development asset as leveraged in part by the undertaking of a project, and in order to promote the public purposes of the taxing district.

(2) Any contract signed for the release of increments shall be made on the basis of automatic year-to-year renewals, with the option to discontinue upon sixty (60) days' notice before the end of any annual termination date of the contract.

(3) The state, acting by and through the Governor, is authorized to execute a grant contract with any agency in acknowledgment of benefits to be derived by it with the development

area with an existing economic development asset as leveraged in part by the undertaking of a project, and in order to promote the public purpose of the state.

(4) Any grant contract signed for an amount equal to the increment derived from the development area shall be made on the basis of automatic year-to-year renewals, with the option to discontinue upon sixty (60) days' notice before the end of any annual termination date of the contract.

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Any agency, other than a county, city, urban-county, or charter county government, that enters into a contract with any taxing district for the release of any increments that may arise during the period of a contract of release shall forthwith notify the official charged with the collecting of taxes for the property in the development area of the execution of a contract of release, and the official charged with the collection of taxes shall in each year a contract of release is in effect determine the amount of the increment that is the subject of the contract of release for division between the taxing district and the agency; and, upon the basis of the agreement made between the taxing district and the agency, the official shall divide and distribute the funds derived from the area between the taxing district and the agency. Any local government that has designated an agency as having oversight of a designated development area shall annually issue a release to the agency of those increments created from the taxes collected on properties within the development area. All increments released to an agency of a local government shall be used solely for the purposes of projects in the development area.

Section 7. The following KRS sections are repealed:

99.751 Definitions for KRS 99.756 to 99.771.

99.756 Purpose.

99.761 Contracts for release of increments to agency by taxing districts.

99.766 Automatic renewals of contracts of release.

99.771 Notification to tax collector -- Distribution of funds.

Approved April 6, 2000

CHAPTER 327

(SB 336)

AN ACT relating to intangible property taxes.

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

Section 1. KRS 132.020 is amended to read as follows:

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created

through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, ~~[shares of stock,]~~notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81, fifteen cents ($0.15) upon machinery actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) (a) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:

1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;

2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;

3. ~~[Shares of capital stock of any affiliated company as defined in subsection (3) of this section and]~~Notes, bonds, accounts receivable, and all other intercompany intangible personal property due from ***any affiliated***~~[the]~~ company; and

4. Tobacco base allotments.

(b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand,~~[shares of stock,]~~ notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or

the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570, except that four hundred thousand dollars ($400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal-related issues.

(10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business, which, on or after January 1, 1999, includes

machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(11) An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

(12) An ad valorem tax for state purposes of one and one-half cents ($0.015) per one hundred dollars ($100) of assessed value shall be paid on aircraft not used in the business of transporting persons or property for compensation or hire.

(13) An ad valorem tax for state purposes of one and one-half cents ($0.015) per one hundred dollars ($100) of assessed value shall be paid on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes.

Section 2. KRS 132.060 is amended to read as follows:

(1) Every broker maintaining an office or place of business in this state for the conduct of the business of buying or selling~~[stocks,]~~ bonds or other securities***, excluding stocks and mutual funds,*** for customers in margin transactions shall report to the Revenue Cabinet as of January 1 of each year, the aggregate amount, with an accurate description and the market value, of all such securities then held or carried by such broker for each office or place of business in the state for resident customers, which report shall be filed with the cabinet on or before March 1 of each year.

(2) If the broker has doubt as to whether or not a customer is a resident of this state, he may, on or before making the required report, call upon the customer to submit an affidavit upon a form to be prescribed by the cabinet, stating the facts relied upon to establish his nonresidence. The broker may then report to the cabinet the name and post office address of such customer and the information as to securities held or carried for him, and file therewith the customer's affidavit. The broker shall then be relieved from making any further report and from collecting or paying any taxes for the customer.

(3) If the customer fails or refuses to furnish the affidavit required by the broker, the broker shall report and pay the tax for the customer, who shall then have no claim against the broker because of the payment of the tax charged to the customer's account.

Section 3. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

(1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operation;

(2) Livestock, ratite birds, and domestic fowl;

(3) Capital stock of savings and loan associations;

(4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;

(5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;

(6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents ($0.045) on each one hundred dollars ($100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

(7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured~~[, and shares of stock]~~. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;

(8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

(9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;

(10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;

(11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;

(12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;

(13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;

(14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to

the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;

(16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095;

(17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;

(18) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;

(19) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs; and

(20) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs.

Section 4. KRS 132.220 is amended to read as follows:

(1) Deposits belonging to a resident of Kentucky in any financial institution, as defined in KRS 136.500, and unmanufactured tobacco insofar as it is subject to taxation by KRS 132.190 and 132.200, shall be listed, assessed, and valued as of January 1 of each year. Money in hand shall be listed, assessed, and valued as of January 1 of each year.~~[Shares of stock,]~~ Notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and all interest in the property, unless otherwise provided by law, shall be listed, assessed, and valued as of the beginning of business on January 1 of each year. All other taxable property and all interest in other taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year. It shall be the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located between January 1 and March 1 in each year, except as otherwise provided by law. It shall be the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in this state to list or have listed the property with the property valuation administrator of the county of taxable situs or with the cabinet between January 1 and May 15 in each year, except as otherwise prescribed by law. The filing date for an individual's intangible property tax return may be extended to the extended federal income filing date approved by the Internal Revenue Service for that individual. If an individual extends the filing date for the intangible return, no discount shall be allowed upon the payment of the intangible tax. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

(2) Any taxpayer may list his property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the

provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the cabinet, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.

(3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his employee, or employees of the cabinet may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.

(4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.

(5) Real property tax roll entries for which tax bills have not been collected at the expiration of the one (1) year tolling period provided for in KRS 134.470, and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated. The property valuation administrator shall keep a record of these exonerations, which shall be open under the provisions of KRS 61.870 to 61.884. If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290. Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.

(6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the cabinet within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the cabinet. The cabinet shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.

(7) Each property valuation administrator, under the direction of the cabinet, shall review annually all real property listed with him under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property

valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

Section 5. KRS 132.240 is amended to read as follows:

Individuals or corporations listing property for taxation with the property valuation administrator or the county board of supervisors shall reveal the face value of all intangibles listed, except~~[stocks,]~~ cash or bank deposits, on the form prescribed by the Revenue Cabinet for listing intangible property. A reduction of fifty cents ($0.50) shall be made from the property valuation administrator's compensation for each list he accepts upon which there is an omission to reveal the face value of any intangible property listed, except~~[stocks,]~~ cash or bank deposits.

Section 6. KRS 132.360 is amended to read as follows:

(1) Any assessment of accounts receivable, notes,~~[stocks]~~ or bonds or other intangible or tangible personal property that were listed with the property valuation administrator or with the Revenue Cabinet as provided by KRS 132.220 may be reopened by the Revenue Cabinet within five (5) years after the date as of which they were assessed, unless the assessed value thereof is the face value in the case of accounts receivable and notes or the quoted value in the case of~~[stocks and]~~ bonds, or has been established by a court of competent jurisdiction. If upon reopening the assessment the cabinet finds that the assessment was less than the fair cash value and should be increased, it shall give notice thereof to the taxpayer, who may within thirty (30) days thereafter protest to the cabinet and offer evidence to show that no increase should be made. After the cabinet has disposed of the protest, the taxpayer may appeal from any such additional assessment as provided by KRS 131.110 and 131.340.

(2) Upon such assessment becoming final the cabinet shall certify the amount due to the taxpayer. The tax bill shall be handled and collected as an omitted tax bill, and the additional tax shall be subject to the same penalties and interest as the tax on omitted property voluntarily listed.

Section 7. KRS 132.520 is amended to read as follows:

(1) Every bank, trust company, combined bank and trust company, and real estate title insurance company doing business in this state shall, by February 1 of each year, unless the time is extended by the Revenue Cabinet, file with the cabinet a report sworn to by its president, vice president, treasurer, or cashier, showing as of January 1 of each year:

(a) A list of the notes, bonds, or other evidences of indebtedness secured by mortgage or other recorded instrument standing in its name of record that it has assigned or transferred during the preceding year without making a transfer of record, the amount of each, and the name and address of the person to whom each was assigned. Where the name and address of the transferee holding the securities on January 1 of any year is given, any previous transfers of the securities during that year need not be furnished.

(b) A list of the mortgages standing in its name on January 1 that were assigned of record to it during the preceding year with its knowledge and consent, where it has not become the absolute owner of the debt secured thereby, showing the amount of each such mortgage and the name and address of each assignor. Any mortgage assigned to it during any year and paid and released of record prior to January 1 need not be included in the report.

(c) A list of all debenture bonds, collateral trust bonds, notes, certificates, and other evidences of indebtedness issued, assigned, or transferred by it during the preceding year that are secured by and represent the beneficial interest in ~~[stocks,]~~lien notes, bonds, or mortgages standing in its name of record, the amount of each such evidence of indebtedness, and the name and address of the person to whom each was assigned or transferred. Where the name and address of the transferee holding the securities on January 1 of any year is given, any previous transfer or assignment of the securities need not be furnished.

(d) A list of all~~[stocks,]~~ lien notes, bonds, mortgages, certificates, and other evidences of indebtedness that it has assigned or transferred to any person as security for the issuing of any debenture or collateral trust bonds, the amount of each, and the name and address of the person to whom each was assigned.

(2) The reports required under paragraphs (a) and (b) of subsection (1) of this section need not include sales or pledges from one (1) bank, trust company, or combined bank and trust company to another bank or company, or notes or obligations secured by any recorded instrument executed to a bank, trust company, or a combined bank and trust company in which the obligations secured by the instrument are divided among estates or accounts in charge of the bank or company and regularly and properly entered on its records. The provisions of this section do not apply to mortgages made by corporations to trustees to secure bond issues made by them in the regular course of business, except as provided in paragraph (c) of subsection (1) of this section.

(3) The information thus obtained shall be communicated by the cabinet to the property valuation administrator and the board of assessment appeals of the respective counties in which the true owners of the debts reside.

Section 8. KRS 136.030 is amended to read as follows:

(1) ~~[(a) The individual stockholders of a corporation shall not be required to list their shares for ad valorem taxation so long as the corporation pays taxes to the State of Kentucky on at least seventy-five percent (75%) of its total property, wherever located. Bonds and obligations of the United States of America and its possessions and bonds and obligations of the State of Kentucky, its instrumentalities, and its political subdivisions and their instrumentalities shall not be considered in the computation of the total property of the corporation, wherever located, nor in the computation of the amount of property upon which the corporation pays ad valorem taxes to the State of Kentucky. In order to obtain this exemption, the stockholder shall furnish satisfactory proof to the Revenue Cabinet that at least seventy-five percent (75%) of the total property of the corporation as hereinabove specified is taxed in the State of Kentucky.~~

~~(b) A corporation which has its "principal office", as defined in KRS 271B.1-400, in this state during the taxable period may elect, in order to satisfy the provisions of paragraph (a) of this subsection, to include in the computation of the total property of the corporation, wherever located, and in the computation of the amount of property upon which the corporation pays ad valorem taxes to the State of Kentucky, out-of-state business property formerly owned by a subsidiary corporation, the shares of which had been treated as stock of an "affiliated company," as defined in KRS 132.020, held by the electing corporation, when the electing corporation pays an ad~~

~~valorem tax for state purposes for the taxable period on the value of the out-of-state business property at the rate provided for in KRS 132.020(2).~~

~~(2)~~]Every corporation organized under the laws of this state, or doing business in this state,[~~whose stock is liable to assessment and taxation under subsection (1) of this section,~~] and domestic life insurance companies, shall by February 15, of each year make a true and correct report to the Revenue Cabinet signed by its president, secretary, treasurer, or other chief officer, giving the names and addresses of residents of this state who hold its[~~shares of stock and~~] outstanding bonds as of January 1 previous thereto, and also the transfer of any of its[~~stocks or~~] bonds by residents of this state to nonresidents within thirty (30) days previous to January 1.

(2)[~~(3)~~] Every broker-dealer or his agent doing business in this state pursuant to KRS Chapter 292, shall on or before March 1, each year, as of the preceding January 1, furnish the Revenue Cabinet the following information:

(a) Name and address of all Kentucky residents whose stocks, bonds, or other securities***, excluding stocks and mutual funds,*** are held in a name other than that of the actual owner and which are in the possession of or subject to the control of such broker-dealer or his agent, for the benefit of such actual owner. This shall be construed to include all accounts fully paid[~~for if the stock certificates have not been sent to the Kentucky residents~~];

(b) Name of company by whom[~~stocks,~~] bonds[~~, options, index futures,~~] or other securities were issued;

(c) [~~Number of shares and type of each stock,~~]Interest rate, maturity date, par value, and number of bonds held, and sufficient information to measure the quantity of other securities; and

(d) Market value as of the previous January 1.

[~~(4) For purposes of determining the tax status, under subsection (1) of this section, of the shareholders of a holding company with subsidiaries subject to the provisions of KRS 136.120(1), the property of the subsidiaries subject to the provisions of KRS 136.120(1) shall be considered to be property of the holding company, and ad valorem taxes paid to the State of Kentucky by the subsidiaries subject to the provisions of KRS 136.120(1) shall be considered to be paid by the holding company.~~]

SECTION 9. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

Shares of stock shall be exempt from state and local ad valorem tax.

Approved April 6, 2000

CHAPTER 328

(SB 326)

AN ACT relating to court fees and costs.

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

Section 1. KRS 23A.205 is amended to read as follows:

(1) Court costs for a criminal case in the Circuit Court shall be ***eighty-two***~~[seventy-five]~~ dollars ***($82)***~~[($75)]~~, which shall include the fee mandated in KRS 346.185.

(2) Except as provided in KRS 346.185, taxation of costs against a defendant, upon conviction, may be probated or suspended at the discretion of the court.

(3) Additional fees shall be charged in Circuit Court criminal matters as follows:

(a) Preparing a certification $1.00

(b) Preparing a copy of a document (per page) $0.15

(4) The additional fees required by subsection (3) of this section shall be paid to the clerk at the time the service is requested.

(5) The circuit clerk shall monthly pay ***twelve***~~[five]~~ dollars ***($12)***~~[($5)]~~ from each court cost collected pursuant to subsection (1) of this section to the sheriff for ***the payment of bailiffs for court security***~~[use by the sheriff for providing security services and related activities to the court]~~ as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 2. KRS 24A.175 is amended to read as follows:

(1) Court costs for a criminal case in the District Court shall be:

(a) For an offense for which prepayment is permitted under KRS 189.394, 431.451, or 431.452 and for which prepayment has been made prior to trial as required by law .... ***$49.00***~~[$42.00]~~

(b) For an offense for which prepayment is not permitted or has not been made ..... ***$74.00***~~[$67.00]~~

(c) Court costs designated in paragraph (b) of this subsection shall include the fee mandated by KRS 346.185.

(2) There shall be no court costs for a parking citation when:

(a) The fine is paid to the clerk before the trial date in the same manner as provided for speeding citations under KRS 189.394(3); and

(b) The citation does not involve parking in a fire lane or blocking the traveled portion of the highway.

(3) Additional costs shall be assessed in District Court criminal matters as follows:

(a) Preparing an attestation $0.50

(b) Preparing a certification $1.00

(c) Preparing a copy of a document (per page) $0.25

(4) Taxation of costs against a defendant, upon conviction, including persons sentenced to state traffic school as provided under KRS 186.574, shall be mandatory and shall not be probated or suspended.

(5) The circuit clerk shall, at the time fines and costs are paid over to the state, pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this section to the county

treasurer for use by the fiscal court for the sole purpose of defraying the costs of operation of the county jail and the transportation of prisoners and shall include among his reports to the Administrative Office of the Courts the amounts paid to the county.

(6) The circuit clerk shall, at the time fines and costs are paid over to the state, pay ten dollars ($10) from each court cost collected pursuant to subsection (1) of this section to the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority pursuant to KRS 441.625 to 441.695.

(7) The circuit clerk shall monthly pay ***twelve***~~[five]~~ dollars ***($12)***~~[($5)]~~ from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 3. KRS 64.092 is amended to read as follows:

Compensation of sheriffs and other law enforcement officers or agencies for attending court shall be as follows:

(1) Compensation shall be provided only for the actual time for which the sheriff or other officer is ordered to be physically present in the courtroom or is ordered to be physically present to discharge a duty ordered by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate.

(2) Compensation shall not be provided for more than one (1) sheriff or other officer per courtroom unless the need for additional personnel is certified in writing by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate, and the utilization of additional personnel is approved by the Chief Justice, or his designee. In the event of an emergency of such nature precluding contacting the Chief Justice or his designee, the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals may authorize such assignment of additional personnel for a period not to exceed twenty-four (24) hours.

(3) Where a single sheriff or other law enforcement officer serves more than one (1) court or courtroom during a single day, he shall be paid as if he had served only one (1) courtroom during that day. Dual compensation for service during a single day shall not be permitted.

(4) Time, for compensation purposes, shall be computed as the actual time spent in the courtroom pursuant to court direction or order and the actual time spent in other service to the court as directed or ordered by the appropriate judge.

(5) Time spent in court service by a sheriff or other law enforcement officer shall be certified by the judge of the court which the officer attended and by the Chief Judge of the Circuit Court, if the service was to the Circuit Court, or by the Chief Judge of the District Court, if the service was to the District Court.

(6) The sheriff or other law enforcement officer serving a Circuit or District Court shall be compensated at the rate of eight dollars ($8) per hour of service. If service is for a part of an hour, then compensation for such service shall be prorated for the actual number of minutes' service within a given hour.

(7) The sheriff shall receive ***twelve***~~[five]~~ dollars ***($12)***~~[($5)]~~ from each court cost collected pursuant to KRS 23A.205, 23A.215, 24A.175, and 24A.180 to help defray the cost of providing security services and related activities to the court. The moneys received by the sheriff under this subsection are authorized official expenses to be considered operating expenses of the sheriff's office and shall not be considered as part of his compensation.

Approved April 6, 2000

CHAPTER 329

(SB 216)

AN ACT relating to the natural history of Kentucky.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that the natural heritage of the Commonwealth is unique and plays a pivotal role in the economy of the state. As the state competes in an expanding global marketplace, this unique heritage must be recognized for its economic importance. In addition, the General Assembly finds that Kentuckians have a deep, personal commitment to a responsible stewardship of the land and water in order that future Kentuckians may benefit from the state's natural heritage. Upon these findings, the General Assembly declares that the purposes of Sections 1 to 9 of this Act are to:

(1) Establish a natural history museum to showcase the natural heritage of the state;

(2) Provide a focal point for gathering resources to educate Kentuckians about the value and uniqueness of the state's natural heritage and to illustrate the historical human interactions with nature;

(3) Establish a database of information on the state's natural heritage;

(4) Create a repository of historical and contemporary specimens of the state's flora, fauna, fossils, minerals, archeological remains, and other natural features;

(5) Prevent the loss of specimens of Kentucky's natural heritage to other states; and

(6) Complement without duplicating the inventory duties of existing state agencies.

SECTION 2. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) To achieve the purposes of Sections 1 to 9 of this Act, the Kentucky Natural History Museum is created. The museum shall serve Kentuckians as a focal point of educational resources to:

(a) Support teaching the natural sciences and anthropology in Kentucky and to educate the public about the unique and diverse natural history of the Commonwealth;

(b) Encourage the conservation of the state's natural resources;

(c) Create a stable repository for scientifically valuable and irreplaceable biological, geological, and archeological specimens; and

(d) Encourage the repatriation and preservation of Kentucky specimens that have been or may be sent outside the state because those specimens cannot be financially supported by their owners.

(2) The museum shall be developed and administered by a board of directors comprised of the following:

(a) The director of the Kentucky Geological Survey;

(b) The director of the Kentucky State Nature Preserves Commission;

(c) The executive director of the Kentucky Heritage Council;

(d) The director of the Kentucky Historical Society;

(e) The commissioner of the Kentucky Department of Fish and Wildlife Resources; and

(f) Two (2) members representing the Kentucky Academy of Science, one (1) each from the disciplines of biology and anthropology, who shall be appointed by the Governor from a list of four (4) nominees, two (2) from each discipline, submitted by the Kentucky Academy of Science.

(3) The director of the Kentucky Natural History Museum shall serve as an ex officio member of the board of directors, be counted for purposes of establishing a quorum for conducting business, and be entitled to participate in deliberations of the board, but shall not be entitled to vote when official actions are taken by the board.

(4) The first chair of the Kentucky Natural History Museum Board of Directors shall be the director of the Kentucky Historical Society, who shall call the first meeting of the board. At the first meeting, the board shall elect a chair. Each chair elected by the board shall serve a single term of three (3) years.

(5) The Kentucky Academy of Science's appointees shall serve three (3) year terms, and they may be reappointed for a second term.

(6) Nominees for appointment to the board shall have resided in Kentucky for at least one (1) year immediately prior to their consideration for appointment.

(7) The board may request the Governor to replace an appointed member who fails to attend three (3) consecutive board meetings.

(8) The appointed members of the board shall serve without pay but shall be paid for expenses directly related to attending board meetings and to performing board authorized activities.

(9) The board shall meet at least four (4) times a year.

SECTION 3. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) The board of directors of the Kentucky Natural History Museum shall establish the Kentucky Natural History Museum. The board shall implement Sections 1 to 9 of this Act to the extent practical prior to operation of the museum. Working to achieve the public purposes that are the goals of implementation of Sections 1 to 9 of this Act shall not be dependent on the existence and operation of the museum in a physical place.

(2) The board shall be administratively linked to the Education, Arts, and Humanities Cabinet.

(3) To accomplish the purposes of Sections 1 to 9 of this Act, the board is authorized to:

(a) Acquire and hold property by deed, gift, devise, bequest, lease, exchange, purchase, or transfer;

(b) Plan for, develop, construct, and maintain buildings;

(c) Enter into agreements with state, federal, or local agencies;

(d) Employ and contract with individuals, corporations, or other business entities to accomplish the purposes of Sections 1 to 9 of this Act;

(e) Accept and administer appropriations, gifts, grants, devises, and bequests of money, securities, or other items of value; and

(f) Carry out any other functions necessary to accomplish the purposes of Sections 1 to 9 of this Act.

(4) To accomplish the purposes of Sections 1 to 9 of this Act, the board may provide and administer grants to public and private entities.

SECTION 4. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

The board shall hire a director to administer the Kentucky Natural History Museum and to assist the board in implementing Sections 1 to 9 of this Act. The board shall select as director a candidate who has a strong background in the natural sciences, demonstrated management skills, and knowledge of Kentucky's natural history. The director shall have at a minimum a master's degree in the natural sciences or anthropology and five (5) years of experience in the educational, research, or exhibit design work of a natural history museum or five (5) years of experience as a curator of significant archeological, biological, or geological collections. The director shall serve at the pleasure of the board. The board may hire the director prior to the development of the museum.

SECTION 5. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

The director of the Kentucky Natural History Museum shall:

(1) Implement the policy directives of the museum's board of directors;

(2) Assist the board in developing and implementing programs to solicit financial and other support for the museum and its mission;

(3) Be the principal representative of the museum. However, the board or the museum director may designate a different representative when necessary;

(4) With the board of directors' approval, hire clerical and administrative support staff and obtain office space and equipment;

(5) With the board of directors' approval, hire the associate directors to manage the mission units established in Sections 7, 8, and 9 of this Act; and

(6) By September 1 of each year, report to the Governor, the board, and the Legislative Research Commission on activities, accomplishments, finances, and the next year's goals.

SECTION 6. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

The purposes of Sections 1 to 9 of this Act shall be carried out through the operation of mission units. When the Kentucky Natural History Museum is established, the mission units shall become administrative units of the museum. Each unit shall be managed by an associate director.

SECTION 7. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) There shall be a curation and science unit within the Kentucky Natural History Museum. The curation and science unit shall:

(a) Collect specimens of Kentucky's extant and fossilized flora and fauna;

(b) Identify and inventory significant archeological sites;

(c) Collaborate with scientists in the state agencies, colleges and universities, and other members of the scientific community on sharing relevant data and creating common databases of biological, archeological, geological, and paleontological information;

(d) Catalog and maintain specimens and artifacts obtained by the museum;

(e) Assure the quality of specimens kept in storage, available through a loan, or displayed;

(f) Accept existing scientifically significant and well-preserved biological, archeological, geological, and paleontological collections that may be offered from private or public entities; and

(g) Conduct research and publish scientific papers related to the purposes of Sections 1 to 9 of this Act.

(2) The associate director of the curation and science unit shall have an earned doctorate in the biological, earth sciences, or anthropology with demonstrated experience in curation of biological or geological collections.

(3) Information that would endanger natural heritage resources by revealing their location shall be exempt from KRS 61.870 to 61.884 unless:

(a) The information is to be used for scientific research or in efforts to protect and preserve the resource;

(b) The person requesting the information agrees in writing to keep confidential the location of the resource; and

(c) The director determines that release of the information will not endanger the resource.

SECTION 8. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) There shall be an education and events unit within the Kentucky Natural History Museum. The education and events unit shall:

(a) Develop programs for the general public and public schools to showcase the natural resources of the state, to explain the values of and need for maintaining biological diversity, to illustrate how people have historically interacted with and affected biodiversity and the environment, and to serve as a resource to public schools to promote understanding and appreciation of Kentucky's natural heritage;

(b) Publicize museum activities and goals;

(c) Develop a program to make useful and accessible to government agencies and citizens the information obtained by the collaborative efforts of the museum;

(d) Solicit assistance from public and private resources;

(e) Conduct an annual symposium focusing on broadening the scientific and popular understanding of Kentucky's natural heritage; and

(f) Perform other functions appropriate to public education, consistent with the mission of the museum.

(2) The associate director of the education and events unit shall have demonstrated experience in science education and an ability to develop educational exhibits and science education programs.

SECTION 9. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) There shall be an exhibits and maintenance unit of the Kentucky Natural History Museum. The exhibits and maintenance unit shall:

(a) Plan, design, construct, and maintain exhibits in cooperation with the education and events unit;

(b) Plan, design, construct, and provide traveling exhibits and other appropriate resources for public education in cooperation with the education and events unit;

(c) Provide storage of exhibit materials; and

(d) Acquire exhibit materials from other institutions, collections, and agencies that are relevant to the natural history of Kentucky.

(2) The associate director of the exhibits and maintenance unit shall have demonstrated experience in the planning, design, production, and maintenance of natural history exhibits.

Approved April 6, 2000

CHAPTER 330

(SB 212)

AN ACT relating to senior citizens and child-care centers.

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

Section 1. KRS 194.245 is amended to read as follows:

(1) No later than August 1, 1990, the Cabinet for Human Resources shall begin contracting to construct and operate, or lease and operate the following:

(a)[~~(1)~~] A one hundred (100) bed inpatient mental health facility in eastern Kentucky;

(b)[~~(2)~~] Twelve (12) child care centers with a minimum of one (1) center in each of the seven (7) Kentucky congressional districts;

(c)[~~(3)~~] Four (4) eight (8) bed group homes for persons with mental retardation;

(d)[~~(4)~~] Two (2) one hundred (100) bed personal care homes; and

(e)[~~(5)~~] Twelve (12) senior citizens centers with a minimum of one (1) center in each of the seven (7) Kentucky congressional districts.

(2) Effective August 1, 2000, the Cabinet for Families and Children, as the successor agency to the Cabinet for Human Resources with the responsibility for the operation of child-care centers as identified in subsection (1)(b) of this section, may transfer the ownership of all real property relating to any child-care center, with the approval of the Finance and Administration Cabinet, and all operational and administrative responsibility over any child-care center, and any contract, agreement, or lease that the Cabinet for Families and Children has assumed or executed for the operation of any child-care center to the city, county, or urban-county government in which the center is located. Any transfer made under this section shall provide for the continued operation of a center in accordance with the public purpose set forth in subsection (1) of this section.

(3) Effective August 1, 2000, the Cabinet for Families and Children, as the successor agency to the Cabinet for Human Resources with the responsibility for the operation of senior citizens centers as identified in subsection (1)(e) of this section, may transfer the ownership of all real property relating to any senior citizens center, with the approval of the Finance and Administration Cabinet, and all operational and administrative responsibility over any senior citizens center, and any contract, agreement, or lease that the Cabinet for Families and Children has assumed or executed for the operation of any senior citizens center, to the city, county, or urban-county government in which the center is located. Any transfer made under this section shall provide for the continued operation of a center in accordance with the public purpose set forth in subsection (1) of this section.

Section 2. KRS 154.20-020 is amended to read as follows:

(1) The secretary shall be authorized to commit the cabinet to any project or proposal, subject to approval of the committee as necessary except that any state incentive agreement requiring the participation of other agencies of state government shall require the concurrence of the board.

(2) No project shall be funded in whole or part by the authority unless first approved by its committee pursuant to administrative regulations promulgated by the board in accordance with KRS Chapter 13A.

(3) Lending decisions made by the authority shall be based, if possible, feasible, and not otherwise precluded by federal or state law, on utilizing state funds to leverage private sector investment.

(4) The authority shall cooperate with the Cabinet for Health Services in facilitation of KRS 194.245(1)***(a)***.

Section 3. If the General Assembly confirms the reorganization addressed by Executive Order 99-80, whereby the Office of Aging Services and the responsibility for the operation of the senior citizens centers addressed by subsection (3) of Section 1 of this Act are transferred to the Cabinet for Health Services, the Reviser of Statutes shall replace the references to the Cabinet for Families and Children with the Cabinet for Health Services in subsection (3) of Section 1 of this Act.

Approved April 6, 2000

CHAPTER 331

(SB 197)

AN ACT relating to the Local Match Participation Program.

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

Section 1. KRS 147A.029 is amended to read as follows:

(1) The commissioner of the Department for Local Government shall administer and determine the disbursement of funds for the Local Match Participation Program~~[for statewide flood control projects]~~.

(2) Funds appropriated for the Local Match Participation Program~~[for statewide flood control projects]~~ may be used as matching funds by local governments for flood-related projects ***and straight sewage pipe removal projects*** with:

(a) The United States Army Corps of Engineers;

(b) The Federal Emergency Management Agency (FEMA); and

(c) Other~~[flood-related]~~ federal government grant and loan programs requiring local matching funds.

(3) Any general fund appropriations made for the Local Match Participation Program~~[for statewide flood control projects]~~ may~~[also]~~ be used for flood control planning and mitigation activities ***and straight sewage pipe removal and mitigation activities***.

Approved April 6, 2000

CHAPTER 332

(SB 75)

AN ACT relating to local government officials' bonds.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) All officers, officials, and employees of cities, counties, urban-county governments, charter county governments, and special districts who handle public funds in the execution of their duties shall give a good and sufficient bond to the local governing body for the faithful and honest performance of his or her duties and as security for all money coming into that person's hands or under that person's control. The bond amount shall

be based upon the maximum amount of public funds the officer, official, or employee handles at any given time during a fiscal year cycle. The local governing body shall pay the cost of the bond.

(2) Elected officials who post bond as required by statute, and employees of their offices covered by a blanket or umbrella bond, shall be deemed to have complied with subsection (1) of this section.

Approved April 6, 2000

CHAPTER 333

(SB 134)

AN ACT relating to retirement boards in urban-counties.

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

Section 1. KRS 67A.530 is amended to read as follows:

(1) The responsibility for the proper operation of the fund and the direction of its policies shall be vested in a board of trustees of ***twelve (12)***~~[eleven (11)]~~ members, consisting of the mayor, the commissioner of public safety, the commissioner of finance, the director of personnel, ***two (2)***~~[one (1)]~~ retired ***members***~~[member]~~ of the fund, the chiefs of the police and fire department, and two (2) active members of each department, who shall be elected by ballot by the active members of the respective departments and shall serve for alternating terms of two (2) years under rules adopted by the board. One of the active members representing each department shall be elected on even-numbered years; and the other active member representing ***the***~~[such]~~ department shall be elected on odd-numbered years. In the event of a vacancy of an elected member, the pension board shall fill the vacancy by appointment until the next regular election.

(2) The retired fund ***members***~~[member]~~ shall be selected by retired fund members by ballot to serve~~[a]~~ two (2) year ***terms***~~[term]~~. ***One (1) retired fund member shall be a retired fire department member, and the other shall be a retired police department member.*** Retired fund members ***of a department*** shall submit the names of at least three (3) nominees ***from their department*** to the pension board not less than three (3) months before the term of office is due to expire. ***The retired members of both departments shall have the right to vote for nominees from either department.*** For the term beginning October 15, ***2000***~~[1990]~~, names of nominees ***from each department*** shall be submitted to the pension board by no later than ***August 15, 2000***~~[July 15, 1990]~~. The pension board shall cause to be prepared an official ballot which shall be distributed to all retired fund members by mail to their last known address. The ballot shall contain the name, address, and former ***department***~~[position]~~ of each of the~~[three (3)]~~ candidates. ***The candidates shall be grouped together by departments for voting purposes and retired fund members shall be instructed to vote for one (1) member from each department. Any ballot marked with more than one (1) vote per department shall be disqualified and not counted. The retiree from either department receiving the most votes shall serve a two (2) year term. The retiree from the other department receiving the most votes shall serve an initial term of one (1) year. Subsequently, retirees elected in alternate years from each department shall serve two (2) years. In the event of vacancy of an elected retired fund member of the board, the retiree***

receiving the next largest number of votes from the department for which the vacancy exists shall fill the vacancy until the next election for a representative of that retiree's department. Retired fund members shall vote for one (1) candidate ***from each department*** by marking a square opposite the name of the candidate of his choice and returning the marked ballot to the secretary of the pension board. Votes shall be tabulated by a committee of three (3) pension board members appointed by the chairman for that purpose. The tabulating committee shall report in writing to the pension board the results of the election and the name of the retired fund member who shall serve on the board.~~[In the event of a vacancy of an elected retired fund member of the board, the pension board shall fill the vacancy by appointment until the next regular election.~~

~~(3) It is the intention of KRS 67A.360 to 67A.690 that the one elected member from each department on the pension boards of funds serving immediately prior to the adoption of the urban-county form of government shall retain his office for one (1) year, and that the other elected member from each department shall be elected for a two (2) year term.]~~

Approved April 6, 2000

CHAPTER 334

(SB 194)

AN ACT relating to deputy sheriffs.

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

Section 1. KRS 70.260 is amended to read as follows:

(1) The primary legislative body of each county may enact an ordinance creating a deputy sheriff merit board, which shall be charged with the duty of holding hearings, public and executive, in disciplinary matters concerning deputy sheriffs. For the purpose of KRS 70.260 to 70.273, the primary legislative body of each county that does not have an urban-county or charter county government shall be the fiscal court.

(2) The reasonable and necessary expenses of the board, including the funds necessary to retain an attorney to advise the board on legal matters, shall be paid out of the fees and commissions collected by the sheriff. If the fees and commissions are not sufficient to pay the expenses of the board and the other expenses authorized by statute to be paid from these fees and commissions, the sheriff may negotiate with the primary legislative body to determine a method of paying all or part of the expenses of the board.

(3) The board shall consist of five (5) members, two (2) members appointed by the county judge/executive or the chief executive officer of an urban-county government with approval by the primary legislative body, two (2) members appointed by the county sheriff, and one (1) member elected by the deputy sheriffs of the county. Each board appointee shall be at least thirty (30) years of age and a resident of the county. No person shall serve on the board who is a deputy sheriff or who holds any elected public office. No person shall be appointed to the board who is a member of the immediate family of the sheriff of the county served by the board. The members of the board shall not receive a salary but shall receive reimbursement for necessary expenses.

(4) All appointments shall be for two (2) years, and any vacancies shall be filled by the sheriff or county judge/executive, or the chief executive officer of an urban-county government responsible for the appointment of the departing board member.

(5) The board shall elect a chairman from its membership and keep an accurate record of its proceedings.

(6) The board shall meet when a disciplinary matter concerning a deputy sheriff is brought to its attention or at other times at the discretion of the board, upon notification of its members.

(7) Three (3) members shall constitute a quorum in all matters which may come before the board.

(8) For the purpose of this section, "member of the immediate family" means a person's father, mother, brother, sister, spouse, son, daughter, aunt, uncle, son-in-law, or daughter-in-law.

(9) An ordinance, adopted under subsection (1) of this section by a county~~[containing a city of the first class]~~, may exclude deputy sheriffs who serve in policy-making or confidential positions from coverage by the merit system. If the ordinance makes this exclusion, a deputy sheriff who is covered by the merit system and who accepts an appointment in a policy-making or confidential position shall be deemed to have received a leave of absence from the merit system during the incumbency of that position. If he ceases to serve in a policy-making or confidential position but continues to serve as a deputy, he shall be restored to coverage at the same classification and rank that he held prior to his policy-making position under the merit system. A deputy who is not covered by the merit system at the time he is appointed to a policy-making or confidential position shall be deemed not to be part of the merit system and shall not be included in the merit system when he ceases to serve in that position.

Section 2. KRS 70.267 is amended to read as follows:

(1) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall directly or indirectly solicit, receive, or be in any manner concerned in receiving, soliciting, or publicizing any assessment, gift, subscription or contribution to or for any political party or candidate for public office.

(2) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be suspended, laid off, demoted, promoted, disciplined, threatened or in any way changed in duty or compensation for withholding or neglecting to pay or make contributions of any sort, either in money, goods, services, or anything of value for any political purpose. Nothing in this subsection shall limit the power of a sheriff to revoke the appointment of a deputy during the probationary period described in subsection (5) of this section.

(3) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be a candidate for any public office. Any person who violates this subsection shall forfeit his position as deputy sheriff.

(4) Nothing contained in this section shall be construed to abridge the rights of any deputy sheriff with respect to his personal opinions, beliefs, or right to vote.

(5) A deputy sheriff's employment shall be probationary during the first year of service ***following an initial appointment or a promotional appointment***. A sheriff may, at his

pleasure, revoke the appointment of a deputy who works for him at any time within one (1) year following the appointment.

Approved April 6, 2000

CHAPTER 335

(HB 118)

AN ACT relating to special license plates for colleges and universities.

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

SECTION 1. A NEW SECTION OF KRS 186.186 TO 186.1867 IS CREATED TO READ AS FOLLOWS:

(1) Any person who complies with the provisions of KRS 186.186 may apply for an independent collegiate license plate for any independent college or university licensed by the Council on Postsecondary Education.

(2) An independent collegiate license plate shall be the color and design selected by the Association of Independent Kentucky Colleges and Universities and approved by the Transportation Cabinet. The name "Kentucky" and the annual renewal decal shall appear on the plate, along with the logo of the Kentucky Association of Independent Colleges and Universities and a decal bearing the name of the college or university selected by the person purchasing the plate. The Transportation Cabinet may use any combination of numerals or letters as needed in the numbering of the license plate.

(3) In addition to the fees required by KRS 186.186, a person applying for an independent college license plate shall pay a ten dollar ($10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. When applying for an annual renewal registration decal, a person with an independent college license plate shall pay a ten dollar ($10) fee, in addition to the renewal fee established in KRS 186.186(2). The additional fees under this subsection shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.

(4) The ten dollar ($10) initial fee and the ten dollar ($10) renewal fee collected under subsection (3) of this section shall be forwarded annually by the Transportation Cabinet to the Kentucky Association of Independent Colleges and Universities for distribution to the general scholarship funds of the Association's members.

Section 2. KRS 186.185 is amended to read as follows:

(1) Any owner of a motor vehicle required to be registered under the provisions of KRS 186.050(1) or (3)(a), except taxicabs, airport limousines, and U-Drive-Its, may in addition to registration under KRS 186.050(1) or (3)(a) obtain a five (5) year collegiate license plate. Application for a collegiate license plate shall be taken by the county clerk and transmitted to the Transportation Cabinet on or before September 1 preceding the year in which the plate or renewal thereof is to be issued. The application shall include the payment of a twenty-five dollar ($25) registration fee.~~[In addition, for the use of the university name or logo, a five dollar ($5) fee shall be collected and paid to the general scholarship fund of the university whose name will be borne on the plate.]~~ The application~~[and appropriate]~~ fee

shall be immediately forwarded to the cabinet. Collegiate license plates issued under this section shall expire December 31 each year.

(2) Collegiate license plates shall be developed for each university in the state university system, except that a minimum of eighteen hundred (1,800) requests for any university shall be received before the cabinet shall be required to print a collegiate license plate for that university. License plates shall be the color and design approved by the cabinet as appropriate for each university in the state system. In addition to letters identifying the university, the name "Kentucky" and the expiration date of the plate, the cabinet may use any other combination of letters or numerals needed in the design of the plate, or the application for a collegiate license plate may be combined with a request that the plate be a personalized plate.

(3) The cabinet shall send the collegiate plate to the county clerk in the county in which the applicant would be required to register his motor vehicle. The county clerk shall issue the collegiate plate and receive ***twenty-five dollars ($25)***~~[fourteen dollars and fifty cents ($14.50)]~~, of which three dollars ($3) shall constitute the clerk's fee***, twelve dollars ($12) shall constitute the cabinet's fee, and ten dollars ($10) shall be collected and paid to the general scholarship fund of the university whose name will be borne on the plate***~~[and eleven dollars and fifty cents ($11.50) shall constitute the cabinet's fee]~~. Annually thereafter, upon application as provided, and upon payment of ***twenty-five dollars ($25)***~~[fourteen dollars fifty cents ($14.50)]~~, three dollars ($3) of which shall constitute the clerk's fee, ***twelve dollars ($12) shall constitute the cabinet's fee, and ten dollars ($10) shall be collected and paid to the general scholarship fund of the university whose name will be borne on the plate,*** the clerk shall issue a decal to renew the vehicles registration.

(4) (a) Upon the sale or transfer of the motor vehicle bearing the collegiate license plate, the owner shall remove it and return it and the certificate of title and registration to the county clerk. The clerk shall issue a regular license plate and certificate of title and registration. This vehicle may then be transferred as provided by KRS Chapters 186 and 186A.

(b) When the collegiate plate has been presented to the clerk, he shall reissue it upon payment of a two dollar ($2) clerk's fee, for use on any other vehicle of the same classification and category owned by the same person purchasing the collegiate plate for the current license period. The license plate and decal on this other vehicle shall be turned in to the county clerk, who shall forward the license to Frankfort.

(5) If a collegiate plate deteriorates, if he has not transferred the vehicle during the current license period, the owner may obtain a regular license plate free of charge.

(6) The secretary of transportation may promulgate administrative regulations necessary to further the purposes of this section.

Approved April 6, 2000

CHAPTER 336

(HB 136)

AN ACT relating to public school volunteers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.

(2) Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.

(3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.

(4) Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.

(5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.

Section 2. KRS 161.044 is amended to read as follows:

(1) The Kentucky Board of Education shall ***promulgate***~~[establish]~~ administrative regulations governing the qualifications of teachers' aides~~[and adult volunteer personnel]~~ in the common schools. All teachers' aides working in kindergarten or with entry level students in primary classes and all instructional teachers' aides initially employed after July 1, 1986, except those with current teacher certification, shall have a high school diploma or a general equivalency diploma.

(2) "Noninstructional teacher's aide" means an adult who works under the direct supervision of the teaching staff in performing noninstructional functions such as clerical duties, lunch room duties, leading pupils in recreational activities, aiding the school librarian, preparing and organizing instructional material and equipment and monitoring children during a noninstructional period. Noninstructional teachers' aides employed on a full-time basis shall

possess skills necessary to perform their duties and shall meet the requirements established in KRS 161.011 ***and KRS 160.380(5)***.

(3) Within the administrative regulations established by the Kentucky Board of Education, a local district may employ teachers' aides in supplementary instructional and noninstructional activities with pupils. While engaged in an assignment as authorized under the administrative regulations, and as directed by the professional administrative and teaching staff, these personnel shall have the same legal status and protection as a certified teacher in the performance of the same or similar duties.

(4) Local districts shall give preference to applicants for the position of teacher's aide who have regular or emergency teacher certification.

(5)[~~ Within the provisions established by the Kentucky Board of Education, local districts may utilize adult volunteer personnel in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.~~

~~(6)~~] Local districts shall provide training of the instructional teacher's aide with the certified employee to whom he is assigned.

Approved April 6, 2000

CHAPTER 337

(HB 176)

AN ACT relating to revenue and taxation.

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

Section 1. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ***1999***[~~1997~~], exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ***1999***[~~1997~~], that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable

income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;

(i) 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

2. The "applicable amount" shall be:

a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars ($6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

b. Fifty percent (50%), but not more than twelve thousand five hundred dollars ($12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;

c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars ($18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and

d. One hundred percent (100%), but not more than thirty-five thousand dollars ($35,000), for taxable years beginning after December 31, 1997.

3. As used in this paragraph:

a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

(j) 1. a. Exclude the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

(k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

(l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;

(m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;

(n) Exclude any capital gains income attributable to property taken by eminent domain; and

(o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from a national settlement agreement between the tobacco industry and the states' Attorneys General or from any federal legislation related to the agreement;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction;

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

(e) "Taxable net income" in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 2. KRS 141.180 is amended to read as follows:

(1) Every individual, except as otherwise provided in this section, having for the taxable year an adjusted gross income which exceeds five thousand dollars ($5,000), if single, or if married and not living with husband or wife and every married individual living with husband or wife whose adjusted gross income combined with the adjusted gross income of his or her spouse exceeds five thousand dollars ($5,000) shall make to the cabinet a return stating specifically the items which he claims as deductions and tax credits allowed by this chapter.

(2) Any individual who is blind or who has attained the age of sixty-five (65) before the close of his taxable year shall be required to make a return only if he has for the taxable year an adjusted gross income which exceeds five thousand dollars ($5,000). Every married individual living with husband or wife shall, if both spouses have attained the age of sixty-five (65), be required to make a return if the combined adjusted gross income of both spouses exceeds five thousand four hundred dollars ($5,400). If the individual is unable to make his own return, the return shall be made by a duly authorized agent.

(3) Any individual, who is both sixty-five (65) or over and blind before the close of the taxable year, shall make a return if he has for the taxable year an adjusted gross income which exceeds five thousand dollars ($5,000).

(4) Notwithstanding any other provision of this section, an individual, having for the taxable year gross income from self-employment of five thousand dollars ($5,000) or more, shall make a return.

(5) Any nonresident individual with gross income from Kentucky sources and a total gross income of five thousand dollars ($5,000) or over shall make a return.

(6) A husband and wife not living together shall make separate returns. A husband and wife living together may make a joint return, or may make separate returns. However, in the event separate returns are made, neither spouse shall report income nor claim deductions properly attributable to the other.

(7) Notwithstanding any other provisions of KRS Chapters 131 and 141, a husband or a wife who is jointly and severally liable for taxes levied under KRS 141.020, applicable penalties, and interest shall be relieved of liability for tax, interest, penalties, and other amounts if:

(a) The spouse has been relieved of liability for federal income tax, interest, penalties, and other amounts for the same taxable year by the Internal Revenue Service under Section ***6015***~~[6013(e)]~~ of the Internal Revenue Code; or

(b) It is shown that the spouse would have qualified for relief under the provisions of Section ***6015***~~[6013(e)]~~ of the Internal Revenue Code for the same taxable year if there had been a federal income tax liability.

(8) Any relief granted pursuant to paragraphs (a) and (b) of subsection (7) of this section shall not result in a tax overpayment to the spouse requesting relief.

(9) Each individual return shall be verified by a written declaration that it is made under the penalties of perjury.

SECTION 3. A NEW SECTION OF KRS CHAPTER 143A IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other statutory provisions, the tax imposed by KRS 143A.020 applicable to limestone actually used in the manufacture of cement by an integrated miner and

manufacturer of cement shall be limited to fourteen cents ($0.14) per ton of limestone mined in Kentucky and actually used in the manufacture of cement.

Section 4. Sections 1 and 2 of this Act shall apply to taxable years beginning after December 31, 1999.

Section 5. Section 3 of this Act takes effect August 1, 2000.

Approved April 6, 2000

CHAPTER 338

(HB 221)

AN ACT relating to a Rails to Trails Program.

WHEREAS, the 1998 Kentucky General Assembly directed the Legislative Research Commission to establish a special interim Rails to Trails Task Force to study the feasibility, benefits, and implementation of a strategy for a Rails to Trails Program throughout the Commonwealth; and

WHEREAS, the task force appointed by the Commission has reported its findings to the Commission and the General Assembly; and

WHEREAS, the task force has recommended that a Rails to Trails Program be pursued by the Commonwealth as promoting the health, safety, and welfare of the citizenry;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

A Railtrail Development Office is hereby created within the Department for Local Government. The department shall insure that the office has the necessary expertise to carry out the requirements imposed upon it by this section. Among other railtrail functions and duties which may be assigned to it, the office shall carry on at least the following responsibilities:

(1) The office shall monitor the proceedings of the United States Department of Transportation's Surface Transportation Board and shall disseminate to interested entities in Kentucky information regarding those proceedings of interest to railtrail conversion or policy in the Commonwealth. If a railroad applies to the Surface Transportation Board for authority to discontinue service over or abandon a railroad corridor in the Commonwealth, the office shall immediately notify those political subdivisions through which the corridor passes and any interested state agency of the proceedings and the potential for trail development of the corridor. Notice shall also be sent to the county judge/executive of each county through which the proposed abandonment passes, who shall distribute copies of the notice to each member of the chief legislative body of the county government at the next regularly scheduled meeting of that legislative body. The office shall also send a copy of the notice to each soil and water conservation district through which the abandonment passes. If time is of the essence and it appears that the corridor is a suitable candidate for conversion to a railtrail and that no other railtrail interested entity will be participating in the federal proceeding, the office

shall take those steps necessary to cause a railbanking or public use condition to be imposed in the federal proceeding;

(2) The office shall assist any requesting political subdivision or agency of state government with assistance on any application to the Surface Transportation Board regarding an abandoned or about to be abandoned railroad corridor, including any requests for railbanking or imposition of public use conditions;

(3) The office shall coordinate and promote railtrail development efforts among the various agencies of state government, including the Department of Parks and the Transportation Cabinet. While this subsection does not confer upon the office any powers beyond those that it may ordinarily possess, every entity of state government shall cooperate with the office to the extent practicable under the circumstances;

(4) The office shall furnish to requesting political subdivisions assistance in applying to available federal, state, or local funding sources for funds to be used for the process of converting railroad corridors into public use trails; and

(5) The office may apply for federal, state, or private grants or other forms of financial assistance to carry on its mission.

SECTION 2. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

(1) Any organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, agency of state government, or political subdivision or city of this state holding or acquiring a railroad corridor may preserve the corridor for future railroad use while utilizing the right-of-way in the interim for nonmotorized public recreational use by filing with the Secretary of State a "Declaration of State Railbanking", concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall contain the name and address of the filing entity, a textual description and map of the railroad corridor being railbanked, a statement that the entity accepts full responsibility for managing the corridor, for any legal liability arising out of the use of the corridor or, if the entity is immune from suit, that the entity agrees to indemnify the railroad for any liability arising out of the use of the corridor, and for the payment of all taxes which may validly be assessed against the corridor, and a declaration that the property is being railbanked in accordance with the provisions of Kentucky law in that the corridor is held open for future restoration of rail service and that this section only grants authority for the corridor to be utilized for nonmotorized public recreational use during the interim.

(2) Any property that is the subject of a declaration of state railbanking, including property held by easement, shall, during the period a declaration of state railbanking remains in force, be deemed to be held for a railroad use and shall not revert to any other form of ownership. Until rail service is restored over the corridor, the declaration of state railbanking shall only authorize the use of the corridor for public, nonmotorized recreational use, with associated infrastructure. However, a declaration of state railbanking shall not preclude any public utility usage of the corridor if that usage is otherwise permitted under other applicable law. For the specific purpose of allowing railbanking under this section, an easement for railroad use shall not be deemed abandoned until the person holding the easement conveys the easement to another person

for a nonrailroad use, title to the easement and the underlying estate comes into the hands of the same owner by conveyance, the easement owner files a disclaimer in the office of the county clerk of the county where the property is situated disclaiming all interest in the corridor, or the easement is declared abandoned by judicial decree.

(3) After property is railbanked under this section, the property shall be held available for purchase by any bona fide purchaser for the restoration of rail service over the property. The following requirements shall apply to any transfer of property in contemplation of the restoration of railroad service:

(a) The entity that acquired the right to use the railroad corridor for a railtrail under this section or to whom that right had been subsequently transferred shall be compensated for the fair market value of the corridor together with any improvements erected thereon. Funds received by the entity under this paragraph shall be held in trust for the benefit of the public;

(b) All required federal and state permits and authority to reactivate and operate a railroad over the corridor shall be obtained prior to the transfer of the property for the contemplated railroad service restoration;

(c) Adequate bond with good surety shall be posted ensuring that the railroad will be constructed, with the bond being used to cover the cost of restoring the corridor to its physical condition prior to transfer of the railbanked corridor for the contemplated railroad service restoration; and

(d) The physical infrastructure necessary to operate the railroad, including tracks, ties, frogs, signaling equipment, grade crossings, and the like, shall be in place one (1) year from the date of the transfer. Train service shall be in place and operating two (2) years, from the date of the transfer. If these timelines are not met, the corridor and all associate physical improvements thereon shall automatically forfeit to the ownership of the entity responsible for railbanking the corridor under this section.

(4) Any person aggrieved by the act of railbanking a railroad corridor under the provisions of this section shall bring their claims within one (1) year after the declaration of state railbanking has been filed with the Kentucky Secretary of State. Any entity against whom a claim is asserted may utilize as an offset or setoff to the amount of any recovery those amounts in state or local taxes, together with interest and penalties, that have not been paid on the value of the property through which the claimant asserts title.

(5) Any entity which caused a declaration of state railbanking to be filed shall cause the declaration to be vacated on the files of the Secretary of State upon the cessation of use of the corridor as a nonmotorized public use trail or the reactivation of railroad service over the corridor.

SECTION 3. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

(1) It is the public policy of this state to preserve railroad corridors for future railroad use. Toward this end, the Commonwealth recognizes that the salvage of tracks, ties, signaling equipment, ballast, and other items may indicate an intent to maximize return on present investment and not an intent to abandon any underlying easement for railroad or other use and that the obtaining of federal authority to discontinue service over or abandon a corridor does not necessarily indicate an intent to relinquish any property interests under

state law. In any civil action to determine the status of a railroad use easement, ambiguity as to intent shall be resolved in favor of continued preservation of the corridor.

(2) Any holder of a railroad corridor held by easement or otherwise may preserve that corridor by filing with the Secretary of State a "Preliminary Declaration of State Railbanking," concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall state the name of the entity holding the corridor, a textual description and map of the land area encompassed by the corridor, and a statement that the entity does not intend to abandon the corridor described in the declaration. The entity filing the declaration may at any later time cause that declaration to be withdrawn from the Secretary of State's files. While a preliminary declaration of state railbanking is on file with the Secretary of State, the corridor set out in the declaration shall not, regardless of the status or conclusion of any federal regulatory proceeding or the salvage of track and other material from the corridor, be deemed abandoned and shall continue to exist under Kentucky law and the property encompassed by the corridor shall not revert to any other form of ownership.

SECTION 4. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

In addition to any other legal right, any person having a legal interest in land adjoining a railtrail or in the land traversed by the railtrail itself may grant to the entity holding the right to maintain a railtrail over the property a conservation easement over all or a portion of the property in accordance with KRS 382.800 to 382.860. The entity holding the right to maintain a railtrail over the corridor may, if it finds the easement's terms acceptable, yearly designate for the tax purposes of the party conveying the easement that the entity is holding the corridor pursuant to the authority granted to that entity in the easement as opposed to authority granted in Section 2 of this Act or any similar law allowing railbanking under federal law. This designation shall not, however, affect in any way the legal right of that entity to hold the corridor pursuant to a federal or state railbanking law or the operation of those laws, and the right to maintain the railtrail on the land shall not lapse as the result of the extinguishment or modification of the easement. The easement, by its terms, may be limited in duration from year to year or for a set period of years, may extinguish itself upon the happening a defined contingent future event, or may last in perpetuity.

Section 5. KRS 148.690 is amended to read as follows:

(1) The department shall review all formal declarations of railroad right-of-way abandonments by the Surface Transportation Board or other agency with jurisdiction and may review former railroad corridors for possible inclusion in the state trails system. The commissioner shall, within three (3) years after the route of a trail or trail segment included in the system has been located, determine the boundaries of the right-of-way to be associated with that trail. Such boundaries shall be established in such a manner that they protect the scenic value of the trail.

(2) The commissioner is authorized to develop effective procedures to assure that, wherever practicable, utility rights-of-way, abandoned railroad corridors, or similar properties having value for trail purposes may be made available for such use; however, the commissioner shall take into consideration the rights of adjacent property owners in the development of any such procedures. Other departments of state government having jurisdiction, control over, or information concerning the use, abandonment, or disposition of rights-of-way,

railroad corridors, and similar properties that may be suitable for trail purposes shall cooperate with the commissioner in the transfer of these rights for trail use. ***These procedures shall include, at a minimum, that, for every railroad corridor that is the subject of a request for federal authority to discontinue service or for federal regulatory abandonment, the commissioner shall evaluate the potential of converting that corridor into a railtrail. The commissioner shall cause a preliminary review to be completed within thirty (30) days of the publication of the request for federal authority in the Federal Register. The commissioner shall cause a final review to be completed ninety (90) days after the publication of the request for federal authority in the Federal Register. The commissioner shall timely transmit copies of these reviews to the Legislative Research Commission and to the Commonwealth's Railtrail Development Office in the Department for Local Government as they are completed. If either review indicates the possibility of converting the corridor into a railtrail, the commissioner may participate in the federal proceeding to request that the corridor be railbanked in accordance with federal law or to request the imposition of a public use condition.***

SECTION 6. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

(1) The Transportation Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

(2) The Transportation Cabinet shall keep a record of railroad lines in the Commonwealth of Kentucky, including both lines that have been abandoned through the federal government's regulatory abandonment process and those where any railroad property interest in the railroad corridor itself has been abandoned under Kentucky law. The cabinet shall annually publish an updated map showing the location and as much information as to the status of these lines as practicable. The record shall include, in as much as possible;

(a) A description of the line and its location;

(b) The current or last railroad owner of the line;

(c) The operator of the line;

(d) The addresses and phone numbers for the owners and operators of the lines;

(e) Whether the owner of the line has received authority from the Federal Government to discontinue service over the line;

(f) Whether the owner of the line has received authority from the Federal Government to abandon the line;

(g) Whether the owner of the line has consummated any authority granted by the Federal Government to discontinue service over the line or to abandon the line;

(h) Whether the line has been railbanked under either federal or state law; and

(i) Any other information the cabinet deems pertinent and useful to the public.

SECTION 7. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

The Natural Resources and Environmental Protection Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Section 8. KRS 171.381 is amended to read as follows:

(1) The heritage council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.

(2) The duties and functions of the council shall be to:

(a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;

(b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;

(c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private; and

(d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those such landmarks which possess statewide or national significance.

(3) The council may:

(a) Accept grants or other funds or property from any available source, public or private;

(b) Employ, with the approval of the Governor, such staff as may be necessary. Any member of such staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;

(c) Enter into such contractual relationships as may be necessary;

(d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;

(e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and

(f) Adopt such rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.

(4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.

(5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.

(6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, Education, Arts, and Humanities Cabinet. The director of the Heritage Division shall be the state historic preservation officer.

(7) The responsibilities of the state historic preservation officer shall include:

(a) Development for the State Historic Preservation Program;

(b) Direction of a comprehensive statewide survey of historic properties;

(c) Nomination of historic properties to the National Register of Historic Places;

(d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;

(e) Cooperation in the integration of historic preservation planning with all levels of planning;

(f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;

(g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;

(h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;

(i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;

(j) Development and operation of a program of public information and education concerning the preservation program;

(k) Administration of the grants program within the state;~~[and]~~

(l) Preparation and maintenance of a comprehensive statewide historic preservation plan***; and***

(m) The immediate transmittal to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government of any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

SECTION 9. A NEW SECTION OF KRS CHAPTER 276 IS CREATED TO READ AS FOLLOWS:

The Railroad Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

SECTION 10. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

Each railroad proposing to discontinue service over or to obtain federal authority for regulatory abandonment of a railroad corridor in the Commonwealth of Kentucky shall, in addition to those notification requirements set out in federal law, notify the Commonwealth's Railtrail Development Office in the Department for Local Government and the trails coordinator in the Department of Parks that the railroad is attempting to obtain federal authority to do so.

SECTION 11. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

The Public Service Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Section 12. KRS 411.190 is amended to read as follows:

(1) As used in this section:

(a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(b) "Owner" means the possessor of a fee***, reversionary, or easement*** interest, a tenant, lessee, occupant, or person in control of the premises.

(c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, ***bicycling, horseback riding,*** pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land but does not include fees for general use permits issued by a government agency for access to public lands if the permits are valid for a period of not less than thirty (30) days.

(2) The purpose of this section is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

(3) Except as specifically recognized by or provided in subsection (6) of this section, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes.

(4) Except as specifically recognized by or provided in subsection (6) of this section, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreation purposes does not thereby:

(a) Extend any assurance that the premises are safe for any purpose.

(b) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of those persons.

(5) Unless otherwise agreed in writing, the provisions of subsections (3) and (4) of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

(6) Nothing in this section limits in any way any liability which otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section.

(7) Nothing in this section shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of the land and in his activities thereon, or from the legal consequences of failure to employ such care.

Section 13. KRS 511.090 is amended to read as follows:

(1) A person "enters or remains unlawfully" in or upon premises when he is not privileged or licensed to do so.

(2) A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license or privilege unless he defies a lawful order not to enter or remain personally communicated to him by the owner of such premises or other authorized person.

(3) A license or privilege to enter or remain in or upon premises which are only partly open to the public is not a license or privilege to enter or remain in or upon a part of the premises which is not open to the public.

(4) A person who enters or remains upon unimproved and apparently unused land which is neither fenced nor otherwise enclosed does not commit criminal trespass unless notice

against trespass is personally communicated to him by the owner of the land or some other authorized person or unless notice is given by posting in a conspicuous manner.

(5) Private land adjoining a railtrail that is neither fenced nor otherwise enclosed shall be presumed to be land where notice against trespassing has been given by the owner of the land, and a person utilizing the railtrail shall be presumed to lack privilege or license to enter upon that land unless the person has permission from an adjoining landowner to do so.

Section 14. The Department for Local Government shall inventory the Commonwealth's active and abandoned rail corridors and, for the abandoned corridors, analyze the suitability of each of those corridors for railtrail conversion. Corridors inventoried shall include both common carrier and private railroads, as well as railroads which may not have been attached to the interstate transportation system. Additionally, corridors over which service has been discontinued as well as corridors potentially subject to abandonment shall be analyzed as abandoned corridors. In conducting the inventory, the department shall, for each corridor, attempt to ascertain the legal ownership status of the corridor and the date rail service over the rail corridor ceased together with the dates of formal abandonment, and make an examination of the physical integrity of the corridor, including the presence or lack of tunnels, bridges, and culverts. The department shall make its report to the Legislative Research Commission no later than July 1, 2003. The department may divide the state into regions, and complete assessments for individual regions prior to July 1, 2003. The report shall be provided in both printed and electronic format. The department may, through a request for proposals process, contract with a Kentucky public university for the performance of any of the responsibilities imposed upon the department by this section. The department may seek and utilize available state and federal grant money to fund the assessment.

Section 15. The Legislative Research Commission shall establish a Rails to Trails Program Task Force. The task force shall be composed of fifteen members, nine of whom shall be members of the Kentucky General Assembly with Senate and House co-chairs appointed by the Legislative Research Commission. The task force shall include among the nine legislative members the Chair of the Senate Economic Development and Labor Committee, and the Chairs of both the House Economic Development Committee and the House Tourism Development and Energy Committee. The remaining six members of the task force shall be:

1. The Governor of the Commonwealth of Kentucky, or his designee;

2. The Commissioner of the Department of Parks, or his designee;

3. The Secretary of the Tourism Cabinet, or his designee;

4. The commissioiner of the Department for Local Government, or his designee;

5. A representative of the Kentucky Rails to Trails Council, to be designated by that organization; and

6. A representative of the Kentucky Farm Bureau, to be designated by that organization.

The task force shall continue to study railtrail issues, with particular emphasis on establishing actual trails within the Commonwealth. The Department for Local Government or the university to whom the assessment contract is awarded under Section 14 of this Act shall, upon request of the task force, update the task force on the progress of the work and allow task force

members and staff access to records and meetings connected with the assessment. The task force shall report its findings and recommendations to the Legislative Research Commission by September 15, 2001.

Approved April 6, 2000

CHAPTER 339

(HB 324)

AN ACT relating to library media centers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) The board of education for each local school district shall establish and maintain a library media center in every elementary and secondary school to promote information literacy and technology in the curriculum, and to facilitate teaching, student achievement, and lifelong learning.

(2) (a) Schools shall employ a school media librarian to organize, equip, and manage the operations of the school media library. The school media librarian shall hold the appropriate certificate of legal qualifications in accordance with KRS 161.020 and 161.030. A certified school media librarian may be employed to serve two (2) or more schools in a school district with the consent of the school councils.

(b) If a vacancy occurs, the school council may fill the vacancy on a temporary basis by employing:

1. A person who is pursuing certification as a school media librarian in accordance with administrative regulations promulgated by the Education Professional Standards Board; or

2. A temporary employee for a period not to exceed sixty (60) days.

Section 2. KRS 160.345 is amended to read as follows:

(1) For the purpose of this section:

(a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.

(b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:

1. Exclusively vocational-technical, special education, or preschool programs;

2. Instructional programs operated in institutions or schools outside of the district; or

3. Alternative schools designed to provide services to at-risk populations with unique needs.

(c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(d) "Parent" means:

1. A parent, stepparent, or foster parent of a student; or

2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

(a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.

(b) 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.

2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:

a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and

b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.

(c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.

(d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. ***The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment.***

(h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;

2. Assignment of all instructional and noninstructional staff time;

3. Assignment of students to classes and programs within the school;

4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;

5. Determination of use of school space during the school day;

6. Planning and resolution of issues regarding instructional practices;

7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;

8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and

9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;

(d) Professional development plans developed pursuant to KRS 156.095;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an

allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

(9) (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

(c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

(d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Approved April 6, 2000

CHAPTER 340

(HB 328)

AN ACT relating to deputy sheriff merit boards.

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

SECTION 1. A NEW SECTION OF KRS 70.260 TO 70.273 IS CREATED TO READ AS FOLLOWS:

(1) In any county containing a city of the first class that has adopted a merit system under KRS 70.260 to 70.273, deputies subject to the merit system may organize, form, join, or participate in organizations in order to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection, and to bargain collectively through a representative of their own free choice. Deputies shall also have the right to refrain from any or all of these activities but shall be subject to the lawful provisions of any collective bargaining agreement entered into under this section. Strikes by deputies of any collective bargaining unit shall be prohibited at any time.

(2) In any county containing a city of the first class that has adopted a merit system under KRS 70.260 to 70.273, the sheriff shall contract with a representative of the deputies

described in subsection (1) of this section employed by the sheriff where the representative has established representation of a majority of the deputies, with respect to wages, hours, and terms and conditions of employment, including execution of a written contract incorporating any agreement reached between the sheriff and the representative. The sheriff shall not be required to bargain over matters of inherent managerial policy.

Approved April 6, 2000

CHAPTER 341

(HB 360)

AN ACT relating to retirement.

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

Section 1. KRS 95.859 is amended to read as follows:

(1) The rate of retirement annuity shall be two and one-half percent (2.5%) of average salary, as defined in KRS 95.851(13), for each year of total service up to and including thirty (30) years, subject to a maximum of seventy-five percent (75%) of average salary. Fractional periods of service shall be considered in the calculation of such annuities according to the aforesaid rate. If the calculated benefit for a member is less than four thousand eight hundred dollars ($4,800) per year, the board may increase the annual benefit to a minimum of four thousand eight hundred dollars ($4,800) if the increase can be supported on an actuarially-sound basis by the fund.

(2) Any member who retired prior to June 21, 1974, shall receive an increase of ten dollars ($10) per month for each year or part thereof of retirement prior to June 21, 1974, with a maximum increase of one hundred and seventy dollars ($170) per month. No surviving widow of a retiree shall receive a pension of less than one hundred and fifty dollars ($150) per month. The board may increase the minimum benefit to no more than ***five hundred dollars ($500)***~~[four hundred dollars ($400)]~~ per month if the increase can be supported on an actuarially-sound basis by the fund. When Social Security benefits are increased, the surviving widows' minimum shall be increased by a like percentage, but the pension increase shall not exceed five percent (5%).

(3) Within six (6) months after the performance of the actuarial study required by KRS 95.872(6), the rate of retirement annuity of each annuitant shall be increased annually by an amount determined by the study to reflect so much of the annual increase in the cost of living of the annuitant as may be supported on an actuarially sound basis by the fund. So long as the same is published, such studies shall rely on the ***percentage increase in the annual average of the consumer price index for all items for the most recent calendar year as published by***~~["All Items Index" of]~~ the United States Department of Labor's ***Bureau of Labor Statistics, not to***~~[Consumer Price Indexes, but no increase in the cost of living shall]~~ exceed five percent (5%)~~[or the actual increase in the cost of living, whichever is lower]~~. ***In any year that the percentage increase in the annual average of the consumer price index for all items is less than five percent (5%), the board may set the annual increase at a rate higher than the increase of the consumer price index but not in excess of five percent (5%), if the board determines that the increase can be supported on an actuarially-sound basis by the fund.*** The increases shall be payable to all members of the

fund on the effective date of the increases, and all increases granted on July 15, 1990, or thereafter shall be compounded.

(4) A surviving spouse who does not receive a pension increase pursuant to subsection (2) of this section or whose pension increase pursuant to the Social Security increase is less than the cost-of-living increase in subsection (3) of this section shall receive the same increase an annuitant receives pursuant to subsection (3) of this section, not to exceed a total of five percent (5%).

Section 2. KRS 95.860 is amended to read as follows:

(1) Upon death of a member due to occupational causes, regardless of length of service, his surviving widow shall be entitled immediately upon cessation of salary or annuity, as the case may be, to an annuity equal to fifty percent (50%) of the member's last rate of salary plus the total increase the retired member may have received in his annuity pursuant to KRS 95.859(3). This annuity shall be payable until she dies or remarries. No surviving widow shall receive an annuity of less than one hundred and fifty dollars ($150) per month. The board may increase the minimum benefit to no more than ***five hundred dollars ($500)***[~~four hundred dollars ($400)~~] per month if the increase can be supported on an actuarially-sound basis by the fund. When Social Security benefits are increased, the minimum shall be increased by a like percentage, provided the increase shall not exceed five percent (5%). In addition, if minor children, under age eighteen (18), survive the member, the widow shall receive twenty-five percent (25%) of the member's last rate of salary until the last child attains age eighteen (18). The combined payments to a widow and minor children, excluding cost-of-living increases or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3), shall not exceed seventy-five percent (75%) of his final rate of salary.

(2) If a widow does not survive the member, or if she remarries, and minor children under age eighteen (18) exist, the children shall be entitled to the benefits provided in KRS 95.861(3).

(3) If neither a widow nor minor children, eligible for benefits survive the member, each dependent parent shall be entitled to an annuity equal to twenty-five percent (25%) of the member's last rate of salary, or fifty percent (50%) to both parents.

(4) If a widow would receive from a combination of:

(a) Survivor benefits pursuant to this section, excluding benefits for minor children or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3); and

(b) Workers' compensation benefits, excluding dependent children's allowances or payments for medical expenses or legal fees related to the workers' compensation claim, an amount greater than one hundred percent (100%) of the deceased member's last rate of salary,

then the pension system survivor benefits shall be reduced to the point that the combined payments equal one hundred percent (100%) of the last rate of salary. The survivor benefit shall not be reduced, however, below an amount equal to two and one-half percent (2.5%) of average salary for each year of the deceased member's service. Any reduction in the survivor payment shall be based upon workers' compensation benefits applicable at the time the survivor payment is granted, and not upon subsequent increases in either benefit. If workers'

compensation benefits are reduced at a subsequent time, the surviving spouse shall inform the board, and the board shall increase the survivor's benefit by the amount of the reductions, but not by more than an amount which would increase the survivor's benefit to fifty percent (50%) of last rate of salary, excluding cost-of-living increases or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3). The board of trustees may pay estimated benefits to a surviving spouse, upon qualification for the benefits, based upon an estimate of workers' compensation benefits until such amounts are actually determined, at which time a final calculation of the spouse's actual benefits shall be determined and the account corrected retroactive to the effective date of the survivor benefit. If workers' compensation benefits are paid in lump sums, the board shall reduce the survivor benefit on a monthly rather than a lump-sum basis. The amount of the monthly reduction shall be based upon the life expectancy of the survivor. The board may request the assistance of the general manager of Kentucky retirement systems to calculate the reduction in survivor benefits when lump-sum payments are involved, and the general manager shall provide such assistance upon request.

(5) A surviving child or parent receiving benefits pursuant to this section shall receive the same cost-of-living increase granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section or whose pension increase pursuant to the Social Security increase is less than the cost-of-living increase in KRS 95.859(3) shall receive the same increase an annuitant receives pursuant to KRS 95.859(3), not to exceed a total of five percent (5%).

Section 3. KRS 95.861 is amended to read as follows:

(1) Upon death of a member occurring while in service, arising from any cause other than in the performance of duty, provided the member has had at least three (3) years of total service, his widow shall receive an annuity equal to one and one-half percent (1-1/2%) of average salary for each year of total service, credited to the member, plus the total increase the retired member may have received in his retirement annuity pursuant to KRS 95.859(3), subject to a maximum payment, excluding cost-of-living increases of the member or the widow, to the widow of fifty percent (50%). If the member has had at least ten (10) years of total service, the widow shall receive an annuity of no less than one hundred and fifty dollars ($150) per month. The board may increase the minimum benefit to not more than ***five hundred dollars ($500)***~~[four hundred dollars ($400)]~~ per month if the increase can be supported on an actuarially-sound basis by the fund. When Social Security benefits are increased, the minimum shall be increased by a like percentage, but the increase shall not exceed five percent (5%). Payment of the annuity shall be subject to the following conditions:

(a) The widow had been married to the member at least one (1) year prior to his death;

(b) The widow is at least forty-five (45) years of age, otherwise payment will be deferred until she attains such age, except that if she is or becomes totally disabled before age forty-five (45), or has a minor child or children by the member in her care under age eighteen (18), (including adopted children provided the proceedings for adoption were initiated at least one (1) year prior to death of member) payment of the widow's annuity will begin immediately together with an additional allowance on account of the child or children;

(c) The widow's annuity will terminate in any event when the widow remarries. The annuity of each child or children shall continue until each child attains age eighteen (18).

(2) If the widow has minor children under age of eighteen (18), the annuity to the widow shall be increased one-half (1/2) on account of the first child and one-fourth (1/4) on account of each additional child, subject to a maximum combined payment, excluding cost-of-living increases or increases the retired member may have received in his annuity pursuant to KRS 95.859(3), to the widow and children of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13).

(3) If the pensioner is not survived by a widow and there are minor children the following benefits shall be paid:

(a) One (1) minor child, fifty percent (50%) of the average salary plus the total increase the retired member may have received in his annuity pursuant to KRS 95.859(3);

(b) Two (2) minor children, fifteen percent (15%) of the average salary additional;

(c) Three (3) or more minor children, ten percent (10%) of the average salary additional,

subject to a maximum combined payment, excluding cost-of-living increases of the member or the minor children, of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13). The annuity of each child or children shall continue until each child attains age eighteen (18), or, in the case of a child regularly employed in full-time educational activities the age of twenty-three (23). The annuity payments shall be reduced in reverse order.

(4) These benefits shall also be payable upon death of the member while on retirement, provided marriage was in effect for at least one (1) year before death.

(5) A surviving child receiving benefits pursuant to this section shall receive the same cost-of-living increases granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section or whose pension increase pursuant to the Social Security increase is less than the cost of living increase in KRS 95.859(3) shall receive the same increase an annuitant receives pursuant to KRS 95.859(3), not to exceed a total of five percent (5%).

Section 4. KRS 95.862 is amended to read as follows:

(1) In the event a total and permanent occupational disability occurs, the member shall receive an annuity equal to seventy percent (70%) of his last rate of salary. If the calculated monthly benefit is less than ***five hundred dollars ($500)***~~[four hundred dollars ($400)]~~ per month, the board may increase the monthly benefit to a minimum of ***five hundred dollars ($500)***~~[four hundred dollars ($400)]~~ monthly if the increase can be supported on an actuarially-sound basis by the fund. This benefit shall begin at such time as his salary may cease, and shall be paid during his entire lifetime. Any member who retired prior to June 21, 1974, shall receive an increase of ten dollars ($10) per month for each year or part thereof of retirement prior to June 21, 1974, with a maximum increase of one hundred and seventy dollars ($170) per month. Upon his death, his eligible widow and minor children, if any, shall receive the benefits as provided under KRS 95.860.

(2) If the member retired for total and permanent occupational disability would receive from a combination of (a) pension disability payments pursuant to subsection (1) of this section,

and (b) workers' compensation payments, excluding spouse or dependent children's allowances or payments for medical expenses or legal fees related to the workers' compensation claim, an amount greater than one hundred percent (100%) of his last rate of salary, then the pension system benefits shall be reduced to the point that the combined payments equal one hundred percent (100%) of the last rate of salary. The benefit shall not be reduced, however, below an amount equal to two and one-half percent (2-1/2%) of average salary for each year of the member's service. Any reduction in the payment shall be based upon workers' compensation benefits applicable at the time the payment is granted, and not upon subsequent increases in either benefit. If workers' compensation benefits are reduced at a subsequent time, the retiree shall inform the board, and the board shall increase the benefit by the amount of the reductions, but not by more than an amount which would increase the benefit to seventy percent (70%) of the last rate of salary, excluding cost-of-living increases. The board of trustees may pay estimated benefits to a retiree, upon qualification for the benefits, based upon an estimate of workers' compensation benefits until such amounts are actually determined, at which time a final calculation of the actual benefits shall be determined and the account corrected retroactive to the effective date of the benefit. If workers' compensation benefits are paid in lump sums, the board shall reduce the disability retirement annuity on a monthly rather than a lump sum basis. The amount of the monthly reduction shall be based upon the life expectancy of the retired member. The board may request the assistance of the general manager of Kentucky Retirement Systems to calculate the reduction in the retirement benefit when lump sum payments are involved, and the general manager shall provide such assistance upon request.

(3) Any member retired pursuant to this section shall receive the same cost-of-living increases granted to other retirees pursuant to the terms of KRS 95.859(3).

Section 5. KRS 95.863 is amended to read as follows:

(1) Upon total and permanent disability of a member as the result of any cause other than occupational disability, if a member shall have rendered at least ten (10) years of total service, he shall be entitled to a disability retirement annuity. The amount of such annuity shall be equal to two and one-half percent (2-1/2%) of average salary, as defined in KRS 95.851(13), for each full year of total service, subject to a minimum payment of twenty-five percent (25%) of such average salary, and a maximum payment, excluding cost-of-living increases, of fifty percent (50%) of average salary. If the calculated monthly benefit is less than ***five hundred dollars ($500)***~~[four hundred dollars ($400)]~~ per month, the board may increase the monthly benefit to a minimum of ***five hundred dollars ($500)***~~[four hundred dollars ($400)]~~ monthly if the increase can be supported on an actuarially-sound basis by the fund. Payment of this annuity shall be made during disability of the member. Any member who retired prior to June 21, 1974, shall receive an increase of ten dollars ($10) per month for each year or part thereof of retirement prior to June 21, 1974, with a maximum increase of one hundred and seventy dollars ($170) per month. Upon death of the member, if an eligible widow or minor children survive, such survivors shall be entitled to the regular annuities provided under KRS 95.861.

(2) Any annuity for nonoccupational disability shall begin to accrue upon the expiration of ninety (90) days following the commencement of disability provided that if the member is receiving salary for sick leave for a period of more than ninety (90) days, payment shall accrue from the date such salary ceases. If written application for such annuity shall not have been filed with the board prior to the expiration of ninety (90) days from the date of

disability, the annuity shall begin to accrue from the date the application shall be filed but not prior to the expiration of ninety (90) days from the date of disability, nor in any event prior to the time when salary payments to the employee shall have ceased.

(3) Any member retired pursuant to this section shall receive the same cost-of-living increases granted to other retirees pursuant to the terms of KRS 95.859(3).

Section 6. KRS 61.702 is amended to read as follows:

(1) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System. The board shall also arrange to provide health care coverage by health maintenance organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section. The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems, who are under age sixty-five (65), to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status.

(2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.

(3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:

1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;

2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance fund;

3. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance fund under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;

4. Partly from subparagraphs 1., 2., or 3., except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance fund or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance fund shall pay the balance, not to exceed the monthly contribution.

5. In full from the Kentucky Retirement Systems insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, a State Police Retirement System member or a hazardous position employee, as defined in KRS 61.592, who becomes disabled in the line of duty as defined in KRS 16.505(19), shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, a State Police Retirement System member or a hazardous position employee as defined in KRS 61.592, who is killed in the line of duty as defined in KRS 16.505(19), shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service."

(b) For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one of the other state-administered retirement plans.

1. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium

to be paid by the insurance fund, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance fund shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.

2. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.

3. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.

(4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the spouse, dependent, disabled child, or beneficiary hospital and medical insurance is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(b) The other provisions of this section notwithstanding, the insurance fund shall pay a percentage of the monthly contribution for the spouse and dependents of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System, or the beneficiary of the member, if the member designated only one (1) person as beneficiary. The percentage of the monthly contribution paid for the spouse and dependents ***of a recipient who was in a hazardous position*** shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section***, except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation***.

(c) The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for the spouse or dependents or beneficiary of a former member of the County Employees Retirement System, the

insurance fund shall continue the same level of coverage for the spouse or dependent or beneficiary after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent or beneficiary is not eligible for Medicare coverage.

(5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.

(6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

Approved April 6, 2000

CHAPTER 342

(HB 385)

AN ACT relating to the Tobacco Master Settlement Agreement and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 and 2 of this Act:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(b) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(c) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," nine hundredths (0.09) ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by Kentucky and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subsection (2) of Section 2 of this Act.

(7) "Released claims" means released claims as that term is defined in the master settlement agreement.

(8) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(9) "Tobacco product manufacturer" means an entity that after the effective date of this Act directly (and not exclusively through any affiliate):

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the master settlement agreement) that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) Becomes a successor of an entity described in paragraph (a) or (b) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of the definitions described in paragraph (a), (b), or (c) of this subsection.

(10) "Units sold" means the number of individual cigarettes sold in Kentucky by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by Kentucky on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of Kentucky. The Revenue Cabinet shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

SECTION 2. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) Any tobacco product manufacturer selling cigarettes to consumers within this state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the effective date of this Act shall do one of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or

(b) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

1. For 2000: $0.0104712 per unit sold after the effective date of this Act;

2. For each of 2001 and 2002: $0.0136125 per unit sold;

3. For each of 2003 through 2006: $0.0167539 per unit sold; and

4. For 2007 and each year thereafter: $0.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by Kentucky or any releasing party located or residing in Kentucky. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than Kentucky's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(c) To the extent not released from escrow under paragraph (a) or (b) of this subsection, funds shall be released from escrow and revert back to such tobacco

product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) of this section shall annually certify to the Attorney General that it is in compliance with subsections (1)(b) and (2) of this section. The Attorney General may bring a civil action on behalf of Kentucky against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of subsection (1)(b) or (2) of this section, may impose a civil penalty (to be paid to the general fund of Kentucky) in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of subsection (1)(b) or (2) of this section, may impose a civil penalty (to be paid to the general fund of Kentucky) in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within Kentucky (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two (2) years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

Section 3. Whereas this Act must be in effect during one-half of the year 2000 in order for the Commonwealth to receive full benefit of enacting this Act under the Master Settlement Agreement, an emergency is declared to exist, and this Act takes effect June 30, 2000.

Approved April 6, 2000

CHAPTER 343

(HB 405)

AN ACT relating to emergency medical services.

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

Section 1. KRS 211.950 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

As used in KRS ***311.652 to 311.658***~~[211.952 to 211.956]~~, unless the context otherwise requires:

(1)[~~"Advisory committee" means the Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council established under KRS 211.9533;~~

~~(2)~~] "Ambulance" means a vehicle which has been inspected and approved by the ***board***[~~cabinet~~], including a helicopter or fixed wing aircraft, except vehicles or aircraft operated by the United States government, that are specially designed, constructed, or have been modified or equipped with the intent of using the same, for the purpose of transporting any individual who is sick, injured, or otherwise incapacitated who may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being;

(2)[~~(3)~~] "Ambulance provider" means any individual or private or public organization, except the United States government, who is licensed by the ***Kentucky Board of Emergency Medical Services***[~~Cabinet for Health Services~~] to provide medical transportation services as either basic life support or advanced life support and who may have a vehicle or vehicles, including ground vehicles, helicopters, or fixed-wing aircraft. An ambulance provider may be licensed as an air ambulance provider; as a Class I ground ambulance provider; as a Class II ground ambulance provider; or as a Class III ground ambulance provider;

(3) "Board" means the Kentucky Board of Emergency Medical Services;

(4) "Department" means the Department for Public Health;

(5) "Emergency medical facility" means a hospital, trauma center, or any other institution licensed by the Cabinet for Health Services that furnishes emergency medical services;

(6) "Emergency medical services" means the services utilized in responding to the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury;

(7) "Emergency Medical Services for Children Program" or "EMSC Program" means the program established under ***Section 5 of this Act***[~~KRS 211.9531~~];

(8) "Emergency medical services personnel" means persons, including physicians, certified or licensed, and trained to provide emergency medical services, whether on a paid or volunteer basis, as part of basic life support, advanced life support, ***or*** prehospital ***services***[~~, or hospital emergency care services or in an emergency department or critical care or specialized unit in a licensed hospital or other licensed emergency or critical care medical facility~~];

(9) "Emergency medical services system" means a coordinated system of health-care delivery that responds to the needs of acutely sick and injured adults and children, and includes community education and prevention programs, centralized access and emergency medical dispatch, communications networks, trained emergency medical services personnel, medical first response, ground and air ambulance services,[~~emergency medical facilities and specialty care hospitals,~~] trauma care systems, mass casualty management, medical direction, and quality control and system evaluation procedures;

(10) ***"Emergency medical technician" or "(EMT)" means a person certified under KRS 311.652 to 311.658 as an EMT-first responder, EMT-basic, EMT-basic instructor, EMT-instructor trainer, or EMT-first responder instructor;***

(11) "Medical director" means a physician licensed in Kentucky who is employed by, under contract to, or has volunteered to serve as the medical director of a licensed ambulance service;

(12) "Paramedic" means a person who is primarily involved in the delivery of emergency medical services and is licensed under KRS 311.652 to 311.658;

(13) "Prehospital care" means the provision of emergency medical services or transportation by trained and certified or licensed emergency medical services personnel at the scene of an emergency or while transporting sick or injured persons to a hospital or other emergency medical facility;

(14)[~~(11)~~] "Regional emergency medical services system" means a system approved by the ***Kentucky Board of Emergency Medical Services***[~~Cabinet for Health Services~~] which provides for the arrangement of personnel, facilities, equipment, or any of the above, for the effective and coordinated delivery of health-care services in an appropriate geographical area;

(15)[~~(12)~~] "Trauma" means a single or multisystem life-threatening or limb-threatening injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability; and

(16)[~~(13)~~] "Trauma care system" means a subsystem within the emergency medical services system consisting of an organized arrangement of personnel, equipment, and facilities designed to manage the treatment of the trauma patient.

SECTION 2. A NEW SECTION OF KRS 311.652 TO 311.658 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Board of Emergency Medical Services is created and shall consist of sixteen (16) members who are residents of Kentucky appointed by the Governor in conjunction with recognized state emergency medical services related organizations. Membership shall be made up of the following:

(a) One (1) paramedic who works for a government agency but is not serving in an educational, management, or supervisory capacity;

(b) One (1) emergency medical technician-basic who works for a government agency but is not serving in an educational, management, or supervisory capacity;

(c) One (1) emergency medical technical-first responder who is not serving in an educational, management, or supervisory capacity;

(d) One (1) physician licensed in Kentucky having a primary practice in the delivery of emergency medical care selected from a list of three (3) physicians submitted by the Kentucky Medical Association;

(e) One (1) physician licensed in Kentucky serving as medical director of an advanced life support ambulance service, selected from a list of three (3) physicians submitted by the Kentucky Medical Association;

(f) One (1) physician licensed in Kentucky who is routinely involved in the emergency care of ill and injured children selected from a list of three (3) physicians submitted by the Kentucky Medical Association;

(g) One (1) trauma surgeon licensed in Kentucky selected from a list of three (3) physicians submitted by the Kentucky Medical Association;

(h) One (1) citizen having no involvement in the delivery of medical or emergency services;

(i) One (1) emergency medical services educator from a Kentucky college or university that provides an emergency medical services educational program;

(j) One (1) mayor of a city that operates, either directly or through contract services, a licensed Class I ground ambulance service;

(k) One (1) county judge/executive from a county that operates, whether directly or through contract services, a licensed Class I ground ambulance service;

(l) One (1) volunteer-staffed, licensed Class I ground ambulance service administrator who is a certified emergency medical technician or a licensed paramedic;

(m) One (1) fire-service-based, licensed Class I ground ambulance service administrator who is a certified emergency medical technician or a licensed paramedic;

(n) One (1) hospital administrator selected from a list of five (5) nominees submitted by the Kentucky Hospital Association;

(o) One (1) basic life support, licensed Class I government-operated ground ambulance service administrator who is a certified emergency medical technician or a licensed paramedic; and

(p) One (1) advanced life support, government-operated ambulance service administrator who is a certified emergency medical technician or a licensed paramedic.

(2) No board member shall serve more than two (2) consecutive terms.

(3) The board shall elect a chair by majority vote of the members present at its first annual meeting.

(4) The board shall adopt a quorum and rules of procedure by administrative regulation.

(5) A member of the board who misses three (3) meetings in one (1) year shall be deemed to have resigned from the board and his or her position shall be deemed vacant. The person removed under this subsection shall not be reappointed to the board for ten (10) years. The year specified in this subsection shall begin with the first meeting missed and end three hundred sixty-five (365) days later or with the third meeting missed, whichever occurs earlier. The Governor shall appoint a person of the same class to fill the vacancy within ninety (90) days.

(6) Members of the board and of all committees shall be entitled to reimbursement for actual and necessary expenses when carrying out official duties of the board in accordance with state administrative regulations relating to travel reimbursement. The board shall meet at least six (6) times each year.

(7) The board shall:

(a) Exercise all of the administrative functions of the state in the regulation of the emergency medical services system and the practice of first responders, emergency medical technicians, paramedics, ambulance services, and training institutions;

(b) Issue, deny, suspend, limit, restrict, and revoke any licenses or certifications, and reprimand or place an individual with a license or certificate on probation;

(c) Appoint an executive director and fix the compensation. The executive director shall serve at the pleasure of the board, administer the day-to-day operations of the agency, and supervise all directives of the board. The director shall possess a baccalaureate degree and shall have no less than five (5) years of experience in public administration or in the administration of an emergency medical services program;

(d) Appoint or contract with a physician who is board certified in emergency medicine and fix the compensation. The physician shall serve as the medical advisor to the Kentucky Board of Emergency Medical Services and the staff of the board;

(e) Appoint a general counsel and fix the compensation;

(f) Employ personnel sufficient to carry out the statutory responsibilities of the board.

1. Personnel assigned to regulate or support the emergency medical technician first responder program shall be certified emergency medical technician first responders or emergency medical technicians.

2. Personnel assigned to regulate or support the emergency medical technician program shall be certified emergency medical technicians or paramedics.

3. Personnel assigned to regulate or support the paramedic program shall be licensed paramedics.

4. Personnel in purely clerical roles need not be certified in the manner specified in this section;

(g) Establish committees and subcommittees, who need not be members of the board, as necessary;

(h) Collect any fees established by the promulgation of administrative regulations;

(i) Investigate and hold hearings for any disciplinary proceedings in accordance with KRS Chapter 13B;

(j) Establish and impose fines against individuals or agencies governed by the board;

(k) Enter into contracts, apply for grants and federal funds, and disburse funds to local units of government as approved by the General Assembly;

(l) Maintain a program and provide technical assistance for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state;

(m) Collect and analyze data for evaluation of emergency medical services in the Commonwealth;

(n) Administer the Emergency Medical Services for Children Program; and

(o) Establish minimum curriculum and standards for emergency medical services training.

(8) The board may utilize materials, services, or facilities as may be made available to it by other state agencies or may contract for materials, services, or facilities.

Section 3. KRS 211.952 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

The Kentucky Board of Emergency Medical Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the functions of KRS 311.652 to 311.658, including, but not limited to:

(1) ~~[The Cabinet for Health Services shall maintain a program for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state.~~

~~(2) The Cabinet for Health Services shall establish and designate a single lead agency under the supervision and direction of the commissioner of public health which will carry out all administrative functions related to the planning, development, improvement, and expansion of emergency medical services systems throughout the state. This will include:~~

~~(a) The training and certification of prehospital personnel;~~

~~(b) The promulgation of standards and regulations for emergency medical services personnel;~~

~~(c) The promulgation of administrative regulations for the ~~]Licensing, ***inspecting***~~[inspection]~~, and ***regulating***~~[regulation]~~ of ambulance ***services*** and medical first-response providers. The administrative regulations shall address specific requirements for:

(a)~~[1.]~~ Air ambulance providers***,*** which provide basic or advanced life support services;

(b)~~[2.]~~ Class I ground ambulance providers, which provide basic life support or advanced life support services to all patients for~~[both]~~ emergencies and scheduled ambulance transportation which is medically necessary;

(c)~~[3.]~~ Class II ground ambulance providers, which provide only basic life support services but do not provide initial response to the general population with medical emergencies and which are limited to providing scheduled ambulance transportation which is medically necessary;

(d)~~[4.]~~ Class III ground ambulance providers, which provide mobile intensive care services at or above the level of advanced life support to patients with critical illnesses or injuries who must be transported between hospitals in vehicles with specialized equipment as an extension of hospital-level care; and

(e)~~[5.]~~ Medical first-response providers***, which***~~[who]~~ provide prehospital basic life support services, or advanced life support services, but do not transport patients;

(2)~~[(d)]~~ ***Establishing,*** planning***,*** and ***developing***~~[development of]~~ emergency medical services and trauma care systems;

(3)~~[(e)]~~ ***Promulgating***~~[Promulgation of]~~ voluntary standards for trauma centers and other specialized emergency medical facilities;

~~[(f) Provision of funding and technical assistance as shall become available; and]~~

(4)~~[(g)]~~ Establishing minimum data reporting requirements, including requirements specifically related to emergency medical services and trauma care of children, for ambulance providers and trauma centers~~[and other specialized emergency medical~~

~~facilities]~~ and collection and analysis of data related to the provision of emergency medical services and trauma care;~~[and]~~

(5)~~[(h)]~~ ***Maintaining***~~[Establishing]~~ the Emergency Medical Services for Children Program with federal funds so designated plus any additional funds that may be appropriated by the General Assembly, or any other funds that may be appropriated by the General Assembly, or any other funds that may become available to the ***Kentucky Board of Emergency Medical Services***~~[cabinet]~~, including gifts, grants, or other sources***;***~~[.~~

~~(3) Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.]~~

(6)~~[(4)]~~ ***Developing***~~[The cabinet shall promulgate administrative regulations and perform the necessary functions to carry out the purpose of this section including:~~

~~(a) Delineation, by administrative order of the secretary, of the geographic boundaries of regional emergency medical services systems.~~

~~(b) Promulgation of administrative regulations providing for:~~

~~1. Composition of regional emergency medical services advisory boards to serve in an advisory capacity to the Kentucky Emergency Medical Services Council;~~

~~2. Terms of office of regional emergency medical services advisory board members;~~

~~3. Appointment of regional emergency medical services advisory board members; and~~

~~4. Such other matters relating to regional emergency medical services systems as may be necessary.~~

~~(c) Provision of technical assistance to regional emergency medical services advisory boards, units of local government, and others in planning for the development, coordination, and monitoring of emergency medical services.~~

~~(d) Development of]~~ a statewide plan for the implementation of emergency medical services systems and trauma care systems within the Commonwealth of Kentucky ***that***~~[which]~~ specifically addresses the unique needs of rural areas***;***~~[.]~~

(7)~~[(e)]~~ ***Issuing***~~[Issuance of]~~ a format for the development of regional emergency medical services plans consistent with goals and standards included in the statewide emergency medical services plan.

(8)~~[(f)]~~ ***Applying***~~[Application]~~ for, ***receiving***~~[receipt of]~~, and ***disposing***~~[disposition]~~ of federal, state, or private funds by grant, appropriation, donation, or otherwise for emergency medical services programs, personnel, and equipment***;***~~[.~~

~~(g) Awarding of funds to regional emergency medical services systems to implement specific objectives delineated in regional emergency medical services plans, including assistance to local governments for their provision of ambulance service.]~~

(9)~~[(h)]~~ ***Developing***~~[Development]~~, monitoring, and ***encouraging***~~[encouragement]~~ of~~[such]~~ other projects and programs ***that***~~[which]~~ may be of benefit to emergency medical services in the Commonwealth***; and***

(10) Establishing standards related to the training of emergency medical services personnel.

Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.

~~[(i) Conducting verification inspections to ensure compliance with voluntary standards established by the cabinet for trauma centers, emergency departments, and specialized hospital-based services for which standards have been established by the cabinet for emergency medical services and trauma care systems.~~

~~(5) The cabinet shall establish a Kentucky Emergency Medical Services Council which shall advise the cabinet on issues relating to the development, implementation, regulation, maintenance, and reimbursement of emergency medical services systems and providers. This council shall be broadly representative of individuals, providers, and public officials having expertise in emergency medical services. The council shall consult with the Kentucky Board of Medical Licensure to establish medically appropriate standards and protocols which will be utilized by emergency medical services personnel and to assist the Kentucky Board of Medical Licensure in meeting the requirements of KRS 311.654. The council shall consult with the Kentucky Board of Nursing to establish appropriate standards and protocols to meet the requirements of KRS 314.131 for nurses who practice in emergency medical service settings.~~

~~(6) Data and records generated and kept by the single emergency medical services administrative agency, the Kentucky Emergency Medical Services Council, the Emergency Medical Services for Children Advisory Committee, the Kentucky Emergency Medical Services for Children Program or their contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth, including the identities of patients, emergency medical services personnel, ambulance providers, medical first-response providers, and emergency medical facilities, shall be held confidential, shall not be subject to disclosure under KRS 61.805 to 61.884, shall not be admissible in court for any purpose, and shall not be subject to discovery; provided, however, that nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment which otherwise would be admissible or discoverable.~~

~~(7) Nothing in this section shall limit, preclude, or otherwise restrict the practices of licensed personnel in carrying out their duties under the terms of their licenses.]~~

Section 4. KRS 211.953 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

The Kentucky General Assembly declares that the purpose of ***Section 5 of this Act***~~[KRS 211.9531 and 211.9533]~~ is to establish a comprehensive emergency medical services system for children, as an integral part of Kentucky's overall emergency medical services and trauma care system, in order to provide children with access to comprehensive emergency~~[and critical care medical services, including preventive, prehospital, hospital, rehabilitation, and other posthospital]~~ care. The General Assembly recognizes the contributions of the federally funded Emergency Medical Services for Children program in Kentucky and desires to continue and expand the activities initiated by this program. The General Assembly finds that coordination of emergency services, additional training of emergency medical services personnel, communication among service providers, and enhanced data collection efforts will provide children with access to skilled emergency care, decrease unnecessary deaths from injury, decrease the overall costs of health care, and provide information as to the quality of emergency medical care for children.

Section 5. KRS 211.9531 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

(1)[~~ There is established within the department's lead agency for emergency medical services an Emergency Medical Services for Children Program.~~

~~(2)~~] The ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] may hire a coordinator for the ***Emergency Medical Services for Children***[~~EMSC~~] Program[~~ who shall be assigned to the department's lead agency for emergency medical services. The authorized personnel cap for the department may be increased to include the coordinator~~] and other positions for which funding is provided by the General Assembly or through any other sources, including gifts, grants, or federal funds.

(2)[~~(3)~~] The coordinator shall***, subject to the direction of the Kentucky Board of Emergency Medical Services***:

(a) Implement and oversee the ***Emergency Medical Services for Children***[~~EMSC~~] Program described in this section[~~, in consultation with the advisory committee established in Section 5 of this Act~~]; and

(b) Serve as liaison for collaboration and coordination between the ***Emergency Medical Services for Children***[~~EMSC~~] Program***, the Kentucky Board of Emergency Medical Services,*** and other public and private organizations,[~~ including the department's lead emergency medical services agency,~~] the state traffic safety office, the maternal and child health program, the Medicaid department, the state and local child fatality review and response teams, state and local professional organizations, private sector voluntary organizations, and consumer and community representatives.

(3)[~~(4)~~] The ***Emergency Medical Services for Children***[~~EMSC~~] Program may include, but not be limited to, the establishment of the following:

(a)[~~ Guidelines for the approval of emergency medical services facilities for pediatric care, and designation of specialized regional pediatric critical care centers and pediatric trauma centers;~~

~~(b) Guidelines for referring children to the appropriate emergency medical facility;~~

~~(c)~~] Guidelines for necessary ***out-of-hospital***[~~prehospital and other pediatric emergency and critical care~~] medical service equipment;

(b)[~~(d) Guidelines for developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate level of care, including critical care, trauma care, or pediatric subspecialty care;~~

~~(e)~~] Guidelines and protocols for ***out-of-hospital***[~~prehospital and hospital facilities encompassing all levels of~~] pediatric emergency medical services[~~, pediatric critical care, and pediatric trauma care;~~

~~(f) Guidelines for rehabilitation services for critically ill or injured children;~~

~~(g) A system for transferring critically ill or injured children between emergency medical facilities, services, and systems~~];

(c)[~~(h)~~] ***Assistance in the development and provision of***[~~Initial and continuing~~] professional education programs for emergency medical services personnel[~~, which shall include training~~] in the emergency care of infants and children;

(d)[~~(i) A public education program concerning the EMSC Program, including information on emergency access telephone numbers;~~

~~(j) The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency medical facilities for the purpose of quality improvement by these facilities, subject to the confidentiality requirements of KRS 211.952(6);~~

~~(k) The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency medical services;~~

~~(l)~~] Coordination and cooperation between the ***Emergency Medical Services for Children***[~~EMSC~~] Program and other public and private organizations interested or involved in emergency[~~ and critical~~] care for children, including those persons and organizations identified in subsection ***(2)***[~~(3)~~](b) of this section; and

(e)[~~(m)~~] The scope of activities carried out by the ***Emergency Medical Services for Children***[~~EMSC~~] Program shall be commensurate with the availability of funds.

Section 6. KRS 211.954 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

A matching fund program is hereby created for the purpose of assisting local ***units of government***[~~ambulance providers~~] in the purchases of ambulances and equipment***, provision of an adequate number of trained emergency medical services personnel, and provision of education for personnel***. The fund shall consist of such moneys as may be appropriated by the General Assembly or may be obtained from other sources for the fund as provided in this section[~~ and KRS 211.956~~]:

(1) Application and justification of need for moneys from the fund shall be based upon the state emergency medical services plan's priorities;

(2) Application for moneys from the fund may be made to the ***Kentucky Board of Emergency Medical Services***[~~Cabinet for Health Services~~] by any city, county, ***ambulance taxing district,*** or regional emergency medical services system based upon guidelines established by the ***Kentucky Board of Emergency Medical Services***[~~Cabinet for Health Services~~];

(3) Moneys from the fund will provide for up to a maximum of fifty percent (50%) of the actual cost of any ambulance or other item of equipment desired to be procured. No county, including all grants to entities within the county, shall receive more than twenty-five thousand five hundred dollars ($25,500) from the fund per year;

(4) No funds awarded pursuant to this section shall be used for any other purpose than the purpose for which they were awarded. Funds remaining unexpended one (1) year from the date of the award shall lapse and shall be returned to the fund by the recipient[~~ city, county, or regional emergency medical services system~~];

(5) Funding periods shall coincide with the fiscal year as established by the ***Kentucky Board of Emergency Medical Services***[~~Cabinet for Health Services~~]; and

(6) Each ambulance or item of equipment purchased shall meet or exceed, if a standard has been set for the particular item of equipment, the standards set by the ***Kentucky Board of Emergency Medical Services***~~[Cabinet for Health Services]~~.

Section 7. KRS 211.962 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

No person shall:

(1) Hold himself out as certified pursuant to KRS ***311.652 to 311.658***~~[211.962 to 211.968]~~ nor use the ***title of emergency medical technician or***~~[initials]~~ "EMT" when he does not hold a current valid certification issued pursuant to KRS ***311.652 to 311.658***~~[211.962 to 211.968]~~; or

(2) If certified, violate any provision of KRS ***311.652 to 311.658***~~[211.962 to 211.968]~~ or any ***administrative***~~[rule or]~~ regulation, adopted by the ***Kentucky Board of Emergency Medical Services***~~[Cabinet for Health Services]~~ relating to ***Section 8 of this Act***~~[KRS 211.964]~~.

Section 8. KRS 211.964 is repealed, reenacted as a new section of KRS 311.652 to 311,658, and amended to read as follows:

(1) The ***Kentucky Board of Emergency Medical Services***~~[Cabinet for Health Services]~~ shall promulgate administrative regulations relating to emergency medical technicians. The ***administrative*** regulations may include the classification and certification of emergency medical technicians, instructors, instructor-trainers, and students and trainees; examinations; standards of training and experience; curricula standards; issuance, renewal, suspension, denial, revocation, probation, and restriction of certificates; hearing of appeals; and other reasonable standards~~[or regulations]~~ as may be necessary for the protection of public health and safety in the delivery of emergency medical services.~~[Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.]~~ No additional testing or examinations shall be required for recertification, except for proficiency testing of new skills or knowledge, or areas in which there is documented evidence of deterioration of skills.

(2) Recertification programs shall be organized to include continuing education and in-service training approved by the ***Kentucky Board of Emergency Medical Services***~~[cabinet]~~. The continuing education program shall be subject to the requirements of KRS 214.610(1).

(3) ***Beginning the effective date of this Act, a new emergency medical technician shall, for initial certification, be certified using the requirements and testing established by the National Registry of Emergency Medical Technicians.***

(4) Beginning the effective date of this Act, a certified emergency medical technician who seeks recertification shall obtain recertification under the requirements established and maintained by the Kentucky Board of Emergency Medical Services. These requirements shall contain a minimum of sixteen (16) hours of required topics and eight (8) hours of elective topics over a two (2) year recertification period. The Kentucky Board of Emergency Medical Services shall also recertify any emergency medical technician who chooses to obtain recertification under the requirements established by the National Registry of Emergency Medical Technicians in lieu of the standards established by the Kentucky Board of Emergency Medical Services.

(5)[~~ In lieu of the continuing education and in-service training requirement specified by the cabinet for recertification, an emergency medical technician, certified as of July 15, 1996, or within one (1) year of July 15, 1996, may elect to recertify utilizing the continuing education and in-service training required by the National Registry of Emergency Medical Technicians or its successor organization. Upon successful completion of the National Registry recertification requirements, the emergency medical technician shall be recertified for the period of time specified by law.~~

~~(4) Emergency medical technicians certifying later than one (1) year after July 15, 1996, shall, in lieu of the certification requirements specified by the cabinet under subsection (1) of this section, successfully complete the National Registry of Emergency Medical Technicians final examination for certification and shall maintain National Registry of Emergency Medical Technicians credentials in order to be recertified.~~

~~(5) A person who has chosen to recertify as an emergency medical technician utilizing the National Registry of Emergency Medical Technicians or its successor organization's requirements shall not be permitted to recertify utilizing the cabinet's requirements, unless the National Registry of Emergency Medical Technicians and its successor organization ceases business or there is no successor organization.~~

~~(6)~~] Other than the requirements of KRS 214.610(1), the ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] shall not require any additional course work, in-service training, testing, or examinations of a person who chooses the National Registry of Emergency Medical Technicians or its successor organization for certification or recertification as an emergency medical technician.

(6)[~~(7)~~] Other than the requirements of KRS 214.610(1), any person ***licensed***[~~certified~~] by the ***Kentucky Board of Emergency Medical Services***[~~State Board of Medical Licensure~~] as a paramedic shall be certified as an emergency medical technician by the ***board***[~~cabinet~~]. The certification shall be issued without fee, without additional training, in-service training, testing, or examination. The emergency medical technician certification shall be issued and expire at the same time that ***the*** paramedic ***license***[~~certification~~] is issued or expires, and if a paramedic voluntarily gives up his ***or her license***[~~certification~~] prior to the expiration of his ***or her*** paramedic ***license***[~~certification~~], his ***or her*** emergency medical technician certification shall be unaffected thereby. If a paramedic chooses not to ***be relicensed***[~~recertify~~] as a paramedic but chooses to retain his emergency medical technician certification, the paramedic shall, prior to the expiration of his paramedic ***license***[~~certification~~], ***complete the requirements for recertification***[~~recertify~~] as an emergency medical technician utilizing one (1) of the methods provided for in this section.

(7)[~~(8)~~] A paramedic whose ***license***[~~certification~~] as a paramedic is suspended, revoked, or denied by the ***Kentucky Board of Emergency Medical Services***[~~State Board of Medical Licensure~~] shall have the same action taken automatically[~~ by the cabinet~~] with regard to his emergency medical technician certification.

Section 9. KRS 211.966 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

The ***Kentucky Board of Emergency Medical Services***[~~secretary of the Cabinet for Health Services~~] may, by ***administrative*** regulation, prescribe a reasonable schedule of fees and charges for examinations, for the issuance of ***licenses or*** certificates, and for the renewal of ***licenses or*** certificates issued pursuant to KRS ***311.652 to 311.658***[~~211.962 to 211.968~~]. All such fees,

charges, or other moneys collected by the ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] under KRS ***311.652 to 311.658***[~~211.962 to 211.968~~] shall be paid into the State Treasury and credited to a trust and agency fund to be used by the ***Kentucky Board of Emergency Medical Services***[~~Cabinet for Health Services~~] for carrying out the provisions of KRS ***311.652 to 311.658***[~~211.962 to 211.968~~].

Section 10. KRS 211.967 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

As a condition of being issued a certificate as an emergency medical technician, the applicant shall have completed a ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change.

Section 11. KRS 211.968 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

Nothing in KRS ***311.652 to 311.658***[~~ 211.962 to 211.966~~] shall be construed to permit certification or utilization of any certified emergency medical technician ***or emergency medical technician first responder*** for the purpose of such individual working full time with primary responsibility and duties limited to hospitals, physicians' offices, clinics, or other definitive care facilities, except[~~ for certification or utilization of a person~~] as an emergency medical technician trainee or as a full-time instructor of emergency medical technicians.

Section 12. KRS 211.990 is amended to read as follows:

(1) Any owner or occupant who fails to comply with an order made under the provisions of KRS 211.210 shall be guilty of a violation, and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.

(2) Except as otherwise provided by law, anyone who fails to comply with the provisions of the rules and regulations adopted pursuant to this chapter or who fails to comply with an order of the cabinet issued pursuant thereto shall be guilty of a violation. Each day of such violation or noncompliance shall constitute a separate offense.

(3) Any person who violates any provision of KRS 211.182 shall, upon first offense, be guilty of a Class A misdemeanor. Each subsequent violation of any provision of KRS 211.182 shall constitute a Class D felony.

(4) Any person who violates any provision of KRS 211.842 to 211.852 or any regulation adopted hereunder or any order issued by the Cabinet for Health Services to comply with any provision of KRS 211.842 to 211.852 or the regulations adopted thereunder shall be guilty of a Class A misdemeanor. Each day of violation or noncompliance shall constitute a separate offense.

(5)[~~ Any person who violates KRS 211.962 or any rule or regulation of the Cabinet for Health Services adopted pursuant to KRS 211.962 to 211.968 shall be guilty of a Class A misdemeanor.~~

~~(6)~~] A private review agent which performs utilization review without proper registration pursuant to KRS 211.461 to 211.466 shall be guilty of a Class A misdemeanor.

(6)[~~(7)~~] Any properly registered private review agent which willfully violates any provision of KRS 211.461 to 211.466 or of the regulations shall be guilty of a Class D felony.

(7)[~~(8)~~] A person who performs or offers to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities who is not certified as required by KRS 211.9063 or 211.9069 shall be guilty of a Class A misdemeanor.

(8)[~~(9)~~] Any person who performs lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities, who willfully violates the standards for performing lead-hazard detection or lead-hazard abatement procedures included in the administrative regulations promulgated pursuant to KRS 211.9075 shall be guilty of a Class D felony.

(9)[~~(10)~~] The penalties provided in subsections ***(5),*** (6), (7), ***and*** (8)[~~, and (9)~~] of this section are cumulative and are in addition to any other penalties, claims, damages, or remedies available at law or in equity.

(10)[~~(11)~~] Any person who violates any provisions of KRS 211.760 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). Each day of violation or noncompliance shall constitute a separate offense.

Section 13. KRS 216B.410 is amended to read as follows:

(1) Each licensed ambulance provider and medical first response provider as defined in ***Section 3 of this Act***[~~KRS 211.952(2)~~] shall collect and provide to the ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] run data and information required by the ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] by administrative regulation.

(2) The ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] shall develop a run report form for the use of each class of ambulance provider and medical first response provider containing the data required in subsection (1) of this section. An ambulance provider or medical first response provider may utilize any run form it chooses in lieu of or in addition to the ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] developed run report form. However, the data captured on the run report form shall include at least that required by the administrative regulations promulgated pursuant to subsection (1) of this section.

(3) An ambulance provider or medical first response provider ***shall***[~~may~~] report the required run report data and information by ***completing an annual report as established by the Kentucky Board of Emergency Medical Services***[~~sending copies of the completed run report forms to the cabinet~~] or by transmitting the required data and information to the cabinet in an electronic format. If the ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] requires the use of a specific electronic format, it shall provide a copy of the file layout requirements, in either written or electronic format, to the licensed ambulance provider or medical first response provider at no charge.

(4)[~~ Each ambulance provider or medical first response provider shall submit its run reports or data summary reports in electronic format on the time schedule specified by the cabinet by administrative regulation.~~

~~(5)~~] The ***Kentucky Board of Emergency Medical Services***[~~cabinet~~] shall publish a comprehensive annual report reflecting the data collected, injury and illness data, treatment utilized, and other information deemed important by the ***board***[~~cabinet~~]. The annual report shall not include patient identifying information or any other information identifying a natural person. A copy of the comprehensive annual report shall be forwarded ***to the***

Governor and the General Assembly~~[by the cabinet to the Kentucky Board of Medical Licensure]~~.

(5)~~[(6)]~~ Ambulance provider and medical first response provider run report forms and the information transmitted electronically to the ***Kentucky Board of Emergency Medical Services***~~[cabinet]~~ shall be confidential. No person shall make an unauthorized release of information on an ambulance run report form or medical first response run report form. Only the patient or the patient's parent or legal guardian if the patient is a minor, or the patient's legal guardian or person with proper power of attorney if the patient is under legal disability as being incompetent or mentally ill, or a court of competent jurisdiction may authorize the release of information on a patient's run report form or the inspection or copying of the run report form. Any authorization for the release of information or for inspection or copying of a run report form shall be in writing.

(6)~~[(7)]~~ If a medical first response provider or ambulance provider does not use a paper form but collects patient data through electronic means, it shall have the means of providing a written run report that includes all required data elements to the medical care facility. A copy of the medical first response form or a summary of the run data and patient information shall be made available to the ambulance service that transports the patient. A copy of the ambulance run report form shall be made available to any medical care facility to which a patient is transported and shall be included in the patient's medical record by that facility. If a patient is not transported to a medical facility, the copy of the run report form that is to be given to the transporting ambulance provider or medical care facility shall be given to the patient or to the patient's parent or legal guardian. If the ambulance provider, medical facility, patient, or patient's legal guardian refuses delivery of their run report form or is unavailable to receive the form, that copy of the form shall be returned to the medical first response provider or ambulance provider and destroyed.

(7)~~[(8)]~~ All ambulance services shall be required to keep adequate reports and records to be maintained at the ambulance base headquarters and to be available for periodic review as deemed necessary by the board. Required records and reports are as follows:

(a) Employee records, including a resume of each employee's training and experience and evidence of current certification; and

(b) Health records of all drivers and attendants including records of all illnesses or accidents occurring while on duty.

(8) Data and records generated and kept by the Kentucky Board of Emergency Medical Services or its contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth, including the identities of patients, emergency medical services personnel, ambulance providers, medical first-response providers, and emergency medical facilities, shall be confidential, shall not be subject to disclosure under KRS 61.805 to 61.850 or KRS 61.870 to 61.884, shall not be admissible in court for any purpose, and shall not be subject to discovery. However, nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment that otherwise would be admissible or discoverable.

Section 14. KRS 281.014 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) (a) The term "city taxicab certificate" or "city limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to the corporate limits of a city of the first or second class or an urban-county area and the city's suburban area, or the corporate limits of any city and its suburban area located in a county which contains a city of the first or second class or an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of such transportation;

(b) The term "county taxicab certificate" or "county limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to a specific county which does not contain a city of the first or second class and is not an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of the transportation;

(c) A "taxicab" means a motor vehicle operated under one (1) or more taxicab certificates, and is a vehicle designed or constructed to transport not more than fifteen (15) passengers exclusive of the driver;

(d) A "limousine" means a luxury motor vehicle passenger car which has either a standard or an extended wheelbase. The vehicle shall have additional rear seating capacity, area, and comforts, but shall be designed or constructed to transport not more than fifteen (15) passengers plus the driver;

(e) The term "taxicab license" means a license plate issued to a taxicab authorized to operate under a taxicab certificate;

(f) The term "limousine license" means a license plate issued to a limousine authorized to operate under a limousine certificate;

(2) (a) An "airport shuttle certificate" means a certificate granting authority only for the operation of motor vehicles exclusively transporting passengers or baggage for hire over regular routes between points within a city or its suburban area and an airport;

(b) An "airport shuttle vehicle" means a motor vehicle operated under one (1) or more airport shuttle certificates and which is designed or constructed to transport not more than fifteen (15) passengers plus the driver;

(c) The term "airport shuttle vehicle license" means a license plate issued for a motor vehicle authorizing its operation under one (1) or more airport shuttle certificates;

(3) The term "U-Drive-It" means any person who leases or rents a motor vehicle for a consideration to be used for the transportation of persons or property, but for which no driver is furnished, and the use of which motor vehicle is not for the transportation of persons or property for hire by the lessee or rentee;

(4) The term "driveaway" means the transporting and delivering of motor vehicles, except semitrailers, and trailers, whether destined to be used in either a private or for-hire capacity, under their own power or by means of a full mount method, saddle mount method, the tow bar method, or any combination of them over the highways of this state from any point of

origin to any point of destination for-hire. The transportation of such vehicles by the full mount method on trailers or semitrailers shall not be included in the term ; and

(5) (a) "Disabled persons vehicle" means a motor vehicle especially equipped and used for the transportation of persons with disabilities and which is in compliance with the accessibility specifications of 49 C.F.R. Part 38, but it shall be designed and constructed to transport not more than fifteen (15) passengers plus the driver. It shall not mean an ambulance as defined in ***Section 1 of this Act***~~[KRS 211.950]~~. It shall not mean a motor vehicle equipped with a stretcher;

(b) "Disabled persons carrier" means an irregular route common carrier for hire, transporting the general public who require transportation in disabled persons vehicles; and

(c) "Disabled persons certificate" means a certificate that grants authority only for the operation of a given number of disabled persons vehicles for hire, the principle operation of which is confined to a specific county.

Section 15. KRS 281.605 is amended to read as follows:

The provisions of this chapter shall not apply, except as to safety regulations, to:

(1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;

(2) Except as provided in paragraph (e) of this subsection, motor vehicles, regardless of ownership, used exclusively:

(a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry, and eggs, while owned by the producer of the products, including landlord where the relation of landlord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy, or mill, or from one (1) market, warehouse, dairy, or mill to another market, warehouse, dairy, or mill;

(b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;

(c) For both the purposes described in paragraphs (a) and (b) of this subsection;

(d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return; or

(e) Motor vehicles used for the transportation of fly ash, in bags, sacks, or other containers, the aggregate weight of which does not exceed ten thousand (10,000) pounds; or bottom ash, waste ash, sludge, and pozatec which is being removed from the premises of a power generator facility for the purpose of disposal;

(3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;

(4) Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;

(5) Motor vehicles owned in whole or in part by any person and used by such person to transport commodities of which such person is the bona fide owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person within the scope and in furtherance of any primary commercial enterprise of such person other than the business of transportation of property for hire;

(6) Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;

(7) Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tipple where the railhead or tipple is located at a point not more than fifty (50) air miles from the point at which the coal is mined;

(8) Motor vehicles used as ambulances in transporting wounded, injured, or sick animals or as ambulances as defined in ***Section 1 of this Act***~~[KRS 211.950]~~;

(9) Motor vehicles used by transit authorities as created and defined in KRS Chapter 96A except as required by KRS 96A.170. Vehicles operated under the authority and direct responsibility of such transit authorities, through contractual agreement, shall be included within this exemption, without regard to the legal ownership of the vehicles, but only for such times as they are operated under the authority and responsibility of the transit authority;

(10) Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself is on his way to or from his place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis;

(11) Motor vehicles used to transport cash letters, data processing material, instruments, or documents, regardless of the ownership of any of said cash letters, data processing material, instruments, or documents;

(12) Motor vehicles operated by integrated intermodal small package carriers who provide intermodal-air-and-ground-transportation. For the purposes of this section, "integrated intermodal small package carrier" shall mean an air carrier holding a certificate of public convenience and necessity or qualifying as an indirect air carrier that undertakes, by itself or through a company affiliated through common ownership, to provide intermodal-air-and-ground-transportation, and "intermodal-air-and-ground-transportation" shall mean transportation involving the carriage of articles weighing not more than one hundred fifty (150) pounds by aircraft or other forms of transportation, including by motor vehicle, wholly within the Commonwealth of Kentucky. The incidental or occasional use of aircraft in transporting packages or articles shall not constitute an integrated intermodal operation within the meaning of this section; or

(13) Motor vehicles operated pursuant to a grant of funds in furtherance of and governed by 49 U.S.C. secs. 5310 or 5311, including all amendments, and whose operators have jurisdictions and services approved annually by the Transportation Cabinet in accordance with 49 C.F.R. Title VI.

Section 16. KRS 304.17A-580 is amended to read as follows:

(1) Health benefit plans shall educate their insureds about the availability, location, and appropriate use of emergency and other medical services, cost-sharing provisions for emergency services, and the availability of care outside an emergency department.

(2) ***All*** health benefit plans using a defined network of health care providers shall cover ***emergency medical services and supplies and*** emergency department screening and stabilization services both in-network and out-of-network without prior authorization for use consistent with the prudent layperson standard.

(3) Emergency department personnel shall contact a patient's primary care provider or health benefit plan, as appropriate, as quickly as possible to discuss follow-up and poststabilization care and promote continuity of care.

(4) Nothing in this section shall apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies.

Section 17. KRS 304.39-020 is amended to read as follows:

As used in this subtitle:

(1) "Added reparation benefits" mean benefits provided by optional added reparation insurance.

(2) "Basic reparation benefits" mean benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications and other conditions provided in this subtitle. The maximum amount of basic reparation benefits payable for all economic loss resulting from injury to any one (1) person as the result of one (1) accident shall be ten thousand dollars ($10,000), regardless of the number of persons entitled to such benefits or the number of providers of security obligated to pay such benefits. Basic reparation benefits consist of one (1) or more of the elements defined as "loss."

(3) "Basic reparation insured" means:

(a) A person identified by name as an insured in a contract of basic reparation insurance complying with this subtitle; and

(b) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of basic reparation insurance complying with this subtitle: a spouse or other relative of a named insured; and a minor in the custody of a named insured or of a relative residing in the same household with the named insured if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

(4) "Injury" and "injury to person" mean bodily harm, sickness, disease, or death.

(5) "Loss" means accrued economic loss consisting only of medical expense, work loss, replacement services loss, and, if injury causes death, survivor's economic loss and survivor's replacement services loss. Noneconomic detriment is not loss. However, economic loss is loss although caused by pain and suffering or physical impairment.

(a) "Medical expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training, ***licensed ambulance services,*** and other remedial treatment and care. "Medical expense" may include non-medical remedial treatment rendered in accordance with a recognized religious method of healing. The term includes a total charge not in excess of one thousand dollars ($1,000) per person for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. Medical expense shall include all healing arts professions licensed by the Commonwealth of Kentucky. There shall be a presumption that any medical bill submitted is reasonable.

(b) "Work loss" means loss of income from work the injured person would probably have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him.

(c) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(d) "Survivor's economic loss" means loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of decedent's death.

(e) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.

(6) "Use of a motor vehicle" means any utilization of the motor vehicle as a vehicle including occupying, entering into and alighting from it. It does not include:

(a) Conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises; or

(b) Conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it.

(7) "Motor vehicle" means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles

as travel exclusively upon rails and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality. Motor vehicle shall not mean moped as defined in this section.

(8) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

(9) "Public roadway" means a way open to the use of the public for purposes of motor vehicle travel.

(10) "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss.

(11) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damages recoverable under the tort law of this Commonwealth. The term does not include punitive or exemplary damages.

(12) "Owner" means a person, other than a lienholder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term does not include a lessee under a lease not intended as security.

(13) "Reparation obligor" means an insurer, self-insurer, or obligated government providing basic or added reparation benefits under this subtitle.

(14) "Survivor" means a person identified in KRS 411.130 as one entitled to receive benefits by reason of the death of another person.

(15) A "user" means a person who resides in a household in which any person owns or maintains a motor vehicle.

(16) "Maintaining a motor vehicle" means having legal custody, possession or responsibility for a motor vehicle by one other than an owner or operator.

(17) "Security" means any continuing undertaking complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.

Section 18. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

(1) "Board" means the State Board of Medical Licensure;

(2) "President" means the president of the State Board of Medical Licensure;

(3) "Secretary" means the secretary of the State Board of Medical Licensure;

(4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;

(5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;

(6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;

(7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;

(8) "Temporary permit" means a permit issued to a person who has applied for a regular or limited license, and who appears from verifiable information in the application to the secretary to be qualified and eligible therefor;

(9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;

(10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;

(11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by ***paramedics licensed under KRS 311.652 to 311.658, emergency medical technician first responders, or*** emergency medical technicians~~[or medical emergency dispatchers]~~ certified ***under KRS 311.652 to 311.658***~~[by the Cabinet for Health Services]~~, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;

(12) "Physician" means a doctor of medicine or a doctor of osteopathy;

(13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;

(14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;

(15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;

(16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including, but not limited

to, crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;

(17) "Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or who possesses a current physician assistant certificate issued by the board prior to July 15, 1998;

(18) "Supervising physician" means a physician licensed by the board who supervises physician assistants; and

(19) "Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, or other telecommunication device. Each team of physicians and physician assistants shall ensure that the delegation of medical tasks is appropriate to the physician assistant's level of training and experience; that the identification of and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

SECTION 19. A NEW SECTION OF KRS 311.652 TO 311.658 IS CREATED TO READ AS FOLLOWS:

(1) When the Kentucky Board of Emergency Medical Services is engaged in the investigation or discipline of an entity licensed by the Kentucky Board of Emergency Medical Services, or a paramedic, emergency medical technician first responder, or emergency medical technician, or it is alleged that a paramedic, emergency medical technician first responder, or emergency medical technician has violated a statute, administrative regulation, protocol, or practice standard relating to serving as a paramedic, emergency medical technician first responder or emergency medical technician, the paramedic, emergency medical technician first responder, emergency medical technician, his or her employer, and the ambulance service's medical director shall be parties to the action and have the right to testify at any deposition, hearing, or other proceeding relating to the investigation or discipline of the paramedic, emergency medical technician first responder, or emergency medical technician.

(2) The paramedic, emergency medical technician first responder, emergency medical technical, his or her employer, and the ambulance service's medical director shall have the right to appeal any portion of a decision of the Kentucky Board of Emergency Medical Services that affects them to the Franklin Circuit Court.

(3) The Kentucky Board of Emergency Medical Services shall investigate any complaint against an entity regulated by the board, a paramedic, emergency medical technician first responder, or emergency medical technician and make findings of fact and conclusions of law.

(4) If it appears that the entity regulated by the board, the paramedic, emergency medical technician first responder, or emergency medical technician has violated a statute, administrative regulation, protocol, or practice standard relating to serving as an entity

regulated by the board, a paramedic, emergency medical technician first responder, or emergency medical technician, the board shall hold a full hearing under KRS Chapter 13B to determine whether the violation occurred. If it is determined that an entity regulated by the Kentucky Board of Emergency Medical Services, a paramedic, emergency medical technician first responder, or emergency medical technician has violated a statute, administrative regulation, protocol, or practice standard relating to serving as an entity regulated by the board, a paramedic, emergency medical technician first responder, or emergency medical technician, the Kentucky Board of Emergency Medical Services may impose any of the sanctions provided in subsection (5) of this section. Any party to the complaint shall have the right to introduce the findings of fact and conclusions of law.

(5) The Kentucky Board of Emergency Medical Services may use any one (1) or more of the following sanctions when disciplining any entity regulated by the board, paramedic, emergency medical technician first responder, or emergency medical technician:

(a) Private reprimand that shall be shared with each of the paramedic's, emergency medical technician first responder's, or emergency medical technician's employer and medical director;

(b) Public reprimand;

(c) Fines;

(d) Revocation of certification or licensure;

(e) Suspension of licensure 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; or

(j) Repassing a portion of the paramedic or emergency medical technician examination.

Section 20. KRS 311.652 is amended to read as follows:

No person shall:

(1) Hold himself out as ***licensed***~~[certified]~~ pursuant to KRS ***311.652***~~[311.650]~~ to 311.658 nor use the term "paramedic" when he does not hold a current valid ***license***~~[certification]~~ issued pursuant to KRS ***311.652***~~[311.650]~~ to 311.658; or

(2) If ***licensed***~~[certified]~~, violate any provision of KRS ***311.652***~~[311.650]~~ to 311.658 or any ***administrative***~~[rule or]~~ regulation, adopted by the ***Kentucky Board of Emergency Medical Services***~~[board of Medical Licensure]~~, relating to KRS 311.654.

Section 21. KRS 311.654 is amended to read as follows:

(1) The ***Kentucky*** Board of ***Emergency*** Medical ***Services***~~[Licensure]~~ shall promulgate administrative regulations relating to paramedics. The regulations may include, but need not be limited to, the classification and ***licensure***~~[certification]~~ of paramedics, instructor-trainers, instructors, and students and trainees; examinations; standards of training and experience; curricula standards; administration of drugs and controlled substances by

paramedics under the direction or supervision of licensed physicians; issuance, renewal, suspension, denial, and revocation of ***licenses***~~[certificates]~~, and such other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services.

(2) ***Relicensure programs shall be organized to include continuing education and in-service training approved by the board.*** Any continuing education required by the ***Kentucky*** Board of ***Emergency*** Medical ***Services***~~[Licensure]~~ shall include ***an***~~[a Cabinet for Health Services]~~ approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change***, subject to Section 26 of this Act***.

~~[(3) The Kentucky Board of Medical Licensure shall enter into an agreement with the Cabinet for Health Services whereby the cabinet's lead agency for emergency medical services shall carry out the day-to-day administration of this section under administrative regulations promulgated by the Board of Medical Licensure. The Kentucky Emergency Medical Services Council will provide advice and recommendations to the Kentucky Board of Medical Licensure related to the provisions of KRS 311.650 to 311.658.]~~

Section 22. KRS 311.656 is amended to read as follows:

The ***Kentucky*** Board ***of Emergency Medical Services***~~[of Medical Licensure]~~ may, by ***administrative*** regulation, prescribe a reasonable schedule of fees and charges for examinations, for the issuance of ***licenses***~~[certificates]~~, and for the renewal of ***licenses***~~[certificates]~~ issued pursuant to KRS ***311.652***~~[311.650]~~ to 311.658. All such fees, charges or other moneys collected by the board~~[of Medical Licensure]~~ under KRS ***311.652***~~[311.650]~~ to 311.658 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the board~~[of Medical Licensure]~~ for carrying out the provisions of KRS ***311.652***~~[311.650]~~ to 311.658.

Section 23. KRS 311.658 is amended to read as follows:

(1) At the discretion of the employer's medical director, a paramedic may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for paramedics published by the United States Department of Transportation. An emergency medical technician may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for emergency medical technicians. An emergency medical technician first responder may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for emergency medical technician first responders. Any paramedic, emergency medical technician first responder, or emergency medical technician may perform any additional procedure authorized by the Kentucky Board of Emergency Medical Services if approved by the employer's medical director and within the scope of the designated practice based upon national practice standards. With the approval of the employer's medical director, a paramedic, emergency medical technician first responder, or emergency medical technician may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for paramedics or the most recent national standard curriculum for emergency medical technicians-basic or emergency medical technician first responder published by the United States Department of Transportation respectively, and other procedure authorized by the Kentucky Board of

Emergency Medical Services. Nothing in this subsection shall prevent an employer from exercising reasonable fiscal control over the costs of providing emergency medical services to its citizens nor prevent the employer from exercising any reasonable control over paramedics, emergency medical technician first responders, or emergency medical technicians providing emergency medical care upon behalf of the licensed entity.

(2) ***Any paramedic may draw blood samples from a criminal defendant upon the request of a peace officer and the consent of the defendant, or without the consent of the defendant upon receipt of a court order requiring the procedure, if the paramedic is authorized to do so by his or her employer. The authorization shall be in writing and may be by general written policy of the employer and the service's medical director. The paramedic who drew the blood sample shall deliver the sample to the peace officer or other person specified by the court in a court order and shall testify in court with regard thereto upon service of a proper subpoena.***

(3) Paramedics shall be permitted to render services only~~[in emergency situations, and shall perform such services]~~ under supervision of a qualified and licensed ***physician***~~[health practitioner]~~.

Section 24. KRS 311.660 is amended to read as follows:

(1) When it appears that a person whom a paramedic who has successfully completed training in determination of death has been called to attend is dead, the paramedic shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the paramedic or an emergency medical technician who has responded with or after the paramedic, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the paramedic may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead. If it is determined that death has occurred in accordance with the procedures of KRS 446.400 with regard to patients who have not been resuscitated, the paramedic may make the actual determination and pronouncement of death. This section shall not apply to patients who are in a hospital when apparent death occurs.

(2) In the event that a paramedic determines that a person is dead, the paramedic shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.

(3) Any paramedic course taught after July 15, 1998, shall include a course of instruction on the determination of death and preservation of evidence as required by the ***Kentucky Board of Emergency Medical Services***~~[board of Medical Licensure]~~ by administrative regulation.

(4) Any paramedic ***relicensed***~~[recertified]~~ within the ***three (3)***~~[two (2)]~~ years following July 15, 1998, shall successfully complete in-service training required by the ***Kentucky Board of Emergency Medical Services***~~[board of Medical Licensure]~~ by administrative regulation relating to determination of death and preservation of evidence. Any paramedic who does not successfully complete the required in-service training shall not be ***relicensed***~~[recertified]~~.

(5) Any paramedic from another jurisdiction desiring to become a paramedic in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection (4) of this section, and ***licensure***~~[certification]~~ as a paramedic shall be denied if the required evidence is not shown.

(6) The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person prior to the arrival of the paramedic by any person, for the purposes of this section and KRS 446.400, shall not be considered as artificial maintenance of respiration and circulation. The administration of advanced cardiac life support procedures by any person, other than a registered nurse rendering care pursuant to KRS 314.181, prior to the arrival of the paramedic shall preclude the determination of death by the paramedic, and the provisions of KRS 446.400 shall apply. However, nothing in this section shall preclude the supervising physician from directing the paramedic to cease resuscitative efforts under approved agency medical protocols.

(7) The resuscitative efforts of a paramedic under the protocols authorized by this section shall not invoke the provisions of KRS 446.400.

Section 25. KRS 311.990 is amended to read as follows:

(1) Any person who violates KRS 311.250 shall be guilty of a violation.

(2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.

(3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.

(4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.

(5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.

(6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.

(7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.

(8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.

(9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.

(10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and

(b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.

(11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS 311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.

2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.

3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.

(b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.

(c) No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.

(12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.

(13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.

(14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.

(15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.

(16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.

(17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.

(18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.

(19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.

(20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.

(21) Any person who ***falsely represents that he or she is a paramedic, emergency medical technician first responder or medical technician***~~[violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654]~~ shall be guilty of a Class A misdemeanor.

(22) Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.

(23) Any person who violates KRS 311.914 shall be guilty of a violation.

(24) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.

(25) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;

(b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.

(26) A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.

(27) Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.

(28) Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(29) Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.

(30) Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars ($50,000) nor more than five hundred thousand dollars ($500,000).

(31) Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars ($10,000) or more than fifty thousand dollars ($50,000).

Section 26. KRS 214.610 is amended to read as follows:

(1) The Cabinet for Health Services shall approve appropriate educational courses on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change to be completed as specified in the respective chapters by each person licensed or certified under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, 335 and emergency medical technicians ***certified***~~[licensed]~~ pursuant to KRS Chapter ***311***~~[211]~~.

(2) Each licensee or certificate holder shall submit confirmation on a form provided by the cabinet of having completed the course by July 1, 1991, except persons licensed under KRS Chapters 314 and 327 for whom the completion date shall be July 1, 1992.

Section 27. The following KRS sections are repealed:

211.9533 Emergency Medical Services for Children Advisory Committee.

211.9535 Biennial report on EMSC Program.

211.956 Matching fund program for providing trained emergency medical service personnel.

211.960 Title.

311.650 Definition.

Section 28. The following implementation schedule shall apply to this Act:

(1) The members of the Kentucky Board of Emergency Medical Services shall be appointed by the Governor on September 1, 2000.

(2) The board shall hire an executive director and essential staff on November 1, 2000.

(3) The Kentucky Board of Emergency Medical Services, the Cabinet for Health Services, and the Kentucky Board of Medical Licensure may implement a transfer of fees, funds, functions, equipment, personal property, and records at any time mutually agreed upon after January 1, 2001, but no later than April 1, 2001.

(4) Until such time as a function is transferred by the Cabinet for Health Services to the Kentucky Board of Emergency Medical Services or the Kentucky Board of Medical Licensure the functions shall remain the duty of the Cabinet for Health Services or the Kentucky Board of Medical Licensure.

(5) All causes relating to the provisions of Sections 1 to 26 of this Act pending before the Cabinet for Health Services on January 1, 2001, shall be transferred to the Kentucky Board of Emergency Medical Services no later than April 1, 2001.

Approved April 6, 2000

CHAPTER 344

(HB 438)

AN ACT relating to tourism and convention commissions.

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

Section 1. KRS 91A.350 is amended to read as follows:

(1) The local governing bodies of counties containing cities of the first class and the local governing bodies of the cities of the first class located therein may, by joint or separate action, establish tourist and convention commissions for the purpose of promoting convention and tourist activity.

(2) The local governing bodies of counties containing cities of the second through sixth classes and the local governing bodies of the cities of the second through sixth classes located therein may, by joint or separate action, establish tourist and convention commissions for

the purpose of promoting ***and developing*** convention and tourist ***activities and facilities***~~[activity]~~.

(3) The local governing bodies of two (2) or more counties may jointly establish tourist and convention commissions for the purpose of promoting convention and tourist ***activities and facilities***~~[activity]~~.

(4) Tourist and convention commissions may continue to fund recreational activities or projects not related to tourism or conventions that were funded by the commission prior to July 13, 1990, at a level no greater than that provided by the commission in the 1990 fiscal year.

(5) For the purpose of promoting recreational, convention, and tourist activity in cities and counties served by joint playground and recreation boards established under KRS 97.035; to provide the boards with the same authority to issue revenue bonds granted to cities by KRS 58.010 to 58.150 and KRS 103.200 to 103.285; and to authorize the boards to build and issue bonds for facilities located on leasehold and permithold land.

Section 2. KRS 91A.360 is amended to read as follows:

(1) The commission established pursuant to subsection (2) of KRS 91A.350 shall be composed of seven (7) members to be appointed, in accordance with the method used to establish the commission. Members of a commission established by joint action of the local governing bodies of a county and a city or cities located therein shall be appointed, jointly, by the chief executive officers of the local governing bodies that established the commission. Members of a commission established by separate action of the local governing body of a county or a city located therein shall be appointed separately by the chief executive officer of the local governing body that established the commission. The chief executive officer of a city shall mean the mayor and the chief executive officer of a county shall mean the county judge/executive. ***Appointments***~~[Candidates for appointment]~~ to a commission shall be ***made by***~~[submitted to]~~ the appropriate chief executive officer or officers in the following manner:

(a) Two (2) commissioners ***shall be appointed*** from a list of three (3) or more names submitted by the local city hotel and motel association ***and***~~[.~~

~~(b)~~] one (1) commissioner ***shall be appointed*** from a list of three (3) or more names submitted by the local county hotel and motel association, provided that if only one (1) local hotel and motel association exists which covers both the city and county, then three (3) commissioners shall be appointed from a list of six (6) or more names submitted by it. If no formal local city or county hotel and motel association is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to ***this*** subsection~~[(1)(a) and (1)(b) of this section]~~, then up to three (3) commissioners shall be appointed ***by the appropriate chief executive officer or officers*** from~~[a list of six (6) or more names of]~~ persons residing within the jurisdiction of the commission ***and representing local hotels or motels***~~[, submitted by the Kentucky Hotel and Motel Association]~~. A local city or county hotel and motel association shall not be required to be affiliated with the Kentucky Hotel and Motel Association to be recognized as the official local city or county hotel and motel association.

(b)~~[(c)]~~ One (1) commissioner ***shall be appointed*** from a list of three (3) or more names submitted by the local restaurant association or associations. If no formal local

restaurant association or associations exist upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1) commissioner shall be appointed ***by the appropriate chief executive officer or officers*** from[~~ a list of three (3) or more names of~~] persons residing within the jurisdiction of the commission ***and representing a local restaurant***[~~, submitted by the Kentucky Restaurant Association~~]. A local restaurant association or associations shall not be required to be affiliated with the Kentucky Restaurant Association to be recognized as the official local restaurant association or associations.

(c)[~~(d)~~] One (1) commissioner ***shall be appointed*** from a list of three (3) or more names submitted by the chamber or chambers of commerce existing within those governmental units, which by joint or separate action have established the commission. If the commission is established by joint action of a county and a city or cities, then each chamber of commerce shall submit a list of three (3) names, and the chief executive officers of the participating governmental units shall jointly appoint one (1) commission member from the aggregate list. ***If no local chamber of commerce is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1) commissioner shall be appointed by the appropriate chief executive officer or officers from persons residing within the jurisdiction of the commission and representing local businesses.***

(d)[~~(e)~~] Two (2) commissioners ***shall be*** appointed in the following manner:

1. By the chief executive officer of the county or city, if the commission has been established by separate action of a county or city; or

2. One (1) each by the chief executive officer of the county and by the chief executive officer of the most populous city participating in the establishment of the commission, if the commission has been established by joint action of a county and a city or cities.

(2) A candidate submitted for appointment to the commission, pursuant to subsection (1)(a) to (1)***(c)***[~~(d)~~], shall be appointed by the appropriate chief executive officer or officers within thirty (30) days of the receipt of the required list or lists[~~; if not, the association or associations shall by election within ten (10) days determine the commissioner from the list or lists submitted by plurality vote of the aggregate membership~~]. Vacancies shall be filled in the same manner that original appointments are made.

(3) The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, the appropriate chief executive officer or officers shall appoint two (2) commissioners for a term of three (3) years, two (2) commissioners for a term of two (2) years and three (3) commissioners for a term of one (1) year. There shall be no limitation on the number of terms to which a commissioner is reappointed. Subsequent appointments shall be for three (3) year terms.

(4) The commission shall elect from its membership a chairman and a treasurer, and may employ personnel and make contracts necessary to carry out the purpose of KRS 91A.350 to 91A.390. The contracts may include, but shall not be limited to, the procurement of promotional services, advertising services, and other services and materials relating to the promotion of tourist and convention business. Contracts of the type enumerated shall be

made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials, such as advertising firms, chambers of commerce, publishers***,*** and printers.

(5) The books of the commission ***and its account as established in subsection (2) of Section 5 of this Act*** shall be audited annually by an independent auditor who shall make a report to the commission, to the associations submitting lists of names from which commission members are selected, to the appropriate chief executive officer or officers, ***to the State Auditor of Public Accounts,*** and to the local governing body or bodies that established the commission that was audited. A copy of the audit report shall be made available by the commission to members of the public upon request and at no charge.

(6) A commissioner may be removed from office, by joint or separate action, of the ***appropriate chief executive officer or officers of the*** local governing body or bodies that established the commission,~~[consistent with the method by which the commission was established, and]~~ as provided by KRS 65.007.

Section 3. KRS 91A.372 is amended to read as follows:

(1) The commission established pursuant to subsection (2) of KRS 91A.350 by an urban-county government shall be composed of nine (9) members appointed by the ***mayor***~~[chief elective official]~~ of the urban-county government in the following manner:

(a) Three (3) commissioners from a list submitted by the local hotel and motel association.

(b) One (1) commissioner from a list submitted by the local restaurant association or associations.

(c) One (1) commissioner from a list submitted by the local chamber of commerce.

(d) Four (4) commissioners who shall be residents of the urban-county.

(2) Vacancies shall be filled in the same manner that original appointments are made.

(3) The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, the chief elective official of the urban-county shall appoint three (3) commissioners for a term of three (3) years, three (3) commissioners for a term of two (2) years and three (3) commissioners for a term of one (1) year.

(4) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business; provided, contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials, such as event coordinators, advertising firms, chambers of commerce, publishers and printers.

(5) The books of the commission shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, and to the mayor ***of the urban-county government***~~[and the chief elective official]~~.

Section 4. KRS 91A.380 is amended to read as follows:

(1) The commission established pursuant to subsection (3) of KRS 91A.350 shall be composed of six (6) members from each county to be appointed by the county judge/executive, with the approval of the fiscal court, one (1) of whom shall be a member of the General Assembly in whose district the county or part of the county is located in the following manner:

(a) One (1) commissioner from a list of at least three (3) persons submitted by the local restaurant association or associations;

(b) One (1) commissioner from a list of at least three (3) persons submitted by the local chamber of commerce;

(c) One (1) commissioner by the county judge/executive; and

(d) Two (2) commissioners from a list of at least six (6) persons submitted by the local hotel and motel association or associations.

(2) Vacancies shall be filled in the same manner that original appointments are made.

(3) The commissioners shall be appointed for terms of three (3) years, provided that in making the initial appointments, the county judge/executive shall appoint two (2) commissioners for a term of three (3) years, two (2) commissioners for a term of two (2) years, and two (2) commissioners for a term of one (1) year.

(4) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business[~~; provided, contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials such as advertising firms, chambers of commerce, publishers and printers~~].

(5) The books of the commission ***and its account as established in subsection (2) of Section 5 of this Act*** shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, ***to the State Auditor of Public Accounts,*** and to the county judge/executive of each county. ***A copy of the audit report shall be made available by the commission to members of the public upon request and at no charge.***

(6) A commissioner may be removed from office as provided by KRS 65.007.

Section 5. KRS 91A.390 is amended to read as follows:

(1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting

the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action~~[,]~~ shall enact an ordinance for~~[the collection and]~~ the enforcement of the tax measure enacted pursuant to this section ***and the collection of the proceeds of this tax measure on a monthly basis***.

(2) All moneys collected pursuant to this section and KRS 91A.400 shall be maintained in an account separate and unique from all other funds and revenues collected, and shall be considered tax revenue for the purposes of KRS 68.100 and KRS 92.330.

(3)~~[(2)]~~ A portion of the money collected from the imposition of this tax, as determined by the, tax levying body***, upon the advice and consent of the tourist and convention commission,*** may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business ~~[and shall include athletic stadiums]~~. The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.

(4)~~[(3)]~~ An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under KRS 67A.845.

(5)~~[(4)]~~ The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.

(6)~~[(5)]~~ The fiscal court or legislative body of a city establishing a commission pursuant to subsection (1) or (2) of KRS 91A.350 and, in its own name, a commission established pursuant to subsection (1) of KRS 91A.350 is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county or city. All bonds sold under the authority of this

section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.

(7)[~~(6)~~] A commission established pursuant to subsection (3) of KRS 91A.350 is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

SECTION 6. A NEW SECTION OF KRS 91A.350 TO 91A.390 IS CREATED TO READ AS FOLLOWS:

(1) On an annual basis, the Auditor of Public Accounts shall issue audit standards to be followed in the audits authorized by subsection (5) of Section 2 and subsection (5) of Section 4 of this Act. These audit standards shall supplement generally accepted audit standards. Upon request, the Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit required under Section 2 of this Act. Any costs associated with the review or subsequent audit by the Auditor of Public Accounts shall be borne by the commission. If the Auditor of Public Accounts determines that there are substantive discrepancies in the commission's books or account, the Auditor of Public Accounts shall notify the director of the commission, the county attorney, and the appropriate legislative body of its findings.

(2) Any resident of the county may bring an action in the Circuit Court to enforce the provisions of KRS 91A.350 to 91A.390. The Circuit Court shall hear the action and, on a finding that the commission has violated the provisions of KRS 91A.350 to 91A.390, shall order the commission to comply with the provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the commission, court costs, to be paid from the commission's account.

Section 7. KRS 91A.392 is amended to read as follows:

(1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.390 and the one percent (1%) transient room tax authorized by KRS 153.440, the fiscal court in a county containing a city of the first class may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.

(2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS ***91A.390(6)***[~~91A.390(5)~~] to finance in part the expansion of a government-owned convention facility located in the central business district of the city of the first class located in the county.

(3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the fiscal court shall take action to repeal the ordinance which levied the tax.

Approved April 6, 2000

CHAPTER 345

(HB 475)

AN ACT relating to criminal justice.

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

Section 1. KRS 196.037 is amended to read as follows:

(1) All personnel of the department, while acting for the department in any capacity entailing the maintenance of custody over any prisoners, shall have all the authority and powers of peace officers.

(2) All department personnel who are officially requested by a law enforcement agency in a county of Kentucky or by the Kentucky State Police to assist in the apprehension of a prisoner who has escaped from the legal or physical custody of the Department of Corrections or a detention facility of the Department of Corrections shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest as peace officers.

(3) Probation and parole officers, while acting for the department in any capacity entailing the maintenance of custody or supervision of any confined prisoner, paroled prisoner, escaped prisoner,~~[or]~~ probationer, ***or other person otherwise placed under their supervision*** shall have all the authority and powers of peace officers.

Section 2. KRS 197.025 is amended to read as follows:

(1) KRS 61.884 and 61.878 to the contrary notwithstanding, no person, including any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.

(2) KRS 61.872 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which pertains to that individual.

(3) KRS 61.880 to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General ***by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial*** pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.

(4) KRS 61.872 to the contrary notwithstanding, the Department of Corrections shall refuse to accept the hand delivery of an open records request from a confined inmate.

(5) KRS 61.870 to 61.884 to the contrary notwithstanding, all records containing information expunged pursuant to law shall not be open to the public.

(6) The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions.

(7) KRS 61.880(1) to the contrary notwithstanding, upon receipt of a request for any record, the department shall determine within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, whether the record shall be released.

Section 3. KRS 197.045 is amended to read as follows:

(1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

(2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.

(3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

(4) Until successful completion of the sex offender treatment program, a sex offender may earn good time. However, the good time shall not be credited to the sex offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, a sex offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any sex offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. A sex offender who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release. The provisions of this section shall not apply to any sex offender convicted before July 15, 1998, or to any mentally retarded sex offender.

(5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious**,**~~[or]~~ harassing, or~~[if satisfied that the action is legally without merit or]~~ factually frivolous.

(b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

Section 4. KRS 438.250 is amended to read as follows:

(1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing~~[of the blood]~~ for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.

(2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.

(3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.

(4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.

(5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

Section 5. KRS 439.563 is amended to read as follows:

(1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.

(2) When the Parole Board orders restitution, the board shall:

(a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;

(b)[~~ The Division of Probation and Parole shall be responsible for overseeing the collection of the restitution;~~

~~(c)~~] Set the amount of restitution to be paid, if not already set;

(c)[~~(d)~~] Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum[~~;~~

~~(e) Monitor the payment of the restitution to assure that payment is being made;~~

~~(f) If restitution is not being paid as ordered, institute parole violation proceedings to determine why the restitution is not being paid;~~

~~(g) If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and~~

~~(h) Not release the defendant from parole supervision until restitution has been paid in full~~].

(3) ***When the Parole Board orders restitution, the Department of Probation and Parole shall:***

(a) Monitor and oversee the collection of the restitution;

(b) Institute parole violation proceedings if the restitution is not being paid;

(c) Institute sanctions against the defendant if restitution is not being paid and good cause is not shown for the nonpayment; and

(d) Maintain parole supervision over the defendant until restitution has been paid in full.

(4) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.

(5)[~~(4)~~] Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.

(6)[~~(5)~~] Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

Section 6. KRS 454.405 is amended to read as follows:

(1) At any time, and upon its own motion or on motion of a party, a court may dismiss a civil action brought by an inmate or on behalf of an inmate if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous. In addition to any other available disposition, a court may dismiss the civil action if satisfied that the affidavit of poverty in support of a request to proceed in forma pauperis is wholly or partly false or misleading.

(2) This section does not apply to criminal or collateral criminal proceedings.

(3) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section shall include as part of its order specific findings as to the reasons for the dismissal. The court shall, upon issuing the order, direct the circuit clerk to transmit a copy of the entire court order to the official having custody of the inmate and to the county attorney of the county where the action was filed.

(4) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section may include as part of its order an assessment of fines and costs against the inmate as the court may deem reasonable and prudent. The Department of Corrections may enforce this assessment against the inmate's prison account and against any other assets of the inmate through any other mechanism provided by law.

(5) No inmate may maintain a civil action for monetary damages in any state court for mental or emotional injury without a prior showing of physical injury.

Section 7. KRS 508.025 is amended to read as follows:

(1) A person is guilty of assault in the third degree when the actor:

(a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:

1. A state, county, city, or federal peace officer;

2. An employee of a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;

3. An employee of the Department for Social Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or

4. A probation and parole officer; or

(b) Being a person confined in a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces***,***~~[or]~~ urine***, or other bodily fluid*** to be thrown upon an employee of the facility.

(2) Assault in the third degree is a Class D felony.

Section 8. KRS 510.120 is amended to read as follows:

(1) A person is guilty of sexual abuse in the second degree when:

(a) He subjects another person to sexual contact who is incapable of consent because he is mentally retarded or mentally incapacitated;~~[or]~~

(b) He subjects another person who is less than fourteen (14) years old to sexual contact***; or***

(c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody,

supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he engaged in the conduct constituting the offense, he and the offender were married to each other.

(2) Sexual abuse in the second degree is a Class A misdemeanor.

Section 9. KRS 532.043 is amended to read as follows:

(1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, KRS ***529.030,*** 530.020, 530.064,~~[or]~~ 531.310***, or 531.320*** shall be ***subject***~~[sentenced]~~ to a period of conditional discharge following release from:

(a) Incarceration upon expiration of sentence; or

(b) Completion of parole.

(2) The period of conditional discharge shall be three (3) years.

(3) During the period of conditional discharge, the defendant shall:

(a) Be subject to all orders specified by the Department of Corrections; and

(b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.

(4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.

(5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant ***as set forth in KRS 532.060***~~[for no longer than the time remaining on the conditional discharge]~~.

(6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

Section 10. KRS 533.025 is amended to read as follows:

(1) When a person is convicted of, pleads guilty to, or enters an Alford plea to a felony offense and is sentenced to jail as a condition of conditional discharge or as a condition of probation, the Department of Corrections shall pay for the incarceration of that person in a county jail at the same rate and under the same conditions as for a Class D felon who is incarcerated in the county jail under KRS 532.100.

(2) If a person incarcerated in a county jail on conditional discharge or probation under subsection (1) of this section is granted work release, he shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a prisoner shall be deducted from the amount which the Department of Corrections shall pay for the incarceration of that prisoner.

(3) The Department of Corrections may, during the prisoner's period of incarceration in the county jail, take custody of the prisoner and hold that person in a state prison facility for the purpose of treating the following medical conditions:

(a) Chronic heart and lung conditions;

(b) Psychiatric conditions;

(c) Acute medical conditions that require diagnostic testing or hospitalization;

(d) Acute surgical conditions;

(e) Pregnancy; or

(f) Any other medical condition which the Department of Corrections may set out by administrative regulation.

Approved April 6, 2000

CHAPTER 346

(HB 488)

AN ACT relating to the transportation of persons.

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

Section 1. KRS 281.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) The term "person" means any individual, firm, partnership, corporation, company, association or joint stock association, and includes any trustee, assignee, or personal representative thereof;

(2) ***The term "cabinet" means the Kentucky Transportation Cabinet;***

(3) The term "department" means the Department of Vehicle Regulation;

(4)[~~(3)~~] The term "city" means a municipality incorporated under the laws of this state;

(5)[~~(4)~~] The term "state" means the Commonwealth of Kentucky;

(6)[~~(5)~~] The term "highway" means all public roads, highways, streets, and ways in this state, whether within a municipality or outside of a municipality;

(7)[~~(6)~~] The term "certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle and irregular route common carriers, a nonprofit bus certificate issued under this chapter authorizing operation thereunder, or a certificate of compliance;

(8)[~~(7)~~] The term "permit" means a permit issued under this chapter to contract carriers by motor vehicle of persons and to persons engaging in the business of U-drive-it;

(9)[~~(8)~~] The term "interstate commerce" means commerce between any place in a state and any place in another state;

(10)[~~(9)~~] The term "intrastate commerce" means commerce between any place in this state and any other place in this state;

(11)[~~(10)~~] The term "passenger" means an individual or group of people; and

(12)[~~(11)~~] The term "property" means general or specific commodities including hazardous and nonhazardous materials.

Section 2. KRS 281.014 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) (a) The term "city taxicab certificate" or "city limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to the corporate limits of a city of the first or second class or an urban-county area and the city's suburban area, or the corporate limits of any city and its suburban area located in a county which contains a city of the first or second class or an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of such transportation;

(b) The term "county taxicab certificate" or "county limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to a specific county which does not contain a city of the first or second class and is not an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of the transportation;

(c) A "taxicab" means a motor vehicle operated under one (1) or more taxicab certificates, and is a vehicle designed or constructed to transport not more than fifteen (15) passengers exclusive of the driver;

(d) A "limousine" means a luxury motor vehicle passenger car which has either a standard or an extended wheelbase. The vehicle shall have additional rear seating capacity, area, and comforts, but shall be designed or constructed to transport not more than fifteen (15) passengers plus the driver;

(e) The term "taxicab license" means a license plate issued to a taxicab authorized to operate under a taxicab certificate;

(f) The term "limousine license" means a license plate issued to a limousine authorized to operate under a limousine certificate;

(2) (a) An "airport shuttle certificate" means a certificate granting authority only for the operation of motor vehicles exclusively transporting passengers or baggage for hire over regular routes between points within a city or its suburban area and an airport;

(b) An "airport shuttle vehicle" means a motor vehicle operated under one (1) or more airport shuttle certificates and which is designed or constructed to transport not more than fifteen (15) passengers plus the driver;

(c) The term "airport shuttle vehicle license" means a license plate issued for a motor vehicle authorizing its operation under one (1) or more airport shuttle certificates;

(3) The term "U-Drive-It" means any person who leases or rents a motor vehicle for a consideration to be used for the transportation of persons or property, but for which no

driver is furnished, and the use of which motor vehicle is not for the transportation of persons or property for hire by the lessee or rentee;

(4) The term "driveaway" means the transporting and delivering of motor vehicles, except semitrailers, and trailers, whether destined to be used in either a private or for-hire capacity, under their own power or by means of a full mount method, saddle mount method, the tow bar method, or any combination of them over the highways of this state from any point of origin to any point of destination for-hire. The transportation of such vehicles by the full mount method on trailers or semitrailers shall not be included in the term ; and

(5) (a) "Disabled persons vehicle" means a motor vehicle especially equipped and used for the transportation of persons with disabilities and which is in compliance with the accessibility specifications of 49 C.F.R. Part 38, but it shall be designed and constructed to transport not more than fifteen (15) passengers plus the driver. It shall not mean an ambulance as defined in KRS 211.950. It shall not mean a motor vehicle equipped with a stretcher;

(b) "Disabled persons carrier" means an irregular route common carrier for hire, transporting the general public who require transportation in disabled persons vehicles;~~[and]~~

(c) "Disabled persons certificate" means a certificate that grants authority only for the operation of a given number of disabled persons vehicles for hire, the principle operation of which is confined to a specific county***;***

(6) "Human service transportation delivery" means the provision of transportation services to any person that is an eligible recipient in one (1) of the following state programs:

(a) Nonemergency medical transportation under KRS Chapter 205;

(b) Mental health, mental retardation, or comprehensive care under KRS Chapter 202A, 202B, 210, or 645;

(c) Kentucky Works Program under KRS Chapter 194 or 205;

(d) Aging services under KRS Chapter 205, 209, 216, or 273;

(e) Vocational rehabilitation under KRS 151B or 157; or

(f) Blind industries or rehabilitation under KRS Chapter 151B or 163;

(7) "Delivery area" means one (1) or more regions established by the cabinet in administrative regulations promulgated under KRS Chapter 13A for the purpose of providing human service transportation delivery in that region;

(8) "Broker" means a person selected by the cabinet through a request for proposal process to coordinate human service transportation delivery within a specific delivery area. A broker may also provide transportation services within the specific delivery area for which the broker is under contract with the cabinet;

(9) "Subcontractor" means a person who has signed a contract with a broker to provide human service transportation delivery within a specific delivery area and who meets human service transportation delivery requirements, including proper operating authority; and

(10) "CTAC" means the Coordinated Transportation Advisory Committee created under Section 3 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created a Coordinated Transportation Advisory Committee, also known as the "CTAC", that is to be composed of designated members of the cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, and the Workforce Development Cabinet.

(2) Members of the CTAC shall serve terms as determined by each respective cabinet. The CTAC shall meet at least once a month, but may meet more frequently if desired, and shall maintain a written record of all meetings and actions taken. In all proceedings of the CTAC and in all actions taken by the CTAC, the cabinet, the Cabinet for Health Services, and the Cabinet for Families and Children shall each have two (2) votes and the Workforce Development Cabinet shall have one (1) vote. A quorum of the CTAC shall be required to conduct any official business.

(3) The staff of the cabinet's Office of Transportation Delivery shall provide administrative support to the CTAC. The executive director of the Office of Transportation Delivery shall set the agenda for meetings of the CTAC. The Office of Transportation Delivery may promulgate administrative regulations under KRS Chapter 13A governing the human service transportation delivery program on behalf of the CTAC. The cabinet shall promulgate administrative regulations under KRS Chapter 13A to specify the duties and responsibilities of the CTAC.

SECTION 4. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall employ a pool of program coordinators. Each program coordinator shall be a state employee and reside in the cabinet.

(2) The program coordinator shall initially investigate all complaints regarding recipients, subcontractors, and the broker for the area and attempt to immediately resolve the problem. All complaints relating to Medicaid fraud or abuse shall be forwarded by the cabinet to the Cabinet for Health Services. The program coordinator shall further be responsible for assisting a person with a complaint as required in subsection (4) of this section.

(3) The program coordinator shall investigate issues of eligibility that result in a person being denied transportation, determine the status of the person's case, and attempt to immediately resolve the matter in order for the person to continue to receive transportation services. A broker shall not deny any person transportation services until the program coordinator resolves the question of the person's eligibility and verifies to the broker that the person is actually ineligible to receive transportation services. A broker who violates the provisions of this subsection shall be fined one thousand dollars ($1,000) and shall be subject to his or her contract being revoked by the cabinet. The program coordinator shall coordinate information about eligibility to participate in the human service transportation delivery program between the cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, and the Workforce Development Cabinet. The cabinet shall ensure each program coordinator has direct computer access to all relevant databases used by all state agencies to administer the human service

transportation delivery program. The Department for Medicaid Services shall provide each program coordinator with a monthly eligibility list for the area.

(4) If a program coordinator is unable to resolve a complaint against a broker or subcontractor to the satisfaction of the person lodging the complaint on the same business day the complaint is made, the program coordinator shall immediately act to assist the person in contacting the appropriate state agency to resolve the complaint. The program coordinator shall ensure that the cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, and the Workforce Development Cabinet strictly adhere to the provisions of 42 CFR governing a person's right to appeal the denial of service or failure for a complaint to be acted upon promptly. The cabinet shall be required to inform in writing, every person who has either been denied transportation or who has failed to have a complaint resolved in a prompt manner under the human service transportation delivery program, of their right to a hearing to be held in the county where the person lives, and the process to follow to obtain a hearing.

(5) All brokers and subcontractors shall be prohibited from retaliating or attempting retribution in any way against any person using the human service transportation delivery program who files a complaint. A broker or subcontractor who is determined by the cabinet to have violated the provisions of this subsection, after an investigation and hearing conducted by the cabinet, shall have his or her contract revoked by the cabinet within ninety (90) days of the hearing and shall be prohibited from participating in the human service transportation delivery program for five (5) years from the date of the cabinet's determination.

SECTION 5. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section and Section 6 of this Act, unless the context otherwise requires:

(a) "Certificate Type 01" means a private automobile;

(b) "Certificate Type 02" means a taxicab service;

(c) "Certificate Type 03" means a bus service;

(d) "Certificate Type 04" means a non-profit transit system;

(e) "Certificate Type 07" means a specialty carrier certified to transport nonemergency, ambulatory disoriented persons;

(f) "Certificate Type 08" means a specialty carrier, using lift-equipped vehicles in compliance with the Americans with Disabilities Act, certified to transport nonemergency, nonambulatory persons; and

(g) "Level of eligibility" means the specialty transport classification a person is designated based upon the written recommendation of the person's personal physician that is used to establish the type of specialty transport needed for the person.

(2) Except for members of the general public, the level of eligibility shall dictate both the necessity and the type of special carrier transport for a person participating in the human service transportation delivery program and shall ensure the person shall be transported in the appropriate vehicle designed to accommodate the person's level of eligibility. The

broker shall, upon request by a recipient, provide specialty carrier transportation for a period up to thirty (30) days without written recommendation of the recipient's personal physician. A broker shall be prohibited from changing or altering a person's level of eligibility and the accompanying certificate type. A broker shall report questionable specialty classifications to the cabinet.

SECTION 6. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

(1) Persons participating in the human service transportation delivery program that have a level of eligibility that dictates they be transported under a Certificate Type 07 or 08 shall be ensured the freedom of personal choice in selecting either an eligible subcontractor within the delivery area, or the broker for the area if the broker also provides transportation services, to provide the person's transportation services.

(2) A person expressing a personal preference under subsection (1) of this section shall contact the broker to arrange transportation services, even if the person is requesting an eligible subcontractor to provide the service. If a person does not express a preference of whom they wish to transport them under subsection (1) of this section, the broker shall determine the eligible subcontractor to provide the service. The broker may select himself or herself if the broker also provides transportation services, however, the broker shall establish a system that fairly and equitably distributes requests for transportation services in the delivery area among the broker and all subcontractors certified to transport Certificate Type 07 or Certificate Type 08.

(3) All brokers shall consider their ability to allow persons with an eligibility level that dictates they be transported under a Certificate Type 02 to request the freedom of personal choice in the selection of who will provide the person's transportation services. A broker may offer freedom of choice to persons with a Certificate Type 02.

SECTION 7. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall promulgate administrative regulations governing, but not limited to, the following provisions of the human service transportation delivery program:

(a) Establishment of one (1) or more specific delivery areas;

(b) The length of the term of the contract to be signed with a broker and the criteria to be used to terminate a contract;

(c) Contractual matters to be specified in a request for proposals from brokers including, but not limited to:

1. Establishment and maintenance of a central business office within the delivery area;

2. Staffing requirements for the central business office;

3. Collection and retention of records to be maintained by each broker and subcontractor;

4. Collection and retention of encounter data on each trip made by the broker if the broker provides transportation services and by each subcontractor. Failure of a broker to record all data required by the cabinet for all trips the broker

provided under the human service transportation delivery program shall be grounds for the cabinet to terminate the broker's contract;

5. Reporting of all traffic accidents and moving violations involving either a broker or subcontractor; and

6. Submission of annual financial reports by each broker;

(d) Criteria for evaluating and selecting a broker subject to the provisions of subsections (2) and (3) of this section;

(e) Identification of all federal statutes, federal rules, and federal administrative regulations with which state agencies, brokers, and subcontractors must comply;

(f) Uniform criteria for establishing capitated rates, fees, and reimbursement procedures for all delivery areas, including a mandate that brokers shall have all reports necessary for payment to the cabinet not later than the seventh of each month. The mandate shall also include a requirement that the cabinet shall pay brokers not later than the fifteenth of each month if the broker has submitted all required reports. A broker shall promptly reimburse subcontractors within three (3) business days of payment by the cabinet;

(g) Uniform responsibilities for all brokers and subcontractors including provisions for reservations and trip assignments, quality assurance, administrative oversight, and reporting;

(h) Uniform criteria for contractual agreements between subcontractors and brokers in all delivery areas;

(i) Uniform criteria governing the authorized provision of transportation services offered by brokers in all delivery areas;

(j) Uniform guidelines brokers shall be required to adopt to educate persons in the delivery area regarding:

1. Procedures for scheduling transportation services including the broker's normal hours of operation and how to schedule transportation after normal hours of operation, including Sundays and all holidays;

2, Rates for services;

3. Information the person shall be required to provide the broker when requesting transportation;

4. Types of eligible transportation, including pick-up and delivery standards and reasons service may be denied;

5. Permissibility of escorts and attendants;

6. Procedures governing requests for urgent care;

7. Standards for driver conduct;

8. Standards for passenger conduct; and

9. Oral and written instructions governing the complaint process and how to lodge a complaint against a subcontractor or broker;

(k) Vehicle requirements governing all vehicles operated by brokers or subcontractors to transport persons under the human service transportation delivery program;

(l) Driver qualifications including driver, attendant, and service personnel training;

(m) Minimum standards to be included in a mandatory orientation program provided by the broker for all subcontractors in the delivery area;

(n) Minimum standards governing volunteer and public transportation services;

(o) Minimum standards governing an operational procedures manual to be developed by all brokers;

(p) Minimum standards governing a quality assurance plan to be developed by all brokers;

(q) Performance monitoring by the cabinet of brokers and subcontractors; and

(r) Standards governing uniform software that all brokers shall be required to use to ensure the uniform collection of data and to facilitate the production and analysis of uniform reports relating to the human service transportation delivery system.

(2) A person that submits a request for proposal to be a broker under the human service transportation delivery program shall be required to submit documentation that he or she has at least one (1) year experience working with persons with special needs.

(3) The cabinet shall be prohibited from awarding higher scores, or giving any type of preferential treatment to, any person that submits a request for proposal to be a broker who is also a transportation provider over a person who submits a request to be a broker but who is not a transportation provider.

(4) The cabinet shall develop a handbook specifying standard operating procedures, which shall be distributed to all providers and shall be made available to the general public.

SECTION 8. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall require and shall ensure that all brokers shall permit a person to request and receive human service transportation with less than the time notice established by administrative regulation for scheduling transportation services if the person's physician submits verification to the broker that the person needs to be seen by the physician or another physician to whom the person is being referred for medical treatment. A broker who violates the provisions of this subsection shall be fined one thousand dollars ($1,000) and shall be subject to his or her contract being revoked by the cabinet.

(2) The physician verification required under subsection (1) of this section may be transmitted in any of the following methods:

(a) Oral verification over the telephone;

(b) Written verification transmitted electronically by computer or by facsimile; or

(c) Written verification delivered by the person directly to the broker or subcontractor.

SECTION 9. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

A broker or subcontractor who is determined by the cabinet to have violated the provisions of Section 4, 5, 6, 7, 8, or 11 of this Act, after an investigation and hearing conducted by the cabinet, shall have his or her contract revoked by the cabinet within ninety (90) days of the hearing and shall be prohibited from participating in the human service transportation delivery program for five (5) years from the date of the cabinet's determination.

SECTION 10. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

A broker may coordinate the human service transportation delivery program with general public transportation as provided in this chapter and KRS Chapter 96A.

SECTION 11. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

A broker shall be prohibited from imposing any requirement on any subcontractor that is not provided for in this chapter, or in an administrative regulation promulgated under KRS Chapter 13A to carry out the provisions of the human service transportation delivery program.

Section 12. KRS 96A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following words or terms shall mean as follows:

(1) "City" means any incorporated city in the Commonwealth;

(2) "County" means any county in the Commonwealth wherein there is located an incorporated city and for the purpose of this chapter shall also mean a county which has adopted an urban-county government;

(3) "State" means the Commonwealth;

(4) "Transit authority" or "authority" means a transit authority created pursuant to this chapter;

(5) "Board" means the board of a transit authority;

(6) "Public body" means any city or county of the Commonwealth;

(7) "Governing body" means, as to a county, the fiscal court thereof; and as to a city, the legislative body thereof, howsoever the same may be denominated according to law;

(8) "Proceedings" means, in the case of a county, a resolution of its fiscal court; and in the case of a city, an ordinance adopted and made effective according to law by its governing body;

(9) "Joint proceedings" relates only to the establishment of a transit authority by two (2) or more public bodies acting in concert or by agreement, and means the proceedings, taken collectively, by the governing bodies of the public bodies, participating in the creation and establishment of a transit authority;

(10) "Appointing authority" means, as to a county, the county judge/executive thereof; and as to any city, the elected chief officer thereof, whether designated as its mayor or the chairman of its board of trustees or otherwise;

(11) "Area" or "transit area" means the geographical area which may be encompassed from time to time within the lawful boundaries of such cities and counties as may be involved in the creation and establishment of an authority; and of any cities or counties within any single

unified metropolitan area which may subsequently become participants as provided in this chapter;

(12) "Mass transit," or "mass transportation," means the transportation of persons and their baggage within or without a transit area, but shall not include the for-hire operation of a taxicab, or industrial bus as defined by KRS Chapter 281;

(13) "Human service transportation delivery" means the ***same as defined in Section 2 of this Act;***[~~provision of transportation for an eligible recipient in one of the following state programs:~~

~~(a) Nonemergency medical transportation under KRS Chapter 205;~~

~~(b) Mental health, mental retardation, or comprehensive care under KRS Chapter 202A, 202B, 210, or 645;~~

~~(c) Kentucky Works Program under KRS Chapter 194 or 205;~~

~~(d) Aging services under KRS Chapter 205, 209, 216, or 273;~~

~~(e) Vocational rehabilitation under KRS 151B or 157; or~~

~~(f) Blind industries or rehabilitation under KRS Chapter 151B or 163; and~~]

(14) ***"Delivery area" means the same as defined in Section 2 of this Act; and***[~~"Human service transportation delivery area" means one (1) of the regions established by the Transportation Cabinet for the purpose of providing human service transportation delivery in that region~~]

(15) "Broker" means the same as defined in Section 2 of this Act.

Section 13. KRS 96A.095 is amended to read as follows:

(1) The Transportation Cabinet may receive and accept from the Commonwealth or any of its agencies, including the Cabinet for Families and Children, the Cabinet for Health Services, and the Cabinet for Workforce Development, and from federal agencies appropriations or grants to promote, develop, and provide capital and operating subsidies for mass transit services and human service transportation delivery in Kentucky, and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value to promote mass transit services. Subject to the provisions of Section 230 of the Constitution of the Commonwealth of Kentucky, any of these funds, property, or things of value received by the Transportation Cabinet may be given directly to any of the following entities in order to accomplish the purposes of this section:

(a) A local transit authority as created under this chapter;

(b) A city;

(c) A county;

(d) Other public mass transit providers;

(e) A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or

(f) An entity providing human service transportation delivery.

(2) The Transportation Cabinet is authorized and directed to apply for any available federal funds for operating subsidies, either on a matching basis or otherwise and to make any of

these funds received available to any of the following entities in order to accomplish the purposes of this section:

(a) A local transit authority as created under this chapter;

(b) A city;

(c) A county;

(d) Other public mass transit providers;

(e) A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or

(f) An entity promoting or providing transit services such as safety, planning, research, coordination, or training activities.

In those cases where federal laws or regulations preclude the Transportation Cabinet from direct application for this type of federal funds, the cabinet is authorized and directed to provide assistance to any of the entities listed in this subsection as necessary to enable it to apply for and obtain this type of federal funds in order to accomplish the purposes of this section.

(3) The Transportation Cabinet is authorized to assist cities and counties in the formation of local transit authorities in conformance with this chapter, but nothing in this chapter shall be construed as preventing the Transportation Cabinet from providing~~[such]~~ assistance as authorized in this chapter to cities or counties where local transit authorities do not exist.

(4) The Transportation Cabinet is authorized to contract, in accordance with the provisions of KRS ***Chapters***~~[Chapter]~~ 45A ***and 281***, with a~~[transportation provider or]~~ broker to provide human ***service***~~[services]~~ transportation delivery within a specific~~[human service transportation]~~ delivery area.

~~[(5) The Transportation Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of this section. The administrative regulations shall include, but not be limited to, the following:~~

~~(a) Establishment of the human service transportation delivery areas, including the counties in each area;~~

~~(b) Safety and other physical operating requirements for all mass transit operations and human service transportation deliveries;~~

~~(c) The minimum conditions and requirements of a subcontract between the Transportation Cabinet's human service transportation provider or broker contractor and an entity providing the means of the human services transportation;~~

~~(d) Compliance with the requirements of the United States Federal Transit Administration; and~~

~~(e) A mechanism for ensuring that each human services transportation provider contractor or subcontractor:~~

~~1. Has appropriate operating authority issued under KRS Chapter 281;~~

~~2. Is a transit authority operating under the provisions of KRS Chapter 96A; or~~

~~3. Has been approved by the Transportation Cabinet to operate under the provisions of 49 U.S.C. sec. 5310 or 5311.~~

~~(6) All willing providers or entities who meet the applicable requirements of subsection (5) of this section shall be provided by the broker with an application for enrollment as a subcontractor for the human service transportation delivery programs.]~~

Section 14. The Transportation Cabinet shall conduct a study of the formulas used to calculate capitated rates by delivery area. The cabinet shall also review rate information collected from brokers and subcontractors since the inception of the human service transportation delivery program, as well as capitated rate need requests brokers have submitted to the cabinet. The cabinet shall report its findings to the Interim Joint Committee on Transportation through the Legislative Research Commission no later than July 1, 2001. The findings of the study shall be used to statutorily create a capitated rate formula governing the human service transportation delivery program.

Section 15. All current contracts between the cabinet and each broker may remain in force until the contractual expiration date except as provided in this section. All current contracts between the cabinet and each broker shall expire not later than July 1, 2001. The cabinet shall execute new contracts with all brokers for all delivery areas under the provisions of this Act not later than July 1, 2001.

Section 16. The provisions of subsections (1), (2), and (3) of Section 7 of this Act shall be promulgated into administrative regulations under KRS Chapter 13A not later than thirty (30) days after the effective date of this Act. The provisions of subsection (4) of Section 7 of this Act shall become effective March 1, 2001.

Approved April 6, 2000

CHAPTER 347

(HB 542)

AN ACT relating to motor vehicle licensing.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Any owner of a motor vehicle required to be registered under the provisions of KRS 186.050(1) or (3)(a), except taxicabs, airport limousines, and U-Drive-Its, may in addition to registration under KRS 186.050(1) or (3)(a) obtain a five (5) year Kentucky Law Enforcement Memorial license plate. Application for a Kentucky Law Enforcement Memorial license plate shall be taken to the county clerk and transmitted to the Transportation Cabinet on or before September 1 preceding the year in which the license plate or renewal thereof is to be issued. The application shall include payment of a fifty dollar ($50) registration fee. In addition, at the time of the application, and with each subsequent annual renewal, a ten dollar ($10) fee shall be collected and paid to the Kentucky Law Enforcement Memorial Foundation, Inc., with the funds to be used for the erection and maintenance of a memorial for Kentucky peace officers killed in the line of duty, and for charitable and educational purposes. The application and fee shall be immediately forwarded to the cabinet.

(2) The Kentucky Law Enforcement Memorial Foundation, Inc., shall develop and submit a design for a Kentucky Law Enforcement Memorial license plate to the cabinet for approval. In addition to suitable language and images identifying the plate as honoring Kentucky peace officers killed in the line of duty, the name "Kentucky", and the expiration date of the plate, the cabinet may use any other combination of letters or numerals needed in the design of the plate, or the application for the Kentucky Law Enforcement Memorial license plate may be combined with a request that the plate be a personalized plate. The cabinet shall receive a minimum of nine hundred (900) applications before it shall be required to print the license plate.

(3) The cabinet shall send the Kentucky Law Enforcement Memorial license plate to the county clerk in the county in which the applicant is required to register the applicant's motor vehicle. The clerk shall issue the Kentucky Law Enforcement Memorial license plate and receive fifteen dollars ($15), of which three dollars ($3) shall constitute the clerk's fee and twelve dollars ($12) shall constitute the cabinet's fee which includes the fifty cents ($0.50) fee to reflectorize the plate under KRS 186.240(2)(c). Annually thereafter during the applicant's birth month, the clerk shall issue a decal to renew the vehicle's registration upon application as provided in subsection (1) of this section, and upon payment of twenty-five dollars ($25), three dollars ($3) of which shall constitute the clerk's fee, twelve dollars ($12) shall constitute the cabinet's fee which includes the fifty cents ($0.50) fee to reflectorize the plate under KRS 186.240(2)(c), and ten dollars ($10) shall be paid to the Kentucky Law Enforcement Memorial Foundation, Inc. under subsection (1) of this section.

(4) (a) Upon the sale, transfer, or termination of a lease of a vehicle bearing the Kentucky Law Enforcement Memorial license plate, the owner or lessee shall remove the plate and return it and the certificate of title and registration to the county clerk. The county clerk shall issue a regular license plate and certificate of title and registration upon payment of a twelve dollar ($12) fee to the cabinet which includes the fifty cents ($0.50) fee to reflectorize the plate under KRS 186.240(2)(c), and payment of a three dollar ($3) fee to the county clerk.

(b) When the plate has been presented to the county clerk, the clerk shall reissue it upon payment to the clerk of a two dollar ($2) fee, for use on any other vehicle of the same classification and category owned by the same person purchasing the plate for the current licensing period. The license plate and decal on the other vehicle shall be turned into the county clerk, who shall forward the license plate to the cabinet.

(5) If the Kentucky Law Enforcement Memorial license plate deteriorates, and if the person has not transferred the vehicle during the current licensing period, the person may obtain a regular license plate free of charge.

Approved April 6, 2000

CHAPTER 348

(HB 555)

AN ACT relating to fire districts.

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

Section 1. KRS 75.031 is amended to read as follows:

(1) (a) Upon creation of a fire protection district or a volunteer fire department district as provided in KRS 75.010, the affairs of the district shall be conducted by the board of trustees consisting of seven (7) members, four (4) to be elected by the members of the district as hereinafter set out and three (3) to be appointed by the county judge/executive. Two (2) members of the board of trustees shall be elected by the members of the firefighters of the district and shall be members of the district. No more than one (1) of the two (2) firefighter trustees may be an employee of the fire protection district or volunteer fire department district. Two (2) members of the board of trustees shall be property owners who own real or personal property which is subject to the fire protection tax pursuant to KRS 75.040, who personally reside in the district, and who are not active firefighters and shall be elected by the property owners of the district***. Property owners voting to select representatives to the board of trustees shall have attained the age of eighteen (18)***~~[with the same qualifications]~~. The county judge/executive of the county in which the greater part of the district is located shall, with the approval of the fiscal court, appoint three (3) members of the board of trustees. In counties containing a city of the first class, trustees appointed by the county judge/executive to serve in volunteer fire prevention districts shall reside within the boundaries of that county. At the first election held after the district is formed, one (1) firefighter shall be elected to serve on the board of trustees for a period of one (1) year and one (1) for a period of three (3) years, and one (1) nonfirefighter property owner shall be elected to serve on the board of trustees for a period of two (2) years and one (1) for a period of four (4) years. On the expiration of the respective terms, the successor to each shall have the same qualifications as his ***or her*** predecessor and shall be elected for a term of four (4) years. The original appointed members of the board of trustees shall be appointed for terms of one (1), two (2), and three (3) years respectively. On the expiration of the respective terms, the successors to each shall be appointed for a term of three (3) years. In the event of a vacancy in the term of an appointed or elected trustee, the county judge/executive shall appoint with the approval of the fiscal court a trustee for the remainder of the term.

(b) An appointed trustee may be removed from office as provided by KRS 65.007.

(c) No person shall be an elected trustee who, at the time of his election, is not a citizen of Kentucky and has not attained the age of twenty-one (21).

(d) Unless otherwise provided by law, an elected firefighter trustee may be removed from office by the county judge/executive of the county in which the greater part of the district is located after a hearing with notice as required by KRS Chapter 424, for inefficiency, neglect of duty, malfeasance or conflict of interest. The hearing shall be initiated and chaired by the county judge/executive, who shall prepare a written statement setting forth the reasons for removal. The trustee to be removed shall be

notified of his proposed removal and the reasons for the proposed removal by registered mail sent to his last known address at least ten (10) days prior to the hearing. The person proposed to be removed may employ counsel to represent him. A record of the hearing shall be made by the county judge/executive.

(e) The removal of an elected firefighter trustee of a fire protection district shall be subject to the approval of the fiscal court of the county in which the greater part of the district is located.

(f) An elected firefighter trustee removed pursuant to paragraphs (c) and (d) of this subsection may appeal, within ten (10) days of the rendering of the decision of the fiscal court, to the Circuit Court of the county in which the greater part of the district is located. The scope of the appeal shall be limited to whether the county judge/executive or the fiscal court abused their discretion in removing the trustee.

(2) The elective offices of members of the board of trustees shall be filled by an election to be held once each year on the fourth Saturday of June between the hours of 11:00 a.m. and 2:00 p.m. The polls shall be located at the principal fire house in the district. The date, time, and place of the election shall be advertised in accordance with KRS 424.120. This notice shall be advertised at least thirty (30) days prior to the election date and shall include the names and addresses of the candidates to be voted on for each position of trustee. In lieu of the published notice for the election of the firefighter trustees, written notice containing the information required to be advertised may be sent by first-class mail to each member of the firefighters of the fire protection district or volunteer fire department district, addressed to the firefighter at his residence, at least thirty (30) days prior to the election date. The nominations for candidates for trustees both representing the firefighters and the property owners residing in the district shall be made in accordance with the bylaws of the department. The terms of the three (3) trustees appointed by the county judge/executive shall start at the same time as the terms of the elected trustees. On or before the beginning of the second fiscal or calendar year, depending on which basis the fire protection or volunteer fire department district is being operated, after June 16, 1966, all departments organized prior to June 16, 1966, shall increase their boards of trustees from three (3) to seven (7) members and elect the elective members in the manner set forth herein.

(3) The trustees shall elect from their number a chairman, a secretary and a treasurer, the latter of whom shall give bond in ***an***~~[such]~~ amount as shall be determined by the county judge/executive of the county in which the greater part of the fire protection district is located, conditioned upon the faithful discharge of the duties of his office, and the faithful accounting for all funds which may come into his ***or her*** possession as~~[such]~~ treasurer. The premiums on ***the***~~[such]~~ bonds shall be paid out of the funds of the district.

Approved April 6, 2000

CHAPTER 349

(HB 564)

AN ACT relating to immunizations.

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

Section 1. KRS 214.034 is amended to read as follows:

Except as otherwise provided in KRS 214.036:

(1) All parents, guardians, and other persons having care, custody, or control of any child shall have the child immunized against diphtheria, tetanus, poliomyelitis, pertussis, measles, rubella, mumps, hepatitis B, and haemophilis influenzae disease in accordance with testing and immunization schedules established by regulations of the Cabinet for Health Services. Additional immunizations may be required by the Cabinet for Health Services through the promulgation of an administrative regulation pursuant to KRS Chapter 13A if recommended by the United States Public Health Service or the American Academy of Pediatrics. All parents, guardians, and other persons having care, custody, or control of any child shall also have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health Services promulgated under KRS Chapter 13A. The persons shall also have booster immunizations administered to the child in accordance with the regulations of the Cabinet for Health Services.

(2) A local health department may, with the approval of the Department of Public Health, require all first-time enrollees in a public or private school within the health department's jurisdiction to be tested for tuberculosis prior to entering school. Following the first year of school, upon an epidemiological determination made by the state or local health officer in accordance with administrative regulations promulgated by the Cabinet for Health Services, all parents, guardians, and other persons having care, custody, or control of any child shall have the child tested for tuberculosis, and shall have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health Services. Nothing in this section shall be construed to require the testing for tuberculosis of any child whose parent or guardian is opposed to such testing, and who objects by a written sworn statement to the testing for tuberculosis of the child on religious grounds. However, in a suspected case of tuberculosis, a local health department may require testing of this child.

(3) All public or private primary or secondary schools, and preschool programs shall require a current immunization certificate for any child enrolled as a regular attendee, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance.

(4) ***All public or private primary schools shall require a current immunization certificate for hepatitis B for any child enrolled as a regular attendee in the sixth grade, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance. This provision shall sunset following the 2008-2009 school year unless otherwise authorized by the General Assembly.***

(5) For each child cared for in a day-care center, certified family child-care home, or any other licensed facility which cares for children, a current immunization certificate, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, shall be on file in the center, home, or facility within thirty (30) days of entrance into the program or admission to the facility.

(6)[~~(5)~~] Any forms relating to exemption from immunization requirements shall be available at public or private primary or secondary schools, preschool programs, day-care centers, certified family child-care homes, or other licensed facilities which care for children.

Approved April 6, 2000

CHAPTER 350

(HB 593)

AN ACT relating to Tobacco Master Settlement Agreement compliance.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "consent order" means the consent order of December 21, 1998 agreed to in Commonwealth of Kentucky v. Philip Morris Inc. et al., Docket Number 98-CI-01579, Franklin Circuit Court.

(2) There is created the Tobacco Master Settlement Agreement Compliance Advisory Board in the Department of Law. The board shall be composed of six (6) members as follows:

(a) The Attorney General, or the Attorney General's designee;

(b) The secretary of the Cabinet for Health Services, or the secretary's designee;

(c) The Commissioner of Agriculture, or the commissioner's designee;

(d) The secretary of the Public Protection and Regulation Cabinet, or the secretary's designee; and

(e) Two (2) citizens at large appointed by the Attorney General.

(3) The citizen members of the board shall serve for terms of one (1) year and until their successors are appointed. The citizen members shall be eligible for successive terms on the board.

(4) The board shall annually elect a member to serve as its chair and shall meet at least quarterly on a date set by the board. Board members shall be reimbursed for necessary expenses incurred in serving on the board.

(5) The board may adopt rules governing the conduct of its meetings, the creation of meeting agendas, and other procedural matters it deems necessary. The board may adopt reporting forms, which shall be developed in consultation with participating agencies.

(6) The Office of the Attorney General shall:

(a) Enter into a memorandum of agreement with the Department of Public Health of the Cabinet for Health Services, the Alcoholic Beverage Control in the Public Protection and Regulation Cabinet, and the Department of Agriculture to identify and report possible violations of the consent order;

(b) Attempt to secure funding under the master settlement agreement to reimburse the agencies specified in paragraph (a) of this subsection for any compliance activity that they perform; and

(c) Provide necessary funding and staff for administrative expenses related to the operation of the board. The board may request assistance from other state agencies.

(7) The Tobacco Master Settlement Agreement Compliance Advisory Board shall:

(a) Identify activities for which training is required for personnel of the state agencies specified in paragraph (a) of subsection (6) of this section that are responsible for identifying and reporting possible violations of the consent order;

(b) Determine eligible compliance training costs and seek reimbursement for the costs; and

(c) Notify the appropriate tobacco manufacturer, in writing, of any alleged violation of the consent order and request a response and, if applicable, a corrective action plan within thirty (30) days from the date of the notice. If the manufacturer fails to respond or to satisfactorily resolve the matter, the board shall review the matter at its next meeting and may refer the matter to the Office of the Attorney General for enforcement action, if warranted.

Section 2. The General Assembly confirms Department of Law Administrative Order 99-01, signed by the Attorney General on February 3, 1999, except for Section 12, which establishes June 30, 2000 as the expiration date of the Order unless extended by subsequent Administrative Order.

Approved April 6, 2000

CHAPTER 351

(HB 643)

AN ACT relating to hazardous waste.

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

Section 1. KRS 224.46-580 is amended to read as follows:

(1) The General Assembly declares that it is the purpose of this section to promote the development of statewide programs, under the responsibility of a single agency, which are intended to protect the health of the citizens and the environment of the Commonwealth from present and future threats associated with the management of hazardous wastes and the release of toxic chemicals regulated under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, including disposal, treatment, recycling, storage, and transportation. The intent of the General Assembly is to add to and coordinate, and not replace, existing efforts and responsibilities in the areas of hazardous waste management, toxic chemical manufacture, processing, or other use, and to leave the primary burden and responsibility for hazardous waste and toxic chemical reduction on private industry; and further to finance assistance and coordination by imposing assessments on the generation of hazardous waste. The assessments are intended to produce a reduction in waste generated; to promote the use of new techniques in recycling, treatment, and alternatives other than land disposal; and to place the burden of financing additional hazardous waste management activities necessarily undertaken by state agencies on the users of those products associated with the generation of hazardous waste. The General Assembly further finds that Kentucky's industries need assistance in developing and

implementing pollution prevention goals and that a fund should be established to provide technical and financial assistance to those industries.

(2) The Natural Resources and Environmental Protection Cabinet is given the authority to administer the provisions and programs of this section and the responsibility to achieve the purposes of this section.

(3) In addition to all specific responsibilities contained elsewhere in this chapter, the cabinet shall:

(a) Respond effectively and in a timely manner to emergencies created by the release of hazardous substances, as defined in KRS 224.01-400, into the environment. The cabinet shall provide for adequate containment and removal of the hazardous substances in order that the threat of a release or actual release of the substance may be abated and resultant harm to the environment minimized. The provisions of KRS 45A.695 to 45A.725 may be suspended by the cabinet if necessary to respond to an environmental emergency.

(b) Provide for post-closure monitoring and maintenance of hazardous waste disposal sites upon termination of post-closure monitoring and maintenance responsibilities by persons permitted to operate the facility pursuant to this chapter.

(c) Identify, investigate, classify, contain, or clean up any release, threatened release, or disposal of a hazardous substance where responsible parties are economically or otherwise unavailable to properly address the problem and the problem represents an imminent danger to the health of the citizens and the environment of the Commonwealth.

(4) The cabinet shall have the authority to finance the nonfederal share of the cost for clean up of sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96-510).

(5) The cabinet shall recover, when possible, actual and necessary expenditures incurred in carrying out the duties under this section. Any expenditures recovered shall be placed in the hazardous waste management fund.

(6) It is the expressed purpose of this section to accomplish effective hazardous waste and toxic chemical management that results in a reduction of the generation of hazardous wastes and the release of toxic chemicals within the Commonwealth; further, it is a purpose of this chapter to allocate a portion of the cost of administering necessary governmental programs related to hazardous waste and toxic chemical management to those industries whose products are reasonably related to the generation of hazardous waste.

(7) There is hereby imposed upon every person engaged within this state in the generation of hazardous waste an annual hazardous waste assessment to be determined pursuant to this section according to the quantity by weight of hazardous waste generated, except that no assessment shall be levied against generators for any quantity of "special wastes," waste oil, or spent material from air pollution control devices controlling emissions from coke manufacturing facilities. The assessment shall not be imposed upon any person for any quantities of hazardous waste generated by others for which that person is a secondary handler that stores, processes, or reclaims the waste. The assessment shall be reported and paid to the Natural Resources and Environmental Protection Cabinet for the generation of

hazardous waste on an annual basis on January 1 of each year. The payment shall be accompanied by a report or return in a form that the cabinet may prescribe. If a federal law is enacted which accomplishes or purports to accomplish the purposes set forth in this section and which levies an assessment or tax upon any business assessed pursuant to this section, the amount of the assessment to be levied upon the business under this section shall be reduced by the amount of the federal assessment or tax upon the business. The reduction shall only be authorized when funds raised by the federal assessment or tax are made available to the state for any of the activities to be funded under this section. If federal moneys are available to carry out the duties imposed by subsection (3) of this section, the assessment shall cease to be levied and collected until such time as federal moneys are no longer available to the Commonwealth for these purposes. The assessment shall be charged against generators of hazardous waste until June 30, ***2002***[~~2000~~]. After this date, no further hazardous waste management assessment shall be charged against generators.

(8) The assessment on generators shall be one and two-tenths cents ($0.012) per pound if the waste is liquid, or two-tenths of a cent ($0.002) per pound if the waste is solid.

(a) Hazardous waste that is injected into a permitted underground injection well shall be assessed on a dry weight basis;

(b) Hazardous waste treated, detoxified, solidified, neutralized, recycled, incinerated, or disposed of on-site shall be assessed at one-half (1/2) of the appropriate rate, except for recycled waste used in the steel manufacturing process which shall be exempt; and

(c) Waste that is subject to regulation under Section 402 or 307B of the Federal Clean Water Act shall be exempt.

(9) Except for waste brought into the state by a company to an affiliated manufacturing facility of the company receiving the waste, any person who transports hazardous waste into the state for land disposal or treatment which is generated outside of the state shall pay an assessment to the hazardous waste facility which first receives the waste for storage, treatment, or land disposal. The assessment rate shall be identical to the rate described in subsection (8) of this section. The facility shall remit the assessment to the cabinet on an annual basis on January 1 of each year. The payment shall be accompanied by a return the cabinet shall prescribe.

(10) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails or refuses to file a return or furnish any information requested in writing by the cabinet, the cabinet may, from any information in its possession, make an estimate and issue an assessment against the generator or hazardous waste facility and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties in this chapter.

(11) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails to make and file a return required by this chapter on or before the due date of the return or the due date as extended by the cabinet, unless it is shown to the satisfaction of the cabinet, that the failure is due to reasonable cause, five percent (5%) of the assessment found to be due by the cabinet shall be added to the assessment for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it is filed, but the total penalty shall not exceed twenty-five percent (25%) of the assessment.

(12) If the assessment imposed by this chapter, whether assessed by the cabinet, or the generator, or any installment or portion of the assessment is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the assessment, interest upon the unpaid amount at the rate of eight percent (8%) per annum from the date prescribed for its payment until payment is actually made to the cabinet.

(13) There is hereby created within the State Treasury a trust and agency fund which shall not lapse to be known as the hazardous waste management fund. The fund shall be deposited in an interest-bearing account. The cabinet shall be responsible for collecting and receiving funds as provided in this section, and all such assessments collected or received by the State Treasury shall be deposited in the hazardous waste management fund. All interest earned on the money deposited in the fund shall be deposited to the fund. When the State Treasurer certifies to the cabinet that the uncommitted balance of the hazardous waste management fund exceeds six million dollars ($6,000,000), assessments shall not be collected until the State Treasurer certifies to the cabinet that the balance in the hazardous waste management fund is less than three million dollars ($3,000,000). The implementation of the cap on the fund shall be suspended from July 13, 1990, until July 1, 1991. In addition, for assessments paid after July 1, 1991, the cabinet shall refund or grant a credit against the next assessment to come due, on a pro-rated basis, any money collected in one (1) year in excess of the cap.

(14) There is hereby created within the State Treasury a trust and agency account which shall not lapse to be known as the pollution prevention fund. The fund shall be placed in an interest-bearing account. The fund shall be administered by the Center for Pollution Prevention. The cabinet shall remit to the fund each fiscal year twenty percent (20%) of the funds received by the hazardous waste management fund subject to the enacted budget bill. The cabinet shall provide to the center estimates of the amount of the hazardous waste assessment expected to be collected during each upcoming fiscal year.

(15) Upon request of the secretary, moneys accumulated in the hazardous waste management fund shall be released in amounts necessary to accomplish the performance of the duties imposed by subsection (3) of this section. However, moneys from the fund shall not be used when federal moneys are available to carry out these duties, except when immediate action is required to protect public health or the environment, in which case the cabinet shall actively pursue reimbursement of the fund by any available federal moneys.

(16) If any person responsible for a release or threatened release of a hazardous substance fails to take response actions or to make reasonable progress in completing response actions ordered by the cabinet, the cabinet may bring an action to compel performance or may take appropriate response actions and order the responsible person to reimburse the cabinet for the actual costs incurred by the cabinet.

(17) If disposal activities have occurred at a hazardous waste site, the cabinet shall record in the office of the county clerk in the county in which a waste site is situated a notice containing a legal description of the property that discloses to any potential transferee that the land was used to dispose hazardous waste and that further information on the hazardous waste site may be obtained from the cabinet.

(18) No person shall affect the integrity of the final cover, liners, or any other components of any containment system after closure of a hazardous waste site on or in which hazardous waste remains without prior written approval of the cabinet.

Approved April 6, 2000

CHAPTER 352

(HB 660)

AN ACT relating to sales tax.

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

Section 1. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

(1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;

(2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:

(a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and

(b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

(3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;

(4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;

(5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;

(6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents ($0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the cabinet. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;

(7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;

(8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include, but not be limited to, natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Revenue Cabinet;

(b) In making the determinations of eligibility, the cabinet shall exempt from taxation all gross receipts derived from sales:

1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;

2. Classified as "residential" by a municipally-owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;

3. Classified as "residential" by the governing body of a municipally-owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

(c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and

(d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;

(9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;

(10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the seller and the seller maintains a file of the proof;

(11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale are not subject to the sales or use tax. The property shall be regarded as having been purchased for resale. For purposes of this

subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.

(a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:

1. Materials which enter into and become an ingredient or component part of the manufactured product.

2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:

a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.

b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.

c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.

3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.

(b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170;

(12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;

(13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle to a location

outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.

(a) As used in this subsection:

1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and

2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.

(b) The seller shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet;~~[and]~~

(14) Gross receipts from the sale of water used in the raising of equine as a business***; and***

(15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.

(a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific customer specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.

(b) The seller shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet.

Section 2. The provisions of this Act shall apply to sales of metal retail fixtures made on or after August 1, 2000.

Approved April 6, 2000

CHAPTER 353

(HB 693)

AN ACT relating to tourism signage.

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

Section 1. KRS 177.076 is amended to read as follows:

As used in KRS 177.076 to 177.079, unless the context requires otherwise:

(1) "Historical site" means a cultural or educational site that is officially listed in the National Register of Historical ***Places***~~[Sites]~~;

(2) "Fully controlled access highway" means a limited access highway, an interstate highway, and a parkway;

(3) "Limited supplemental guide sign" means an official highway guide sign that is erected by the Department of Highways to give directions, furnish advance notice, show mileage or exit indicators, and indicate access to historical sites or to scenic, cultural, and recreational tourist areas or attractions and that conforms to the design standards and requirements set forth in the Manual on Uniform Traffic Control Devices (MUTCD);

(4) "Post-interchange guide sign" means an official highway sign that may be used in conjunction with a limited supplemental guide sign and lists the name of a tourist area or attraction or an historical site and the distance from an interstate to a tourist area or attraction or an historical site. A post-interchange guide sign shall conform to the design standards and requirements set forth in the Manual on Uniform Traffic Control Devices (MUTCD);

(5) "Rural area" means an area that does not have sufficient population to be designated as an urban area;

(6) "Tourist area or attraction" means a cultural, recreational, or entertainment facility***, family entertainment center,*** or an area of natural phenomenon or scenic beauty that is suited for outdoor recreation~~[or]~~ that receives a major portion of its income or visitors during the normal business season from motorists not residing in the immediate area of the tourist area or attraction. "Tourist area or attraction" does not include any of the following:

(a) Lodging facilities; or

(b) Facilities that are primarily devoted to the retail sale of goods, unless the ***facilities are a family entertainment center or the*** goods are created by individuals at the tourist area or attraction or if the sale of goods is incidental to the tourist area or attraction; ***or***

(c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the tourism area or attraction;

(7) ***"Family entertainment center" means a facility, other than a stand alone shopping center, that meets all of the following criteria:***

(a) Contains a minimum of fifty thousand (50,000) square feet of building space;

(b) Is located on property encompassing at least five (5) acres adjacent or complementary to a cultural, recreational, or entertainment facility, or natural recreational area;

(c) Provides a variety of entertainment and leisure options;

(d) Contains at least one (1) restaurant and at least two (2) additional venues, including, but not limited to, live entertainment, concert halls, museums, zoos, or other cultural, recreational or leisure activities; and

(e) Is at a location where sixty percent (60%) of the developed property is devoted to entertainment and food options.

(8) "City" means an area with a population of one hundred thousand (100,000) or more designated by the United States Department of Commerce, Bureau of the Census.

Section 2. KRS 177.077 is amended to read as follows:

(1) No later than February 1, 1999, the commissioner of the Department of Highways shall establish standards, procedures, and forms for the making and approval of applications for a limited supplemental guide sign by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(2) The criteria for the approval of a limited supplemental guide sign application for an historical site or for a tourist area or attraction shall be based upon average annual attendance and distance from a fully controlled access highway interchange.

(3) At a fully controlled access highway interchange in a rural area, the standards for approval shall be the lesser of:

(a) Tourist areas and attractions that have an average annual attendance of ten thousand (10,000) visitors and are located within fifty (50) miles of a fully controlled access highway;

(b) Tourist areas and attractions that are located within fifty (50) miles of a fully controlled access interchange and have an annual visitation equal to or greater than the average annual daily traffic count of the fully controlled access highway at the interchange from which the attraction is served.

(4) At a fully controlled access highway interchange in a city, the standards for approval shall be the lesser of:

(a) Tourist areas and attractions that have an average annual attendance of seventy-five thousand (75,000) visitors and are located within fifty (50) miles of a fully controlled access highway interchange;

(b) Tourist areas and attractions that are located within fifty (50) miles of a fully controlled access highway interchange and have an annual visitation equal to the average annual daily traffic count of the fully controlled access highway at the interchange from which the attraction is served.

(5) Historical sites that are located in either a rural area or a city shall have an average annual attendance of five thousand (5,000) and shall be located within fifty (50) miles from a fully controlled access highway interchange.

(6) The identification of a tourist area or attraction on a specific service sign pursuant to KRS 177.0736 shall not affect its eligibility for a limited supplemental guide sign.

(7) Upon receipt of an application, the commissioner of the Department of Highways shall within thirty (30) days provide written notification to the applicant of any hearings pertaining to the application. The commissioner of the Department of Highways shall make a determination on whether to approve the erection of a limited supplemental guide sign within ninety (90) days after the receipt of an application and shall provide written notification to the applicant of his decision.

(8) Supplemental guide signs, including but not limited to limited supplemental guide signs, erected prior to July 1, 1998, shall not be removed due to the site selection criteria contained in KRS 177.076 to 177.079.

Section 3. KRS 177.078 is amended to read as follows:

(1) An application from an historical site or from a tourist area or attraction for the erection of a limited supplemental guide sign shall be made to the commissioner of the Department of Highways. The application shall include, but not be limited to:

(a) Evidence that demonstrates the average annual attendance;

(b) Evidence that the tourist area or attraction is established as a permanent business; and

(c) Evidence that the tourist area or attraction has all necessary and proper licenses, that normal business hours shall be maintained, that it is open to the traveling public, and that it provides recreational or educational opportunities.

(2) ***An***~~[A nonrefundable]~~ application fee of two hundred dollars ($200) shall be paid to the Department of Highways ***by each applicant***.

(3) Upon approval of the application, the applicant shall pay a fee not to exceed five hundred dollars ($500) per year for a period of ten (10) years or the total cost of the sign and its installation, amortized for a period of ten (10) years, whichever is less, to the Transportation Cabinet.

Approved April 6, 2000

CHAPTER 354

(HB 740)

AN ACT relating to local elections.

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

Section 1. KRS 83A.047 is amended to read as follows:

In a city whose boundaries extend beyond those of a single county, candidates for nomination or election to city office shall be governed by the provisions contained in KRS 83A.045, except that all nomination papers shall be filed with the ***county clerk of the county in which the candidate resides***~~[Secretary of State]~~ no later than 4 p.m. local time on the day provided for in KRS 83A.045. ***On the day following the candidate filing deadline, each county clerk shall certify the names of all candidates for city office that filed nomination papers with him or her to the clerk of the other county into which the boundaries of the city extend.***

Section 2. KRS 83A.170 is amended to read as follows:

(1) In any city which has under the provisions of KRS 83A.045 or 83A.050 required nonpartisan city elections, or in any city of the second class operating under the city manager form of government pursuant to KRS 83A.150, no person shall be elected to city office except as provided in this section or as otherwise provided in this chapter relating to nonpartisan elections.

(2) No person shall be elected to city office without being nominated in the manner provided in this section at a nonpartisan primary election to be held at the time prescribed by KRS Chapters 116 to 121, except as otherwise provided in this chapter. Nonpartisan primary elections shall be conducted by the same officers, chosen and acting in the same manner, with the same rights and duties as in regular elections.

(3) Each applicant for nomination shall, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the

ballot and not later than the last date prescribed by the election law generally for filing notification and declaration forms with the county clerk~~[or the Secretary of State]~~ as provided in KRS 83A.047, file a petition of nomination, which shall be in the form prescribed by the State Board of Elections signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.

(4) The county clerk~~[or the Secretary of State]~~ shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk~~[or the Secretary of State]~~ shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(5) Immediately upon expiration of the time for filing petitions, the county clerk shall have published in accordance with KRS Chapter 424 the names of the applicants as they will appear before the voters at the primary.

(6) Subsection (5) of this section shall not apply if it appears, immediately upon expiration of the time for filing petitions, that there are not more than two (2) applicants for nomination for each city office to be filled, or, when the nominations are for city legislative body members in cities electing legislative body members at large, and there are no more than twice the number of applicants for nomination for the number of offices to be filled. In that case, the applicants for nomination shall thereby be nominated and no drawing for ballot position nor primary election shall be held for that office.

(7) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(8) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk~~[or the Secretary of State]~~ dies or notifies the clerk~~[or the Secretary of State]~~ in writing, signed and properly notarized, that he will not accept the nomination, the clerk shall not cause his name to be printed on the ballot.

(9) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,

(a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.

(b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.

(10) Names of applicants for each nomination shall be placed before the voters of the city. The voters shall be instructed to vote for one (1) candidate, except that they shall be instructed to vote for the number of legislative body members to be elected in cities nominating legislative body members at large. No party designation or emblem of any kind nor any sign indicating any applicant's political belief or party affiliation shall be used.

(11) Persons qualified to vote at a regular election shall be qualified to vote at a nonpartisan primary election and the law applicable to challenges made at a regular election shall be applicable to challenges made at a nonpartisan primary election.

(12) Votes shall be counted as provided in general election laws, pursuant to KRS Chapters 116 to 121, and the result shall be published as provided in KRS Chapter 424.

(13) The two (2) applicants receiving the highest number of votes for nomination for each city office shall be nominated; or where the nominations are for city legislative body members in cities electing legislative body members at large, there shall be nominated the number of applicants receiving the highest number of votes equal to twice the number of offices to be filled.

(14) At the regular election following a nonpartisan primary election, the names of the successful nominees and candidates who have filed a petition of candidacy as provided in this chapter to fill a vacancy shall be placed before the voters.

(15) The nominee or candidate receiving the greater number of votes cast for each city office shall be elected.

(16) KRS Chapters 116 to 121 prescribing duties of county clerks and other public officers in the conduct of elections shall be applicable in all respects to nonpartisan city elections, except no election officer or other person within a polling place shall tell or indicate to a voter, by word of mouth or otherwise, the political affiliation of any candidate for city office.

Section 3. KRS 83A.175 is amended to read as follows:

(1) The election to fill the regular term of a nonpartisan city office shall be conducted in the manner prescribed in KRS 83A.165 when, in a regular election for nonpartisan city office no candidates nominated to an office as provided in KRS 83A.170 are available due to death, incapacity, or withdrawal, or when city legislative body members are to be elected at large and there are fewer nominees than there are offices to be filled, or when a city of the fourth to sixth class has not conducted a primary election pursuant to KRS 83A.045.

(2) Each candidate shall, not earlier than the first Wednesday after the first Monday in November of the year before the year in which the office will appear on the ballot and not later than the last date prescribed by the election law generally for filing petitions of nomination with the county clerk~~[or the Secretary of State]~~ as provided in KRS 83A.047, file a petition for candidacy. The petition shall be prescribed by the State Board of Elections and shall be signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.

(3) The county clerk~~[or the Secretary of State]~~ shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk~~[or the Secretary of State]~~ shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(4) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(5) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk~~[or the Secretary of State]~~, dies or notifies the clerk~~[or the Secretary of~~

~~State]~~ in writing, signed and properly notarized, that he will not accept the election, the clerk shall not cause his name to be printed on the ballot.

(6) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,

(a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.

(b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.

Section 4. KRS 118.356 is amended to read as follows:

(1) Certificates and petitions of nomination shall, in the case of candidates voted for by the state at large ***or***[~~,~~] by a district greater than one (1) county,[~~ or by a city whose boundaries extend beyond those of a single county,~~] be filed with the Secretary of State. In the case of candidates voted for by a county or by a district less than a county, they shall be filed with the county clerk. ***In the case of candidates voted for by a city whose boundaries extend beyond those of a single county, they shall be filed with the county clerk of the county in which a candidate resides.*** In the case of candidates for Congress and for General Assembly, they shall be filed with the Secretary of State.

(2) Certificates of nomination at a primary election held under this chapter shall be filed by the State Board of Elections or the county board of elections, depending upon which one issued the certificate. Certificates and petitions of nomination shall be filed by the candidate or by someone on his behalf.

Section 5. KRS 67.045 is amended to read as follows:

(1) For the purposes of this section the word "district" shall mean:

(a) Justice's of the peace district in counties having a fiscal court composed of the county judge/executive and the justices of the peace;

(b) County commissioner's district in counties having a fiscal court composed of the county judge/executive and three (3) county commissioners; or

(c) Justice's of the peace district in counties having a fiscal court composed of the county judge/executive and three (3) county commissioners established according to KRS 67.060.

(2) In counties where the members of the county fiscal court are nominated or elected by districts, the boundaries of those districts shall be drawn so that the districts are compact, contiguous, and the population of each district shall be as nearly equal as is reasonably possible.

(3) In counties where the fiscal court consists of the county judge/executive and three (3) county commissioners established according to KRS 67.060, the justice of the peace districts shall be coextensive with the three (3) county commissioner districts.

(4) The fiscal court shall initiate reapportionment proceedings in ***May***~~[February]~~ of the ***first***~~[second]~~ year following the decennial census of the United States. The fiscal court may, at other times, review the district boundaries and shall initiate reapportionment proceedings if the district boundaries are in violation of subsection (2) of this section.

(5) To initiate a reapportionment proceeding, the fiscal court shall publish notice of the planned reapportionment in accordance with KRS Chapter 424 and appoint three (3) competent citizens of the county over twenty-one (21) years of age, and residing in different districts, and the county clerk as a nonvoting member as commissioners to reapportion the county into not less than three (3) nor more than eight (8) justices' districts in counties having a fiscal court composed of the county judge/executive and the justices of the peace or three (3) commissioner's districts in counties having a fiscal court composed of the county judge/executive and county commissioners. The commissioners, before they proceed to act, shall be sworn to faithfully perform their duties. They shall receive out of the county treasury a reasonable compensation for their services, fixed by the fiscal court.

(6) The commissioners shall, within sixty (60) days after their appointment, lay off the boundary lines of the districts. They shall file in the office of the county clerk and with each member of the fiscal court a written report, showing the boundary of each district and the estimated population in each. Within sixty (60) days of the receipt of the report, the fiscal court shall consider the report of the commissioners and, in accordance with the provisions of KRS 67.075 to 67.077, adopt or amend the report in establishing the districts. In no event shall districts be reapportioned during the period from thirty (30) days prior to the last date for filing for candidacy for county office as provided in KRS 118.165 and the regular election for candidates for county office.

(7) Precinct lines shall be redrawn when necessary in accordance with the provisions of KRS 117.055. No precinct shall be in more than one (1) district.

(8) Within twenty (20) days of the establishment of the districts by the fiscal court, any registered voter of the county may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the fiscal court has violated the provisions of this section, remand the matter to the fiscal court. The Circuit Court, in its discretion, may allow the prevailing party, other than the fiscal court, a reasonable attorney's fee, to be paid from the county treasury, as part of the costs.

~~[(9) The fiscal court of any county which has not reapportioned its districts since the 1980 decennial census of the United States shall initiate reapportionment proceedings within sixty (60) days of July 15, 1982.]~~

Approved April 6, 2000

CHAPTER 355

(HB 742)

AN ACT relating to the purchase of development rights for public parks.

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

Section 1. KRS 67A.160 is amended to read as follows:

The procedure for a referendum authorized by KRS 97.590 shall be as follows:

(1) A public parks purchase and maintenance program proposal authorized by KRS 97.590 may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out the matters specified in KRS 97.590(1). The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the effect or impact of the proposal.

(2) Petitions shall be signed by registered voters of the urban-county government equal in number to at least ten percent (10%) of the total number of votes cast in the urban-county in the last regular mayoral election of the urban-county government.

(3) If, not later than ninety (90) days preceding the day established for a regular election, the county clerk receives a resolution adopted by a three-fifth's (3/5) vote of the legislative body of the urban-county government requesting that the question be submitted to the voters or determines that a petition submitted in accordance with this section is sufficient, the legal department of the urban-county government shall prepare to place before the voters of the urban-county government at the next regular election the question, which shall appear on the ballot in the following form:

"( ) FOR RATIFICATION OF (summary of proposed program)

( ) AGAINST RATIFICATION OF (summary of proposed program)"

The county clerk shall cause to be published not fewer than three (3) times within thirty (30) days of the election, in a newspaper having a general circulation in the territory of the urban-county government, notice of the referendum, the exact language of the proposal, and a map prepared by the urban-county government showing the general location of the properties that may be purchased and the public parks that may be maintained under the program.

(4) The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body. If a proposed program is approved, it shall become effective at the time specified in the proposal, but the effective date shall not be before the first day of January following the election.

(5) After complying with the provisions of this section and Section 2 of this Act, a purchase of development rights program authorized by KRS 67A.843 and KRS 67A.845 may include a public parks and maintenance program proposal authorized by KRS 97.590. In the case of a combined proposal, the urban-county government shall place before the voters a single ballot proposal that combines the purchase of development rights proposal and the public parks purchase and maintenance proposal. In that event, the proposal shall specify which tax levy or portion thereof shall provide funding for the purchase of development rights program proposal and which shall provide funding for the purchase of parks and maintenance program.

Section 2. KRS 67A.847 is amended to read as follows:

The procedure for a referendum authorized by KRS 67A.843 shall be as follows:

(1) A purchase of development rights program proposal authorized by KRS 67A.843 and 67A.845 may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or

petition shall set out the matters specified in KRS 67A.843(1). The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the proposal.

(2) Petitions shall be signed by registered voters of the urban-county government equal in number to at least ten percent (10%) of the total number of votes cast in the urban-county in the last regular mayoral election of the urban-county government.

(3) If, not later than ninety (90) days preceding the day established for a regular election, the county clerk receives a resolution adopted by a three-fifths (3/5) vote of the legislative body of the urban-county government requesting that the question be submitted to the voters or determines that a petition submitted in accordance with this section is sufficient, the legal department of the urban-county government shall prepare to place before the voters of the urban-county government at the next regular election the question, which shall appear on the ballot in the following form:

"( ) FOR RATIFICATION OF (summary of proposed program)

( ) AGAINST RATIFICATION OF (summary of proposed program)".

The county clerk shall cause to be published, not fewer than three (3) times within the thirty (30) day period immediately preceding the election in a newspaper having a general circulation in the territory of the urban-county government, notice of the referendum, the exact language of the proposal, and a map prepared by the urban-county government showing the general location of the properties from which development rights may be purchased under the program.

(4) The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body. If a proposed program is approved, it shall become effective at the time specified in the proposal, but the effective date shall not be before the first day of January following the election.

(5) After compliance with the provisions of this section and Section 1 of this Act, a purchase of development rights program authorized by KRS 67A.843 and KRS 67A.845 may be combined with a public parks purchase and maintenance program proposal authorized by KRS 97.590. In the case of a combined proposal, the urban-county government shall place before the voters a single ballot proposal that combines the purchase of development rights program proposal and the parks purchase and maintenance program proposal. In that event, the proposal shall specify which tax levy or portion thereof shall provide funding for the purchase of development rights program proposal and which will provide funding for the parks purchase and maintenance program proposal.

Section 3. KRS 97.590 is amended to read as follows:

(1) For the purpose of purchasing and maintaining public parks within the jurisdictional limits, cities of any class, counties, charter counties, and urban-county governments may levy taxes not exceeding five cents ($0.05) on each one hundred dollars ($100) of all taxable property within the corporate limits***, subject only to the aggregate limits on property taxes set forth in the Kentucky Constitution, but not subject to the recall provisions of KRS 132.017***. No city, county, charter county, or urban-county government shall levy the tax until a public referendum has been conducted in accordance with the provisions of KRS 83A.120 in the

case of a city, county, or charter county or in accordance with the provisions of KRS 67A.160 in the case of an urban-county government and has been adopted by the city's, county's, charter county's, or urban-county government's voters. The public referendum provisions in this section shall not apply to any city, county, charter county, or urban-county government that has in effect on July 15, 1998, a tax for park purposes in accordance with this section or KRS 97.550.

(2) The funds derived from the levy shall be held by the treasurer of the city or the treasurer of the county in a separate and distinct fund designated the "Park Fund***.***~~[,]~~" ***The funds***~~[and]~~ shall be paid out by the treasurer only upon order issued by the park board signed by the secretary and countersigned by the president after the bill for the withdrawal has been approved by the board***, unless a park board has not been appointed under KRS 97.550 to KRS 97.600, in which case the funds shall be appropriated by the city legislative body, the fiscal court, or the legislative body of the charter county government or urban-county government for purposes consistent with the levy***. The treasurer shall not honor in any one (1) year orders for a greater sum than the amount apportioned and levied for that year for park and playground purposes.

Approved April 6, 2000

CHAPTER 356

(HB 789)

AN ACT relating to intellectual property.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Counterfeit mark" means:

1. Any unauthorized reproduction or copy of intellectual property; or

2. Intellectual property knowingly affixed to any item without the authority of the owner of the intellectual property.

(b) "Intellectual property" means any trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify the person's goods or services.

(c) "Person" includes, in addition to its meaning under KRS 446.010, any association, organization, or entity amenable to suit in a court of law.

(d) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(2) Any person who willfully manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any item or service that the person knows bears or is identified by a counterfeit mark shall be guilty of counterfeiting.

(3) A person having possession, custody, or control of more than twenty-five (25) items that the person knows bears or is identified by a counterfeit mark shall be presumed to possess the items with the intent to sell or distribute.

(4) Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor, except where the person has been previously convicted of a violation of this section or the violation involves more than one hundred (100) items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than one thousand dollars ($1,000), in which case the person shall be guilty of a Class D felony. Unless reduced by the court for extenuating circumstances and notwithstanding KRS Chapter 534, upon conviction the offender shall, in addition to any other allowable disposition, be fined an amount equal to the greater of:

(a) Three (3) times the retail value of the items bearing, or services identified by, the counterfeit mark;

(b) Double the amount of the defendant's gain from commission of the offense; or

(c) As otherwise allowed in KRS Chapter 534 for felonies and misdemeanors.

(5) For purposes of this section, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses.

(6) Except for items in the possession of a person not in violation of this section, any items bearing a counterfeit mark, and all personal property, including but not limited to, any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this section shall be seized by any law enforcement officer.

(a) Except as otherwise provided in this subsection, all personal property seized under this subsection shall be forfeited in accordance with KRS 431.100.

(b) Upon request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner.

(c) If the intellectual property owner does not request release of seized items bearing a counterfeit mark, the items shall be destroyed unless the intellectual property owner consents to another disposition.

(7) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated in the certificate.

(8) The remedies provided in this section shall be cumulative to other civil and criminal remedies provided by law.

(9) Notwithstanding any statute to the contrary, fines imposed under this section shall be paid into the Crime Victims Compensation Fund established in KRS 346.185.

Approved April 6, 2000

CHAPTER 357

(HB 807)

AN ACT relating to property tax.

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

Section 1. KRS 134.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue.

(2) "Cabinet" means the Revenue Cabinet.

(3) "Real property" includes all lands within this state and improvements thereon.

(4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.

(5) "Taxpayer" means any person made liable by law to file a return or pay a tax.

(6) "Tax claim" includes, in addition to the taxes due on a tax bill, the penalties, costs, fees, interest, commissions, the lien provided in subsection (1) of KRS 134.420 and other such items or expenses that have become or are by reason of the delinquent tax bill proper legal charges ***imposed by this chapter*** against the delinquent taxpayer at any given time.

(7) "Uncollectible tax bill" means a tax bill of a delinquent who owns no real property and which has been returned to the fiscal court by the sheriff or collector because there is insufficient or no personal property to satisfy it, and which has been allowed and approved in the settlement with the court as uncollectible.

(8) "Sheriff" includes any collector whose duty it is to receive or collect state, county or district taxes.

Section 2. KRS 134.450 is amended to read as follows:

(1) The sheriff shall sell all tax claims for which payment by the delinquent taxpayer has not been made by the closing date for the acceptance by the sheriff of offers to purchase delinquent tax claims. If there is more than one (1) willing purchaser who has made an offer, the one having made the most recent purchase of a tax claim against the same delinquent or the same property shall have preference; if there is no such person, the person being the first, in the judgment of the sheriff, to offer to pay cash in the full amount of the tax claim shall receive priority for the purchase of the tax claim. If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars ($200,000), whichever is less, the sheriff shall notify the Finance and Administration Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance and Administration Cabinet shall purchase the delinquent tax bills upon which the sheriff has received an offer of purchase and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county

attorney's contract with the Revenue Cabinet to collect delinquent taxes. If the county attorney has not contracted with the Revenue Cabinet to collect delinquent taxes, the Revenue Cabinet shall collect all amounts due on behalf of the Finance and Administration Cabinet. If the Finance and Administration Cabinet does not purchase all of the delinquent tax bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff has received responsible offers to purchase. When a sale is made the tax bill shall be known as a certificate of delinquency and the sheriff shall inscribe thereon the date of sale, the sale price, and the name and address of the purchaser, in the place and manner prescribed by the Revenue Cabinet, and the purchaser shall be entitled to a certified copy of the certificate of delinquency.

(2) If no responsible offer in the amount of the tax claim is received, the sheriff shall purchase it for the state, county, and taxing districts having an interest in the tax claim. In such case, the tax bill shall also be known as a certificate of delinquency, and the sheriff shall inscribe thereon the same information required when one other than the state, county, or taxing district is the purchaser.

(3) The sheriff shall file all certificates of delinquency in the county clerk's office immediately upon completion of the tax sale and the clerk shall retain them. The county clerk shall acknowledge receipt of the certificates by signing a receipt form that has been prepared in a manner prescribed by the Revenue Cabinet. If the sheriff fails to file the certificates, he shall be liable on his official bond for the aggregate amount of the certificates not returned, but the claim of the purchaser shall not be affected by this neglect. If the sheriff fails to return any certificate, the purchaser may file his certified copy with the clerk, with the same effect as the original.

(4) The clerk shall make, execute, and deliver a certified copy of a certificate of delinquency to the payor, or the clerk may provide for a certified electronic register of the certificates of delinquency in the clerk's record in lieu of delivering a certified copy of the certificate of delinquency.

(5) The certificate of delinquency is assignable by endorsement. The clerk shall note the assignment on the certificate of delinquency or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency. An assignment when noted on the record in the office of the county clerk vests in the assignee all rights and title of the original purchaser.

Section 3. KRS 134.460 is amended to read as follows:

(1) Certificates of delinquency shall bear interest from the date of issuance until collected at the rate of twelve percent (12%) per annum ***simple interest. A fraction of a month is counted as an entire month***.

(2) Certificates of delinquency shall be prima facie evidence that:

(a) The property represented by the certificate was subject to taxes levied thereon, and was assessed as required by law.

(b) The tax bill was valid and correct in all respects.

(c) The taxes were not paid at any time before the issuance of the certificate.

Section 4. KRS 134.480 is amended to read as follows:

(1) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the state, county, or taxing district was the purchaser. When a certificate is paid to an owner other than the state, county, or taxing district***, the assignee shall mark paid in full on*** the certified copy of the certificate ***and*** shall ***surrender the certified copy of the certificate of delinquency***~~[be surrendered]~~ to the person making payment, and if he is the person primarily liable on the certificate he may ***file it with the county clerk and***~~[, by exhibiting it to the county clerk,]~~ have the certificate released of record. When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by him, and such other information as the Revenue Cabinet may require. ***The clerk shall mark the certificate of delinquency paid in full.*** Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment thereof. ***The clerk shall note the assignment on the certificate of delinquency and provide the assignee a certified copy of the certificate of delinquency, or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency.*** Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee of fifty cents ($0.50), have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise he shall pay a fee of fifty cents ($0.50) to the clerk for entering such change on the certificate.

(2) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and he shall give a receipt to the payor and make a report to the Revenue Cabinet, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not less than once in every thirty (30) days. The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards. He shall pay to the Revenue Cabinet for deposit with the State Treasurer all moneys collected by him due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. He shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto. He shall retain ten percent (10%) of the amount due each taxing unit for his services as a fee. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim.

(3) If the person entitled to pay a certificate of delinquency sends a registered letter addressed to the owner of record of the certificate, other than the state, county, or taxing district, and the letter is returned by mail unclaimed, the sender thereof may make payment to the county clerk, who shall make the necessary assignment or release and deposit the money to the account of the owner of record in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. The clerk may deduct the sum of fifty cents ($0.50)

as a fee for such service. The name of the bank in which the money is deposited shall be noted on the certificate.

(4) If any clerk fails to pay to the person entitled thereto, upon demand, the money received in payment of a certificate of delinquency, he and his sureties shall be liable for the same and twenty percent (20%) interest thereon annually from the time he received it until paid.

(5) Copies of the records provided for in KRS 134.450 and this section, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

Section 5. KRS 134.500 is amended to read as follows:

(1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum ***simple interest*** from the date the certificate of delinquency is issued. ***A fraction of a month is counted as an entire month. The sheriff's add-on fee provided in KRS 134.430, the clerk's add-on fee provided in Section 4 of this Act, and the county attorney's add-on fee provided in this section shall be excluded from the interest calculation.*** All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice

shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.

(3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.

(4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

(5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be

entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

Approved April 6, 2000

CHAPTER 358

(HB 852)

AN ACT relating to incremental financing by local governments.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 11 of this Act:

(1) "City" means any city or urban-county;

(2) "Commencement date" means the date a development area is established, as provided in the ordinance creating the development area;

(3) "County" means any county or charter county;

(4) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;

(5) "Development area" means a contiguous geographic area, which may be within one (1) or more cities or counties, defined and created for economic development purposes by an ordinance of a city or county in which one (1) or more economic development projects is proposed to be located;

(6) "Economic development project" means any property, asset, or improvement certified by the governing body, which certification is conclusive as:

(a) Being for a public purpose;

(b) Being for economic development purposes;

(c) Being in or related to a development area; and

(d) Having an estimated life or period of usefulness of one (1) year or more, including, but not limited to, real estate, buildings, personal property, equipment, furnishings, and site improvements and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more;

(7) "Economic development purposes" means the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, or any

combination thereof, which is determined by the governing body establishing the development area as contributing to economic development;

(8) "Financing agreement" means an agreement made between cities, counties, or a combination thereof providing for the release of increments under the authority of Sections 1 to 11 of this Act;

(9) "Governing body" means the body possessing legislative authority in a city or county;

(10) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more economic development projects in a development area, the payment of which is secured solely by a pledge of increments or by a pledge of increments and other sources of payment that are otherwise permitted by law to be pledged or used as a source of payment of the bonds or notes;

(11) "Increments" means that amount of revenue due to be received by a city or county, determined by subtracting the amount of old revenues from the amount of new revenues with respect to a development area;

(12) "Issuer" means a city or county issuing increment bonds;

(13) "New revenues" means the revenues received with respect to a development area in any year after the commencement date for the development area;

(14) "Old revenues" means the amount of revenues received with respect to a development area in the last year prior to the commencement date for the development area;

(15) "Outstanding" means increment bonds that have been issued, delivered, and paid for, except any of the following:

(a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;

(b) Increment bonds in replacement of which or in exchange for which other bonds have been issued; or

(c) Increment bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;

(16) "Revenue collector" means any official charged with collecting revenues in a development area;

(17) "Revenues" means ad valorem revenues and occupational license fees received by the city or county creating a development area and by each city and county that is a party to a financing agreement related to that development area;

(18) "Special fund" means a special fund created in accordance with Section 5 of this Act into which increments are to be deposited;

(19) "Termination date" means the date on which the development area shall cease to exist, which date shall be no earlier than the date any increment bonds secured by increments from a development area are no longer outstanding, and which shall be no later than the first December 31st that is at least thirty (30) years from the commencement date; and

(20) "Year" means January 1st to December 31st of the same calendar year.

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that economic development created by the development of economic development projects to support economic revitalization and improvement in a development area which results in the increase in the value of property located in a development area or results in increased employment opportunities within or around a development area serves a public purpose.

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

In addition to any other powers conferred by law, any city or county may exercise any powers necessary or convenient to carry out the purposes of Sections 1 to 11 of this Act, including the power to:

(1) Create development areas and to define their boundaries;

(2) Undertake economic development projects;

(3) Issue increment bonds and pledge increments to the payment of debt charges on those increment bonds;

(4) Create a special fund established for the deposit of increments and other funds that may be used or pledged for the payment of increment bonds and to pay the costs of economic development projects; and

(5) Utilize increments to pay the costs of economic development projects and for the payment of amounts due on increment bonds.

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) Any city or county may establish or modify a development area by:

(a) Holding a public hearing by its governing body or its designee at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation or modification of a development area and its boundaries. Notice of the hearing shall:

1. Include a declaration that the purpose of the hearing is to afford interested parties an opportunity to express their views regarding the development area;

2. Include a general description of the boundaries of the proposed development area;

3. State the time and place of the hearing; and

4. Be published in a local newspaper of general circulation at least seven (7) days but no more than twenty-one (21) days prior to the scheduled hearing date; and

(b) Adopting an ordinance which shall:

1. Describe the boundaries of the development area with sufficiency to allow ordinary and reasonable certainty of the territory included. However, no development area shall include property located in any other development area;

2. Create the development area on a date certain, which shall be referred to as the commencement date, and, if deemed appropriate by the governing body, establish a termination date;

3. Assign a name to the development area for identification purposes;

4. Contain findings that the designation of the proposed development area will result in the increase in the value of property located in the development area or result in increased employment within or around the development area, or both;

5. Approve the financing agreement, if any, relating to the economic development project;

6. Establish a special fund for that development area; and

7. Contain any other findings, limitations, rules or procedures regarding the development area and its establishment or maintenance as deemed necessary by the governing body; and

(c) Providing the revenue collector, if the collector is not an employee of the city or county designating the development area, with a description of the development area and any other information available which is needed to determine increments or new revenues.

(2) Increments generated in a development area shall be submitted by the revenue collector to the city or county establishing the special fund for that development area, deposited to that special fund and used to pay the costs of economic development projects or to pay debt charges on increment bonds, except that increments payable to any city or county other than the city or county establishing the economic development area shall be submitted to that city or county as if no development area existed unless that city or county is a party to a financing agreement that provides that some or all of the increments are to be submitted to a special fund.

(3) The existence of a development area shall terminate on the termination date and if no termination date is established by the ordinance creating the development area, on the earlier of the termination date subsequently established by ordinance or the first December 31st that is at least thirty (30) years from the commencement date.

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

While increment bonds are outstanding, the issuer shall maintain a special fund which shall be pledged for the retirement of those increment bonds. Revenue collectors shall, for each year a

financing agreement is in effect or any increment bonds are outstanding with respect to a development area, determine the amount of increments from the development area which they are charged with collecting and submit those increments for deposit in the special fund established by the governing body for that development area. Funds deposited in a special fund for the payment of increment bonds shall be disbursed at the times and in the amounts required to pay debt charges on those increment bonds. Accrued interest from the sale of increment bonds shall be deposited in the special fund pledged to the payment of those bonds. Amounts in a special fund which exceed the amount required to pay debt charges on related increment bonds in any fiscal year may accumulate in the special fund for the payment of future debt charges or to pay the costs of additional economic development projects in the development area, or may be transferred by the governing body from the special fund under the terms of a financing agreement or used for any lawful purpose.

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Increment bonds shall be issued, administered, and regulated only by ordinance adopted by the governing body which, in addition to any other provisions deemed appropriate by the governing body, shall:

(1) Declare the necessity of the increment bond issue;

(2) State the principal amount or maximum principal amount of the increment bonds to be issued;

(3) State the purpose of the increment bond issue;

(4) State or provide for the date of, and the dates and amounts or maximum amount of, maturities or principal payments on the increment bonds;

(5) State any provisions for a mandatory sinking fund, mandatory sinking fund redemption, or for redemption prior to maturity;

(6) Provide for the rate or rates of interest, or maximum rate or rates of interest, or the method for establishing or determining the rate or rates of interest to be paid on the increment bonds; and

(7) State any provision for a designated officer of the issuer to determine any of the specific terms required to be stated or provided for in this section, subject to any limitations stated in the proceedings.

SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) Increment bonds may be issued to pay the costs of economic development projects. The provisions of KRS 66.021, KRS 66.031, KRS 66.041, KRS 66.045, KRS 66.071, KRS 66.091, KRS 66.121, KRS 66.131, KRS 66.141, KRS 66.151, KRS 66.171, KRS 66.181, and KRS 66.191 shall apply to the issuance of increment bonds.

(2) Debt payments on increment bonds may be paid from increments, from any other funds of the issuer, or from funds identified in a financing agreement, or any combination thereof. If increment bonds are payable solely from increments, the issuer shall, prior to the issuance of the increment bonds, make a determination that the increments are adequate to make the debt payments so long as the increment bonds are outstanding.

(3) Increment bonds may also be issued to fund or refund all or any portion of outstanding increment bonds. Any increment bonds issued under this subsection shall mature as determined by the governing body consistent with KRS 66.091, but their maturity shall not be later than the date that would have been permitted by KRS 66.091, as of the date the original bonds were issued.

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Any city or county may pledge increments to the payment of increment bonds by an ordinance adopted by the governing body or by a financing agreement adopted by ordinance. Any pledge of increments adopted under this section shall, as to the increments, but not as to any other revenues, be superior to any other pledge of revenues for any other purpose and shall, from the effective date of the ordinance to the termination date, supersede any statute or ordinance regarding the application or use of increments. No ordinance in conflict with an ordinance pledging increments shall be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances pledging increments on a subordinate basis to any existing pledges may be adopted.

SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) Upon establishment of a development area, any city or county may release, by a financing agreement with any other city or county, increments expected to be collected by that city or county in the related development area for a period that does not extend beyond the termination date.

(2) The financing agreement shall include the following provisions:

(a) The identity of each city and county participating in the financing agreement;

(b) A detailed description of each economic development project that is the subject of the financing agreement, including an estimate of its costs of construction or acquisition and development;

(c) A detailed description of the development area;

(d) A detailed summary estimating old revenues collected and projected new revenues in the development area for each city and county that is a party to the financing agreement, on an annual basis, for the term of the proposed financing agreement;

(e) The maximum amount of increments to be released by the parties to the financing agreement, if any, and the maximum number of years the release will be effective, including an agreement to deposit the increments in a special fund created for that purpose, which, if any increment bonds are to be issued, shall be held by the issuer of the increment bonds;

(f) The times and procedures for depositing increments and other funds, if any, in the special fund to be established for the development area and any provisions relating to the collection of the increments;

(g) Any covenants regarding additional funds or to pay the costs of the economic development projects;

(h) Any covenants regarding completion of the economic development project;

(i) Terms of default and remedies, except that no remedy shall permit the withholding by any party to the financing agreement of any increments to be deposited in the special fund identified in the financing agreement so long as any increment bonds are outstanding that are secured by a pledge of those increments; and

(j) Any other provisions not inconsistent with Sections 1 to 11 of this Act that are deemed necessary or appropriate by the parties to the financing agreement.

SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The authority granted by Sections 1 to 11 of this Act is in addition to and not a limitation on any other authorizations granted by or pursuant to law for the same or similar purposes.

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 11 of this Act may be cited as the Kentucky Increment Financing Act.

Approved April 6, 2000

CHAPTER 359

(HB 865)

AN ACT relating to city police and fire departments.

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

Section 1. KRS 90.360 is amended to read as follows:

(1) No employee in the classified service of a city of the second or third class shall be dismissed, suspended or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination or violation of law involving moral turpitude, or, in a city of the third class, violation of any rule adopted by the city legislative body or civil service commission.

(2) Any person may prefer charges in writing against any employee by filing them with the mayor or other appointing authority who shall communicate the charges without delay to the civil service commission of the city. The charges must be signed by the person making them and must set out clearly each charge. The appointing authority shall, whenever probable cause appears, prefer charges against any employee whom he ***or she*** believes guilty of conduct justifying his ***or her*** removal. Upon the filing of charges the clerk of the civil service commission shall notify its members and serve a copy of the charges upon the accused employee with a statement of the date, place and hour at which the hearing of charges will begin, this hearing not to be held within three (3) days of the date of the service of charges upon the accused employee. The day on which the charges are served on the accused employee shall count as one (1) of the days of notice. The person accused may in writing waive the service of charges and demand trial within three (3) days after they have been filed with the clerk of the civil service commission.

(3) Upon the hearing the charges shall be considered traversed and put in issue, and the trial shall be limited to the issues presented by the written charges.

(4) The civil service commission shall have the power to summon and compel attendance of witnesses at all hearings by subpoena issued by the clerk of that body and served upon the witnesses by members of the police department of the city or any officer authorized to serve subpoenas. If any witness fails to appear in response to a summons or refuses to testify concerning any matter on which he may lawfully be interrogated, any District Judge, on application of the commission, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the District Court. The accused employee shall have the right to have subpoenaed any witnesses he ***or she*** may desire, upon furnishing their names to the clerk. As many as ten (10) subpoenas may be served on the request of the accused employee without charge but each additional subpoena requested by him shall be issued by the clerk and served by the police department only upon payment of fifty cents ($0.50) to the city clerk by the employee. The action and decision of the civil service commission on the charges shall be reduced to writing and kept in a book for that purpose and the written charge shall be attached to the book containing the body's decision.

(5) In cases where the head of the department or the appointing authority has probable cause to believe an employee has been guilty of conduct justifying his removal or punishment he shall immediately suspend that employee from duty or from both pay and duty pending trial and the employee shall not be placed on duty or allowed pay thereafter until the charges are heard by the civil service commission.

(6) The civil service commission shall punish any employee found guilty by reprimand or a suspension for any length of time not to exceed six (6) months, or by reducing the grade, if the employee's classification warrants, or by combining any two (2) or more of these punishments, or by dismissal. No employee shall be reprimanded, removed, suspended or dismissed except as provided in this section.

(7) (a) Any of the following offices, positions, and places of employment, in the police and fire departments of a city of the second or third class, may be excluded from the classified service:

1. Chief of police;

2. Assistant chief of police;

3. Chief of firefighters; and

4. Assistant chief of firefighters.

(b) Any classified employee in either department who shall accept an appointment and qualify as chief of police, assistant chief of police, chief of firefighters, or assistant chief of firefighters, shall be deemed to have received a leave of absence from the classified service for, and during the incumbency of, any of those respective positions. If an individual should cease to serve in any of those positions, there shall be restored to him or her the same classification and rank which he or she held prior to his or her appointment.

SECTION 2. A NEW SECTION OF KRS CHAPTER 95 IS CREATED TO READ AS FOLLOWS:

Any city of the second or third class may elect to operate under KRS 90.310 to 90.410, and, by ordinance, create a civil service commission. Any classified employee in the police or fire department, who accepts an appointment and qualifies as chief of police, assistant chief of

police, chief of firefighters, or assistant chief of firefighters, shall be deemed to have received a leave of absence from the classified service for, and during the incumbency of, any of those respective positions. If an individual should cease to serve in any of those positions, there shall be restored to him or her the same classification and rank which he or she held prior to his appointment.

Approved April 6, 2000

CHAPTER 360

(HB 881)

AN ACT relating to real estate sales associates.

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

Section 1. KRS 324.117 is amended to read as follows:

(1) Real estate advertising shall not be false, misleading, or deceptive. All real estate advertising shall specify the names of the real estate company listed on the licensee's real estate license or the name of the principal broker and a designation indicating that the licensee is engaged in the real estate business. The commission shall promulgate administrative regulations to define false, misleading, or deceptive advertising.

(2) The name of a deceased broker may remain a part of the firm name.

(3) ***An associate may have his or her name in the firm name after two (2) years experience with the firm, averaging at least twenty (20) hours per week for twenty-four (24) months***~~[No associate may have his or her name in the firm name]~~.

(4) Any sales associate or broker affiliated with a principal broker shall advertise in the name of the real estate company listed on the associate's or broker's real estate license or the name of the principal broker, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property.

Approved April 6, 2000

CHAPTER 361

(HB 886)

AN ACT relating to optometrists.

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

Section 1. KRS 320.210 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Kentucky Board of Optometric Examiners;

(2) "Practice of optometry" means***:***

(a) The employment of any means including the administration of pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, except surgery in examination, diagnosis, and treatment of the human eye and its appendages, to determine the visual efficiency of the human eye, or to

determine the powers or defects of vision, provided that superficial foreign bodies may be removed from the eye and its appendages;

(b) The prescribing, providing, furnishing, adapting, using, or employing lenses, prisms, contact lenses, visual training, orthoptics, ocular exercise, ***autofractometry,*** or any other means or device including pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, excluding the use of surgery for the aid, relief, or correction of the human eye and its appendages; ***and***

(c) Low vision rehabilitation;

(3) "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus;

(4) "Visual aid glasses" means eyeglasses, spectacles, or lenses designed or used to correct visual defects; provided, however, that nothing in the provisions of this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of sunglasses designed and used solely to filter out light; and further provided that nothing in this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eyeglasses or spectacles designed and used solely to magnify;~~[and]~~

(5) *"*~~[An]~~Orthoptic technician*" means*~~[is]~~ a person who trains and directs individuals to engage in ocular exercises designed to correct visual defects, and shall not be required to be licensed under the provisions of this chapter ***if***~~[provided that]~~ such training and directions are done pursuant to and under the instructions of a duly-licensed physician, osteopath, or optometrist and consists solely of visual training, orthoptics, or ocular exercises***; and***

(6) "Low vision rehabilitation" means the evaluation, diagnosis, and management of the low vision patient, including but not limited to, prescription, low vision rehabilitation therapy, education, and interdisciplinary consultation when indicated. Any person who prescribes or provides comprehensive low vision care for the rehabilitation and treatment of the visually impaired or legally blind patient; prescribes corrective eyeglasses, contact lenses, prisms, or filters; employs any means for the adaptation of lenses, low vision devices, prisms, or filters; evaluates the need for, recommends, or prescribes optical, electronic, or other low vision devices; or recommends or provides low vision rehabilitation services independent of a clinical treatment plan prescribed by an optometrist, physician, or osteopath is engaged in the practice of optometry.

Section 2. KRS 320.220 is amended to read as follows:

(1) No person shall practice optometry in this Commonwealth or hold himself ***or herself*** out as being able~~[so]~~ to do ***so*** unless he ***or she*** is the holder of a license duly issued to him ***or her*** by the board and registered in the manner provided by KRS 320.290.

(2) ***A***~~[Such]~~ license to practice optometry shall not be required by physicians or osteopaths ***currently***~~[regularly]~~ licensed to practice medicine or osteopathy at any place in the Commonwealth of Kentucky.

(3) Nothing in this chapter shall be construed to prohibit persons from fitting, adjusting, or dispensing visual aid glasses or other lenses or appurtenances ***if the***~~[; provided, that such]~~ fitting, adjusting or dispensing is done upon the written prescription of a ***currently***~~[regularly]~~ licensed optometrist, physician or osteopath, ***nor shall this chapter be construed***~~[or]~~ as requiring ***these***~~[such]~~ persons to be licensed under this chapter.

Section 3. KRS 320.230 is amended to read as follows:

(1) The Kentucky Board of Optometric Examiners shall consist of five (5) members appointed by the Governor. Four (4) members shall be ***Kentucky licensed*** practicing optometrists ***whose licenses are in good standing and who are***~~[well grounded in the practice of optometry]~~ appointed by the Governor from a list containing three (3) names for each appointment recommended by the Kentucky Optometric Association. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The members shall serve for a term of four (4) years and until their successors are appointed and~~[have]~~ qualified. They shall receive per diem compensation to be determined by ***administrative regulations promulgated by***~~[regulation of]~~ the board***,*** ~~[but]~~not to exceed one hundred twenty-five dollars ($125) per day for attending board meetings***.***~~[and]~~ Members shall be reimbursed for actual expenses incurred in the performance of their duties under this chapter.

(2) Each optometrist member shall be ***a Kentucky***~~[well grounded in the theory and practice of the profession of optometry and shall have been an actual resident and]~~ licensed practicing optometrist ***in good standing***~~[of this state]~~ for not less than five (5) years immediately preceding his ***or her*** appointment to the board. ***The member***~~[He]~~ shall not be in any way connected with or interested in any optometric school, college, or institution of learning or optometric supply business.

(3) Any vacancy occurring on the board as the result of a member not completing the term for which he ***or she*** was appointed shall be filled, for the unexpired term, in the same manner as is provided in subsection (1) of this section for the appointment of members.

(4) A majority of the members of the board shall constitute a quorum for the transaction of business.

Section 4. KRS 320.240 is amended to read as follows:

(1) The board shall meet at least once each year at which time it shall choose from among its members the president, vice president, and secretary-treasurer. In addition, the board, upon call of its officers, may hold meetings at any time as it deems necessary.~~[The secretary-treasurer shall keep]~~ A full record of ***the board's***~~[its]~~ proceedings~~[which]~~ shall be ***kept in the office of the board and shall be*** open to inspection at all reasonable times.

(2) The board shall keep a register containing the name, address, and license number of every person licensed to practice optometry in this state.

(3) The Attorney General shall render to the board legal services as it may require in carrying out and enforcing the provisions of this chapter.

(4) Subject to and consistent with the provisions of this chapter, the board shall~~[make and]~~ promulgate reasonable administrative regulations and do any and all things ***that***~~[which]~~ it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists.

(5) The board shall have a common seal.

(6) The board ***may***~~[shall have authority to]~~ administer oaths and~~[to]~~ require the attendance of witnesses, the production of books, records, and papers pertinent to any matters coming before the board by the issuance of process ***that***~~[which]~~ shall be served and returned in the

same manner as in civil actions and for the disobedience of which the board shall have the power to invoke the same rights as are provided ***for***[~~in the event of~~] disobedience of a subpoena or subpoena duces tecum in a civil action.

(7) The board shall ***promulgate***[~~make~~] administrative regulations ***necessary to regulate and control all matters set forth in***[~~governing applicants and applications for registration or license under~~] this chapter[~~ and governing the conduct of licensing examinations~~].

(8)[~~ The board shall from time to time accredit schools and colleges teaching optometry, the graduates of which shall be eligible to licensing examinations.~~

~~(9)~~] The board shall have the right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter.

(9)[~~(10)~~] The board ***may***[~~shall have authority to~~] assist in the prosecution of any violation of this chapter and in the enforcement of any of the provisions of this chapter.

(10)[~~(11)~~] The board shall have other powers and duties as may be provided in the provisions of this chapter.

(11)[~~(12)~~] The board shall[~~ make a~~] report[~~ of~~] its proceedings to the Governor on or about January 1 of each year, including an accounting of all moneys received and disbursed.

(12)[~~(13)~~] The board may ***permit***[~~authorize~~] persons engaging in the practice of optometry under the provisions of this chapter to administer diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics applied topically only, but excluding any drug classified as a controlled substance pursuant to KRS Chapter 218A. These pharmaceutical agents shall be applied in diagnostic procedures only as part of an eye examination. The application of ***the***[~~such~~] diagnostic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pharmacology, with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye, from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.

(13)[~~(14)~~] The board may authorize only those persons who have qualified for use of diagnostic pharmaceutical agents as set out in subsection (13) of this section to utilize and prescribe therapeutic pharmaceutical agents in the examination or treatment of any condition of the eye or its appendages. Any therapeutically-certified optometrist licensed under the provisions of this subsection shall be authorized to prescribe oral medications except controlled substances classified in Schedules I and II for any condition which an optometrist is authorized to treat under the provisions of this chapter and to use injections to administer benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction. The authority to prescribe a Schedule III, IV, or V controlled substance shall be limited to prescriptions for a quantity sufficient to provide treatment for up to seventy-two (72) hours. No refills of prescriptions for controlled substances shall be allowed. The utilization or prescribing of therapeutic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or

courses in general and ocular pathology and therapy, with particular emphasis on utilization of therapeutic pharmaceutical agents from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education. These six (6) semester hours are in addition to the six (6) semester hours required by subsection (13) of this section, making a total of twelve (12) semester hours.

(14)[~~(15)~~] Any optometrist authorized by the board to utilize diagnostic pharmaceutical agents shall be permitted to purchase for use in the practice of optometry diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics to be applied topically only. Any optometrist authorized by the board to utilize therapeutic pharmaceutical agents shall be permitted to prescribe in the practice of optometry therapeutic pharmaceutical agents. Optometrists so authorized by the board to purchase pharmaceutical agents shall obtain them from licensed drug suppliers or pharmacists on written orders placed in the same or similar manner as any physician or other practitioner authorized by KRS Chapter 217. Purchases shall be limited to those pharmaceutical agents specified in this subsection and in subsection (13) of this section, based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist as set out herein.[~~ All purchases of pharmaceutical drugs by optometrists shall be upon purchase order forms approved by the board.~~]

Section 5. KRS 320.250 is amended to read as follows:

(1) Licenses to engage in the practice of optometry shall be issued only to those who qualify[~~ therefor~~] under the provisions of KRS 320.260 or 320.270, or who successfully pass examinations conducted ***or approved by***[~~under the direction of~~] the board at a time and place fixed by the board. Each applicant shall comply with the provisions of KRS 214.615(1). Each license certificate shall be signed by the president and secretary-treasurer and authenticated by the seal of the board.

(2) The ***examinations may***[~~examination shall~~] consist of[~~ a~~] written***,***[~~ and~~] clinical***,*** or practical ***examinations***[~~examination~~] and shall relate to the skills needed for the practice of optometry in this Commonwealth at the time of the examination and shall seek to determine the applicant's preparedness to exercise these skills.[~~ In regard to the written examination,~~] The examining board[~~, at its discretion,~~] may:

(a) Prepare, administer, and grade the examination;

(b)[~~ Approve and administer a standardized examination prepared and graded by or under the direction of the National Board of Examiners in Optometry or any other organization approved by the board as qualified to prepare an examination;~~

~~(c)~~] Accept the scores of the applicant from an examination prepared, administered, and graded by the National Board of Examiners in Optometry or any other organization approved by the board as qualified to administer the examination***; and***

(c) Require passage of an examination on Kentucky optometric law.

(3)[~~ The applicant, except those granted licenses under the provisions of KRS 320.260 or 320.270, shall successfully pass both the written and clinical or practical portions of the examination.~~

~~(4)~~] Any person seeking a license to practice optometry ***under***[~~pursuant to~~] the provisions of this section shall submit an application to the board on forms furnished by the board. The applicant shall show proof of the following:

(a) The applicant is not less than eighteen (18) years of age ***and is of good moral character***;

(b) The applicant is a graduate of a school or college of optometry ***that is*** accredited by a regional or professional accreditation organization ***that***[~~which~~] is recognized or approved by the council on postsecondary accreditation, or by the United States Department of Education, and[~~ which~~] is in good standing, as ***approved***[~~determined~~] by the board. All applicants shall have transcript credit of at least six (6) semester hours in a course or courses from a school or college as described in this subsection in general and ocular pharmacology with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye and six (6) semester hours in ocular pathology and therapy with emphasis on utilization of therapeutic pharmaceutical agents. All hours shall be from a school or college as described in this subsection***;***[~~.~~]

(c) All other information requested by the board as is set out on the application.

(4)[~~(5)~~] The ***nonrefundable*** fee for each ***license application***[~~examination~~] shall not exceed ***six***[~~two~~] hundred dollars ***($600)***[~~($200) for resident applicants and four hundred dollars ($400) for nonresident applicants~~].

(5)[~~(6)~~] No ***application shall be considered by the board after one (1) year from the date in which the board received the application has lapsed. After the lapse of the one (1) year period, an applicant shall submit a new application and another nonrefundable fee for further consideration by the board***[~~person shall be allowed to take the examination more than three (3) times within the period of any five (5) consecutive years~~].

Section 6. KRS 320.270 is amended to read as follows:

The board may license by endorsement an optometrist who holds a valid license that was obtained by examination from another state or territory of the United States if the applicant for licensure by endorsement:

(1) ***Has engaged in the active practice of optometry for at least five (5) years immediately preceding his or her application for licensure;***[~~Any person who has been licensed to practice optometry in another state, which state has licensing and educational requirements substantially equal to or higher than those of this state and which grants equal licensing privileges to persons licensed in this state, may be issued, without written examination, a license to practice optometry in this state upon satisfactorily complying with all regulations and procedures established by the board relating to the granting of licenses by reciprocity.~~]

(2) ***Has not committed any act that would constitute a violation of this chapter and the administrative regulations promulgated under this chapter and is not the subject of any pending or unresolved board action or malpractice suit in this or any other state or territory;***[~~The applicant shall be required to pass an oral and clinical or practical examination and produce satisfactory evidence that he has actually practiced optometry for at least five (5) years in the state from which he is applying for reciprocity, and shall further comply with all other regulations adopted by the board relating to the granting of a license by reciprocity.~~]

(3) ***Meets all of the qualifications for regular state licensure as set forth by the board; and***[~~The applicant shall further be required to execute and deliver an affidavit to the board stating that said applicant intends to practice optometry in the Commonwealth upon receipt of the license.~~]

(4) ***Has completed and submitted an application for licensure by endorsement to the board, submitted a nonrefundable fee to be determined by the board in administrative regulations of no more than seven hundred dollars ($700), and has authorized any state in which the applicant is licensed to submit information to the board indicating whether or not the applicant is in good standing with the respective state's licensing board***[~~The granting of a license by reciprocity shall be at the discretion of the board. An applicant seeking a license by reciprocity shall be charged a fee not to exceed four hundred dollars ($400)~~].

Section 7. KRS 320.280 is amended to read as follows:

(1) All optometrists desiring to continue practice shall annually, prior to March 1, secure from the secretary-treasurer of the board a renewal certificate upon the payment of a fee of not more than two hundred dollars ($200). Not later than February 15 of each year the ***board***[~~secretary-treasurer~~] shall notify by mail all optometrists of the renewal date and fee. Application for a renewal shall be upon a form[~~ as is~~] prescribed by the board and the optometrist shall furnish the information required by the form.

(2) As a prerequisite for license renewal, all optometrists now or hereafter licensed in the Commonwealth of Kentucky are and shall be required to take annual courses of study in subjects relating to the practice of optometry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research will assure expansive and comprehensive care to the public. The annual courses of study shall include the course described in KRS 214.610(1). The length and content of study shall be prescribed by the board but shall not exceed eight (8) hours in any calendar year, with the exception of those optometrists who are authorized to prescribe therapeutic agents who shall be required to have additional credit hours of continuing education in ocular therapy and pharmacology, the amount of required credit hours to be determined by the board, but not to exceed an additional seventeen (17) credit hours, for a total not to exceed twenty-five (25) credit hours per year. Attendance ***shall***[~~must~~] be at a course or ***by a sponsor***[~~courses~~] approved by the board. Attendance at any course or courses of study ***is***[~~are~~] to be certified to the board upon a form provided by the board and shall be submitted by each licensed optometrist at the time he makes application to the board for the renewal of his license and payment of his renewal fee.[~~ The board is authorized to use a portion of the annual renewal fees for the purpose of contracting with institutions of higher learning, professional organizations, or qualified individuals for the providing of educational programs that meet this requirement. The board is further authorized to treat funds set aside for the purpose of continuing education as state funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education. In no instance may the board require a greater number of hours of study than are available at approved courses held within the state.~~] The board ***may***[~~shall~~] waive the continuing education requirement in cases of illness or undue hardship.

(3)[~~(2)~~] Failure of any optometrist to secure his renewal certificate within sixty (60) days after March 1, shall constitute sufficient cause for the board to revoke his license.

Section 8. KRS 320.290 is amended to read as follows:

[~~(1) Every optometrist shall register his license with the clerk of the county or counties in which he practices. The clerk shall receive a fee pursuant to KRS 64.012 for each registration.~~

~~(2)~~]Every practicing optometrist shall display in a conspicuous place at the entrance to his office the true full name of the person practicing therein and shall keep his license certificate conspicuously displayed in his place of practice so that it can easily be seen and read.

Section 9. KRS 320.295 is amended to read as follows:

[~~(1)~~]No optometrist shall engage in[~~ any~~] advertising ***of***[~~, in~~] any form ***that***[~~, which contains a statement or claim which~~] is false**,**[~~ or tends to be~~] misleading, ***or*** deceptive[~~ or unfair, or which is self-laudatory rather than designed to inform the public.~~

~~(2) No optometrist shall engage in any direct personal solicitation of business, or engage any person to conduct direct personal solicitation on his behalf, unless of an already existing client of that optometrist.~~

~~(3) "Advertise" means to furnish any written, printed, or broadcast information containing an optometrist's name or any other identifying information, with the exception of the following:~~

~~(a) A professional card identifying the optometrist by name and as an optometrist and giving his address and telephone number;~~

~~(b) A brief professional announcement card stating the information contained in paragraph (a) of this subsection or any changed associations or addresses or phone numbers which may be mailed to other optometrists, patients, former patients, personal friends, and relatives;~~

~~(c) A routine telephone book listing containing only the information set forth in paragraph (a) of this subsection;~~

~~(d) A sign on or near the optometrist's office and in the building directory identifying the optometrist's office and containing only the information specified in paragraph (a) of this subsection; and~~

~~(e) A letterhead of an optometrist containing the information set forth in paragraph (a) of this subsection and the name of any other optometrists in his office.~~

~~(4) The board may establish regulations to govern advertising under this section and by regulation may institute a procedure requiring prepublication approval of advertisements by the board.~~

~~(5) In the event that the board disapproves any advertisement pursuant to its regulations, the optometrist submitting the advertisement may request a hearing before the board. The board may consider any additional information submitted to it by the optometrist, or other individuals, and shall issue its final decision concerning the advertisement in writing.~~

~~(6) Any optometrist aggrieved by a final decision of the board concerning an advertisement may appeal to the Franklin Circuit Court in the same manner provided in this chapter for appeals from disciplinary actions~~].

Section 10. KRS 320.300 is amended to read as follows:

It shall be unlawful and a violation of the provisions of this chapter for any person:

(1) To sell, fit, or dispense visual ***aids***~~[aid glasses]~~ except upon the written prescription of an optometrist, physician, or osteopath regularly licensed to practice optometry, medicine, or osteopathy;

(2) To practice optometry, directly or indirectly, or to hold ***oneself out***~~[himself]~~ as being able so to do without first having obtained a license from the board~~[and filing the license with the clerk of the county or counties in which he practices]~~;

(3) ***Who***~~[If he]~~ writes a prescription for visual aid glasses, to receive any part of the price paid to a third person for filling ***the***~~[such]~~ prescription~~[;]~~ or for ***the***~~[such]~~ third person to pay to the person writing the prescription any part of the price paid for filling the prescription;

(4) To practice optometry under any name other than his own, except as permitted by the board in its regulations.

Section 11. KRS 320.310 is amended to read as follows:

(1) The board ***may***~~[shall have the power to]~~ refuse to~~[grant,]~~ issue, ***refuse to***~~[or]~~ renew***, limit or restrict,*** ~~[any license to practice optometry, to]~~revoke***,*** or suspend ***a***~~[any]~~ license~~[to practice optometry]~~, ***may***~~[to]~~ place ***on***~~[any optometrist upon terms and conditions of]~~ probation,~~[to limit the license privileges of an optometrist, or to issue a private]~~ or~~[public]~~ reprimand ***a licensee, may order restitution, may impose a fine not to exceed one thousand dollars ($1,000) for each violation of this chapter or the corresponding administrative regulations, or may impose any combination of these penalties if it finds that an applicant or a licensee has***~~[for any of the following causes]~~:

(a) ***Engaged in any***~~[Presentation to the board of any license, certificate, or graduation diploma illegally or fraudulently obtained, or the]~~ practice of fraud or ***deceit in obtaining or attempting to obtain a license***~~[deception in passing an examination]~~;

(b) ***Been convicted of a felony or misdemeanor involving moral turpitude. A record of the conviction or a certified copy of the record shall be conclusive evidence***~~[Conviction of a felony or any crime which involves acts which relate to the optometrist's qualifications, ability, or moral fitness to continue to practice optometry or which may create a danger to the public]~~;

(c) Chronic or persistent inebriety or addiction to a drug habit to an extent that ***continued practice is dangerous to patients or to the public safety***~~[disqualifies from practicing with safety to the public]~~;

(d) ***Been granted a license upon a mistake of material fact***~~[Loaning, selling, or fraudulently obtaining any optometry diploma, license, record, or certificate, or aiding or abetting therein]~~;

(e) ***Engaged in***~~[Gross]~~ incompetence, as determined by the board;

(f) ***Practiced***~~[Grossly unprofessional or dishonorable conduct, as determined by the board;~~

~~(g) The obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient or patients;~~

~~(h) Affliction with a contagious or infectious disease which, in the opinion of the board, renders practice of optometry by the licensee or applicant for license dangerous to the public health;~~

~~(i) Practicing~~] as an itinerant, ***peddled***[~~peddling~~] from door to door, ***established***[~~establishing~~] a temporary office, or ***practiced***[~~practicing~~] optometry outside of or away from his regular office or place of practice;

(g)[~~(j)~~] ***Employed, procured, induced, aided, or abetted***[~~Employing, procuring, inducing, aiding or abetting~~] any person, not holding a ***Kentucky*** license, to practice optometry ***or in practicing optometry***;

[~~(k) Seeking patronage by means of solicitors, canvassers, cappers, steerers, or agents;~~]

(h)[~~(l)~~] ***Used***[~~Using~~] the title "doctor" or its abbreviation without further qualifying this title or abbreviation with the word "optometrist" ***or suitable words or letters designating an optometry degree***;

[~~(m) Use by an optometrist of the words "infirmary," "hospital," "school," "college," "university," or "institute" in English or any other language in connection with any place where optometry may be practiced or demonstrated; Provided, however, That nothing in this section shall prevent an optometric clinic, approved by the board, from being conducted on a nonprofit basis by a school or college of optometry or an association of registered optometrists;~~]

(i)[~~(n)~~] ***Engaged in*** any conduct[~~ which, in the opinion of the board, is of a character~~] likely to deceive or defraud the public;

[~~(o) Receipt by an optometrist of any part of the price paid to another person for filling a prescription prepared by the optometrist;~~]

(j)[~~(p)~~] ***Violated***[~~Violation of~~] any order[~~ of suspension, order limiting privileges, or terms or conditions of any order of probation~~] issued by the board;

(k) [~~(q) Has~~]Had his license to practice optometry in any other jurisdiction revoked, suspended, ***limited,*** placed on conditions of probation, or subjected to ***any*** other disciplinary action by the licensing authority thereof;

[~~(r) Receipt of any fees for services not rendered;~~]

(l)[~~(s)~~] ***Prescribed***[~~Prescription of~~] any therapeutic agent in[~~ such~~] an amount that the optometrist knows, or ***should***[~~has reason to~~] know, is excessive under accepted and prevailing standards, or which the optometrist knows, or has reason to know, will be used or is likely to be used other than for an accepted therapeutic purpose;

(m)[~~(t)~~] ***Developed***[~~Development of~~] a physical or mental disability, or other condition, which renders the continued practice by the optometrist dangerous to[~~ the~~] patients or the public; ***or***[~~and~~]

(n)[~~(u)~~] ***Violated***[~~Violation of~~] any statute under this chapter ***or administrative regulation promulgated under those statutes***[~~pertaining to professional advertising of optometrists~~].

(2)[~~ Nothing in this section shall be construed to prohibit a licensed optometrist from issuing appointment cards to his patients when the information thereon is limited to matter pertaining to the time and place of appointment and that permitted on a professional card. For the purpose of this section, the professional card shall contain only the name, title, profession, degrees, address, telephone number, and office hours of the licensed optometrist.~~

~~(3)~~] Nothing in this section shall prevent an optometrist from establishing ***branch offices if each***[~~not more than one (1) branch office, providing any~~] office contains minimum equipment as[~~ shall be~~] required by ***administrative*** regulation of the board***, ensures patient care as necessary,*** and ***has***[~~provided further, that~~] a ***Kentucky***[~~duly~~] licensed optometrist[~~ shall be~~] in charge of the office.

Section 12. KRS 320.312 is amended to read as follows:

(1) When the board has reason to believe, based upon its own information or a complaint or inquiry directed to the board, that an optometrist is suffering from a physical or mental condition that might impede his ability to practice competently, the board may order the optometrist to undergo a physical or mental examination by persons designated by the board***, at the expense of the optometrist***.

(2) Failure of an optometrist to submit to an examination when directed shall constitute an admission that the concerned optometrist has developed a physical or mental disability, or other conditions, that continued practice is dangerous to patients or to the public and the board may act accordingly pursuant to KRS 320.310.

(3) The board may limit the optometrist's license privileges pursuant to this section in addition to the other alternatives set forth in KRS 320.310.

(4) An optometrist whose license has been suspended, limited, or revoked under this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that he is able to resume the competent practice of optometry with reasonable skill and safety to patients.

Section 13. KRS 320.321 is amended to read as follows:

(1) ***Grievances may be submitted by an individual, organization, or entity, including the board based upon information within the board's knowledge.*** The board may investigate any suspected grounds for disciplinary action and may hire persons to investigate on its behalf. The board shall have the power to issue investigatory subpoenas for the appearance before the board of any person within the jurisdiction of the Commonwealth of Kentucky and to require production of any record, document, or other item. The board may seek enforcement of investigatory subpoenas in the courts of the Commonwealth as may be necessary. ***A copy of the grievance shall be mailed to the licensee at the last address that the board has on record. If the licensee chooses to respond to the grievance, he or she shall submit a response within ten (10) days after the date on which the grievance was mailed.***

(2) The board may initiate disciplinary proceedings based upon information within its knowledge or received from other persons. A majority of the board members may direct the issuance of a complaint; in these instances, the board shall prepare a written complaint***, in accordance with KRS Chapter 13B, that***[~~ which~~] shall be signed by the chairman of the board and[~~ which~~] shall contain sufficient information to apprise the named optometrist of the nature of the charges. A ***copy of the*** complaint shall be delivered to the charged optometrist by personal delivery or ***sent*** by certified mail to the optometrist's last[~~ known~~] address ***that the board has on record***. The optometrist shall file a response within twenty (20) days after the ***complaint was sent or personally served upon the optometrist***[~~date of delivery~~]. ***Failure to submit a timely response or avoidance of service may be taken by the board as an admission of the charges contained in the complaint.*** The board may then review the ***grievance, information obtained by the board, and the*** optometrist's response, and dismiss the ***grievance***[~~complaint~~], issue a ***complaint and notice of hearing , or***

investigate further[~~private and confidential reprimand to the optometrist, or schedule further proceedings~~].

(3) [~~If the board decides to schedule the matter for further proceedings, it shall assign the matter for full hearing by the board, or if the board directs, by any individual member of the board or a hearing officer.~~]The hearing shall be conducted in accordance with KRS Chapter 13B.

(4) The board may ***impose discipline upon the licensee under Section 11 of this Act if the board finds a violation of this chapter or administrative regulations promulgated under this chapter, after a hearing***[~~revoke or suspend a license, place an optometrist on terms and conditions of probation, limit an optometrist's license privileges, or issue a private or public reprimand~~].

(5)[~~ If a board member serves as a hearing officer for a prehearing, informal conference, or a hearing, he shall abstain from voting on any final order which results from the hearing.~~

~~(6)~~] All costs of the proceeding may be assessed against the charged optometrist if a finding of guilt is made by the board.

Section 14. KRS 320.331 is amended to read as follows:

An optometrist who, by final order of the board has been subjected to any disciplinary action may file an appeal. The action on appeal shall be filed with the Circuit Court of the county in which the violation occurred in accordance with KRS Chapter 13B. The ***commencement of proceedings under this section shall not operate as a stay on the board's order, unless specifically ordered otherwise by the court***[~~board's order shall be stayed until final determination of the appeal, unless the court, upon motion of the board, finds that irreparable harm may result to the public unless the order is enforced during the pendency of the appeal~~].

Section 15. KRS 320.360 is amended to read as follows:

All fees imposed and collected under the provisions of this chapter shall be paid to the [~~secretary-treasurer of the~~]board for the use of the board, and shall be deposited in the State Treasury to the credit of an agency fund for the use of the board. The board may make such expenditures from the fund as may, in the opinion of the board, serve to further the purposes of this chapter, including payment for professional services.

Section 16. KRS 320.990 is amended to read as follows:

Any person who violates any of the provisions of this chapter shall be ***guilty of a Class A misdemeanor***[~~fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for the first offense, and shall be fined one hundred dollars ($100) and confined in jail for thirty (30) days for each subsequent offense~~].

Section 17. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

(1) "Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

(2) "Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act;

(3) "Cabinet" means the Cabinet for Health Services or its designee;

(4) "Color" means but is not limited to black, white, and intermediate grays;

(5) "Color additive" means a material that:

(a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or

(b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;

(6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;

(7) "Cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(b) Articles intended for use as a component of those articles, except that the term shall not include soap;

(8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(b) To affect the structure or any function of the body of man or other animals;

(9) "Dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;

(10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;

(11) "Drug" means:

(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;

(12) "Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;

(13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;

(14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments thereto;

(15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;

(16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

(17) "Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;

(18) "Food" means:

(a) Articles used for food or drink for man or other animals;

(b) Chewing gum; and

(c) Articles used for components of any such article;

(19) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting

the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity;

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(c) A color additive; or

(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;

(20) "Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments;

(21) "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; charitable food kitchens; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines, establishments serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

(22) "Food storage warehouse" means any establishment in which food is stored for subsequent distribution;

(23) "Immediate container" does not include package liners;

(24) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:

(a) The number of potential illnesses or injuries; or

(b) The nature, severity, and duration of the anticipated illness or injury;

(25) "Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet during all reasonable times of operation;

(26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;

(27) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon an article or any of its containers or wrappers; or

(b) Accompanying the article;

(28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";

(29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;

(30) "New drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;

(31) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;

(32) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity;

(33) "Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;

(34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act; 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any amendments thereto;

(35) "Practitioner" means medical or osteopathic physicians, dentists, chiropodists, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in ***subsections (12) to (14) of Section 4 of this Act***~~[KRS 320.240(13), (14), and (15)]~~, advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042, and physician assistants when

administering or prescribing pharmaceutical agents as authorized in KRS 311.560(3) and (4);

(36) "Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(37) "Prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;

(38) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;

(39) "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;

(40) "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;

(41) "Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;

(42) "Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;

(43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;

(44) "Secretary" means the secretary of the Cabinet for Health Services;

(45) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;

(46) "Traffic" has the same meaning as it does in KRS 218A.010;

(47) "Ultimate user" has the same meaning as it does in KRS 218A.010;

(48) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device,

sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;

(49) The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body; and

(50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment.

Section 18. The following KRS section is repealed:

320.255 Inactive status for license.

Approved April 6, 2000

CHAPTER 362

(HB 901)

AN ACT relating to the Kentucky Information Highway.

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

Section 1. KRS 45A.605 is amended to read as follows:

(1) As used in this section:

(a) "Information highway" means a communication network for voice, data, and video communications technologies; and

(b) "Agencies of the Commonwealth of Kentucky" includes all authorities; boards; commissions; councils; departments; program cabinets; the Kentucky Lottery Corporation; vocational schools; the Kentucky School for the Deaf; the Kentucky School for the Blind; upon written request of the Chief Justice, the Court of Justice; upon written request of the co-chairmen of the Legislative Research Commission, the General Assembly and the Legislative Research Commission; and upon written request of presidents, state institutions of higher education.

(2) The provisions of any other law notwithstanding, the Finance and Administration Cabinet may enter into one (1) or more contracts, on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The information highway shall enable the Commonwealth to benefit from cost-effective telecommunications technologies and shall provide opportunities for the private sector.

(3) Upon implementation, all agencies of the Commonwealth of Kentucky shall obtain all available communications services under contracts executed pursuant to subsection (2) of this section, except as provided under subsection (4) of this section.

(4) The secretary of the Finance and Administration Cabinet may grant exceptions to the mandatory use of the information highway upon good cause shown.

(5) Any contract awarded under subsection (2) of this section shall be deemed, for purposes of KRS 45A.050, a state agency price contract to which all political subdivisions and state-licensed nonprofit institutions of higher education may have access and use on the same terms as agencies of the Commonwealth of Kentucky. In addition, nonprofit schools providing elementary or secondary education and nonprofit health care organizations shall be allowed to have access and use the contract on the same terms as agencies of the Commonwealth of Kentucky. "Nonprofit schools" and "nonprofit health care organizations" mean those schools and health care organizations which have been granted tax-exempt status under the United States Internal Revenue Code.

(6) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which any entity that has been approved for economic development incentives under programs approved and administered by the Kentucky Economic Development Finance Authority may have access and use on the same terms as agencies of the Commonwealth of Kentucky.

(7) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which nonprofit organizations whose exclusive purpose is the delivery of services related to education, economic development, or cultural arts and humanities, may have access and use on the same terms as agencies of the Commonwealth of Kentucky. For the purposes of this section, "nonprofit organizations" means those organizations which have been granted tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code or those existing education based entities whose purpose is the delivery of services to state school systems, their employees, or their governing organizations and which have been granted tax-exempt status under Section 501 (c)(6) of the United States Internal Revenue Code.

Approved April 6, 2000

CHAPTER 363

(HB 910)

AN ACT designating the official state bourbon festival.

WHEREAS, the Kentucky Bourbon Festival held annually in Bardstown, Kentucky, on the third weekend of September is the first and oldest Kentucky bourbon festival, having been established in 1991; and

WHEREAS, the Bardstown festival equally showcases all Kentucky distilleries and related industries for domestic and international visitors and press, with the 1999 festival attracting people from twenty states and ten foreign countries; and

WHEREAS, in addition to demonstrating the use of bourbon and bourbon by-products in cooking, agriculture, and aquaculture, the Kentucky Bourbon Festival provides food, arts and

crafts, a variety of musical events, and an ever-increasing number of additional activities for children and adults that serve to promote the Commonwealth of Kentucky; and

WHEREAS, the proceeds from the Kentucky Bourbon Festival have benefited numerous nonprofit organizations and schools, a practice to be expanded by dedicating a portion of the proceeds from the September 13-17, 2000 Festival to the funding of a scholarship to be awarded to the child of a distillery worker;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

The Kentucky Bourbon Festival, Incorporated, of Bardstown, Kentucky, is named and designated the official state bourbon festival.

Approved April 6, 2000

CHAPTER 364

(HB 950)

AN ACT authorizing the payment of certain claims against the state that have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which claims were chargeable, and declaring an emergency.

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

Section 1. (1) There is appropriated out of the general fund in the State Treasury for the purpose of compensating persons and companies for claims that have been duly audited and approved according to law, but have not been paid because of lapsing or insufficiency of former appropriations against which the claims were chargeable, the following amounts:

1.	Anne R. Miller 209 Sage Road Louisville, Kentucky 40207	$114.14
2.	Weber and Rose, PSC 2700 Aegon Center 400 West Market Street Louisville, Kentucky 40207-3364	$2,294.33
3.	James B. Hord 188 St. Matthews Avenue # 3 Louisville, Kentucky 40207	$1,007.81
4.	Valley Institute of Psychiatry P.O. Box 1637	$8,918.94

	Owensboro, Kentucky 42302	
5.	David P. Schoepf 880 Alexandria Pike Fort Thomas, Kentucky 41075	$2,737.50
6.	TransCor America, Inc. 1510 Fort Negley Boulevard Nashville, Tennessee 37203	$1,650.00
7.	Charter Ridge Behavioral Health System 3050 Rio Dosa Drive Lexington, Kentucky 50509	$17,730.72
8.	Spectrum Care Academy 4500 Campbellsville Road Columbia, Kentucky 42728	$27,400.81
9.	BCC Resident Account Blackburn Correctional Complex 3111 Spurr Road Lexington, Kentucky 40511	$1,748.68
10.	KPMG Peat Marwick LLP Peat Marwick Plaza 302 East Wacker Drive Chicago, Illinois 60601-9973	$9,000.00
11.	Brown, Todd and Heyburn P.O. Box 70087 Louisville, Kentucky 40270-0087	$26,188.01
12.	Henderson County Fiscal Court 20 North Main Street Henderson, Kentucky 42420	$2,500.00
13.	Mason County Detention Center 702 U.S. 68 Maysville, Kentucky 41056	$55,000.00
14.	Weber and Rose PSC 2700 Aegon Center 400 West Market Street Louisville, Kentucky 40202-3364	$3,878.59

15.	The Albertson Network P.O. Box 960645 Cincinnati, Ohio 45296	$3,344.64
16.	Rodes Professional Apparel P.O. Box 70007 Louisville, Kentucky 40270-0007	$2,503.92
17.	Wyatt, Tarrant and Combs Citizens Plaza Louisville, Kentucky 40202-2898	$11,307.54
18.	SSC Service Solutions P.O. Box 52370 Attention: Accounts Receivable Knoxville, Tennessee 37950-2370	$350.00
19.	An/Dor Reporting Service, Inc. 179 East Maxwell Street Lexington, Kentucky 40508	$240.00
20.	Benjamin Dickinson 107 Trigg Court Glasgow, Kentucky 42141	$208.00
21.	Miller, Griffin, and Marks PSC Suite 700 271 West Short Street Lexington, Kentucky 40507	$607.52
22.	Porter Paints P.O. Box 101397 Atlanta, Georgia 30392-1397	$1,635.10
23.	Brown, Todd and Heyburn P.O. Box 70087 Louisville, Kentucky 40270-0087	$42,135.00
24.	William G. Holbrook, DVM P.O. Box 66 West Liberty, Kentucky 41472	$222.00
25.	Preprint Publishing Company	$277,590.00

9550 Regency Square Boulevard

Suite 900

Jacksonville, Florida 32225

(2) The claims listed below are for the payment of State Treasury checks payable to the persons or personal representatives, and the firms listed, but not presented for payment within a period of five (5) years from the date of issuance of the checks as required by KRS 41.370 and 413.120.

		Payee	Treasury Fee	Total Check
1.	Check #071745 dated May 8, 1961	$483.00	$25.00	$458.00
	Margaret Herrmann, Administratix			
	Estate of Alfred William Prinz			
	Route 4, Box 521			
	Cynthiana, Kentucky 41031-9340			
2.	Check #879532 dated April 24, 1962	$270.66	$25.00	$245.66
	Estate of James R. Hayes			
	c/o Mrs. James R. Hayes			
	P.O. Box 173			
	Gray Hawk, Kentucky 40434			
3.	Check #T5,379,774 dated June 9, 1976	$172.82	$25.00	$147.82
	Ricky and Rosemary Dingus			
	110 Pine Street			
	Cynthiana, Kentucky 41031			
4.	Check #T5,949,710 dated April 22, 1977	$120.20	$25.00	$95.20
	Robert C. and Dorothiann Green			
	36 Bob Green Road			
	Milton, Kentucky 40045			
5.	Check #A5,079,303 dated May 1, 1982	$171.00	$25.00	$146.00
	Oscar Wren			
	307 Wilson Avenue			
	Auburn, Kentucky 42206			
6.	Check #G1,286,150 dated March 25, 1986	$38.66	$25.00	$13.66
	Check #G1,309,622 dated April 8, 1986	$38.66	$25.00	$13.66
	Check #G1,343,570 dated April 21, 1986	$38.66	$25.00	$13.66
	Check #G1,370,765 dated May 6, 1986	$38.66	$25.00	$13.66
	Check #G1,396,889 dated May 20, 1986	$38.66	$25.00	$13.66

	Check #G1,420,738 dated June 2, 1986	$38.66	$25.00	$13.66
	Check #G1,451,325 dated June 13, 1986	$38.66	$25.00	$13.66
	Check #G1,485,946 dated June 30, 1986	$38.66	$25.00	$13.66
	Check #G1,513,542 dated July 15, 1986	$38.66	$25.00	$13.66
	Check #G1,555,076 dated July 31, 1986	$38.66	$25.00	$13.66
	Estate of Jon Bud Harris (totals)	$386.60	$250.00	$136.60
	c/o Douglas Charles			
	529 Hunters Knoll			
	Lexington, Kentucky 40509			
7.	Check #T4,085,127 dated May 23, 1986	$199.00	$25.00	$174.00
	Check #T6,757,551 dated June 28, 1898	$561.00	$25.00	$536.00
	Neil Yoder (totals)	$760.00	$50.00	$710.00
	11305 Brodley Drive			
	Louisville, Kentucky 40223			
8.	Check #T4,825,225 dated May 20, 1987	$71.00	$25.00	$46.00
	Douglas Jefferson			
	5426 Pawnee Trail			
	Louisville, Kentucky 40222			
9.	Check #T5,024,640 dated July 7, 1987	$389.76	$25.00	$364.76
	Paul R. and Marjorie R. Beach			
	230 West Hickman Street			
	Winchester, Kentucky 40391			
10.	Check #P6,041,018	$43.51	$25.00	$18.51
	dated January 8, 1988			
	Check #P6,071,148	$74.41	$25.00	$49.41
	dated January 18, 1988			
	Check #P7,864,260	$71.36	$25.00	$46.36
	dated November 21, 1989			
	Check #G1,555,076	$137.53	$25.00	$112.53
	dated December 19, 1989			
	James W. Murphy (totals)	$326.81	$100.00	$226.81
	3120 Bank Street			
	Louisville, Kentucky 40212			

11.	Check #T6,577,625 dated May 17, 1989 William L. Haynes 385 West Seventh Street Calhoun, Kentucky 42327-2047	$167.00	$25.00	$142.00
12.	Check #G5,401,798 dated April 24,1990 Ashland Poe P.O. Box 145 Cumberland, Kentucky 40823	$500.00	$25.00	$475.00
13.	Check #A1,970,873 dated June 1, 1990 Leah Hampton for Meredith Willis P.O. Box 127 Vanceburg, Kentucky 41179	$31.00	$25.00	$6.00
14.	Check #T7,481,918 dated June 7, 1990 Perry and Ella Nora North 14 Summer Street Hazard, Kentucky 41701	$37.00	$25.00	$12.00
15.	Check #T7,481,918 dated June 7, 1990 Michael Fallon 881 Minoma Avenue Louisville, Kentucky 40217	$35.52	$25.00	$10.52
16.	Check #E0,288,020 dated November 14, 1990 Lucille M. Franklin 4001 Woodgate Lane Louisville, Kentucky 40220	$38.83	$25.00	$13.83
17.	Check #G8,127,835 dated April 17, 1992 T. Rothrock Miller, PSC c/o T. R. Miller 1250 Lakewood Drive Lexington, Kentucky 40502	$541.00	$25.00	$516.00
18.	Check #G8,171,722	$1,050.00	$25.00	$1,025.00

	dated April 17,1992			
	Richard Sanders			
	c/o Joanna Sagester			
	700 Capital Avenue, Room 316B			
	Frankfort, Kentucky 40601			
19.	Check # T9,433,681	$3550.64	$25.00	$3,525.64
	dated June 12, 1992			
	Check #T9,433,682	$184.32	$25.00	$159.32
	dated June 12, 1992			
	Dixie Fuel Company (totals)	$3,734.96	$50.00	$3,684.96
	General Delivery			
	Grays Knob, Kentucky 40829			
20.	Check #T9,574,726 dated July 2, 1992	$64.11	$25.00	$39.11
	Gray L. Bragg			
	6413 Faris Way			
	Louisville, Kentucky 40272			
21.	Check #T9,590,230 date July 2, 1992	$129.00	$25.00	$104.00
	James H. and B. L. Ryle			
	1098 Cecilia Avenue			
	Covington, Kentucky 41011			
22.	Check #CS116,379	$45.70	$25.00	$20.70
	dated March 2, 1993			
	Paul D. Durbin			
	505 East Park Drive			
	Edinburgh, Indiana 48124			
23.	Check #E0,725,516	$308.52	$25.00	$283.52
	dated July 1, 1993			
	Robert A. and S. Perkins			
	523 West New Buckley Road			
	Ashland, Kentucky 41102			
24.	Check #T9,912,433	$90.71	$25.00	$65.71
	dated March 12, 1993			
	Beatrice B. Robinson			

	2218 Stockton Road			
	Frankfort, Kentucky 40601			
25.	Check #C0,342,884	$442.32	$25.00	$417.32
	dated February 15,1994			
	Check #C0,351,884	$442.75	$25.00	$417.75
	dated March 15,1994			
	Check #C0,325,417	$442.75	$25.00	$417.75
	dated December 15, 1993			
	Check #C0,334,093	$442.75	$25.00	$417.75
	dated January 15,1994			
	Charlene M. Cornell	(totals)$1,770.57	$100.00	$1,670.57
	c/o Carol Coyle			
	Adult Protective Services			
	908 East Broadway, 11-W			
	Louisville, Kentucky 40203			
26.	Check #G0,304,650	$563.64	$25.00	$538.64
	dated February 24, 1994			
	Check #G0,315,583	$1,328.64	$25.00	$1,303.64
	dated February 28, 1994			
	Allen County Sheriff Dept.	(totals)$1,892.28	$50.00	$1,842.28
	Scottsville, Kentucky 42164			
27.	Check #G0,520,276	$2,948.00	$25.00	$2,923.00
	dated May 9, 1994			
	St. Stephen Baptist Church			
	1008 South Fifteenth Street			
	Louisville, Kentucky 40210-1321			
28.	Check #G8,127,835	$228.88	$25.00	$203.88
	dated April 9,1992			
	Titus L. White			
	1120 Liberty Road			
	Lexington, Kentucky 40505			

Section 2. The Finance and Administration Cabinet and the State Treasurer are authorized to pay the following listed claims from the following funds:

(1) The Kentucky Retirement Systems is authorized to make payment from their retirement fund for State Treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of the checks, the following sums:

1.	Check #R2,437,308		$221.01	$25.00	$196.01
	dated August 4, 1987				
	Samuel J. Flowers				
	3105 Carriage Court				
	Louisville, Kentucky 40205				
2.	Check #K0,399,849		$137.12	$25.00	$112.12
	dated July 6, 1993				
	Check #K0,410,188		$137.12	$25.00	$112.12
	dated August 4, 1993				
	Check #K0,420,767		$137.12	$25.00	$112.12
	dated September 7, 1993				
	Check #K0,431,397		$137.12	$25.00	$112.12
	dated October 5, 1993				
	Check #K0,442,101		$137.12	$25.00	$112.12
	dated November 12, 1993				
	Check #K0,452,650		$137.12	$25.00	$112.12
	dated December 15, 1993				
	Estate of Ruby Miller	(totals)	$822.72	$150.00	$672.72
	c/o Carol Zeitler				
	325 Walnut Drive				
	Nashville, Tennessee 37205				

(2) The Workforce Development Cabinet is authorized to make payment from their unemployment compensation fund for State Treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of the checks, the following sums:

1.	Check #U4,362,558 dated June 18, 1982	$136.00
	Darrell S. Meffert	
	922 Reasor Avenue	
	Louisville, Kentucky 40217	
2.	Check #U3,254,518 dated June 16,1989	$308.00
	Patrick Jelinek	

217 Jeffrey Drive

Radcliff, Kentucky 40160-1744

Section 3. Whereas the persons and companies named have furnished in good faith the services, supplies, and materials enumerated, and the Commonwealth has received them, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 6, 2000

CHAPTER 365

(HCR 11)

A CONCURRENT RESOLUTION confirming the appointment of Sheila Owsley Thomas to the Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Sheila Owsley Thomas as a member of the Postsecondary Education Nominating Committee to fill an unexpired term ending April 14, 2004; and

WHEREAS, appointments to the Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of March 26, 1999, the Governor has delivered the name of Sheila Owsley Thomas of Booneville, Kentucky for confirmation as a member of the committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Sheila Owsley Thomas meets the requirements established in KRS 164.005 for membership on the Postsecondary Education Nominating Committee;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Sheila Owsley Thomas to the Postsecondary Education Nominating Committee to fill the remainder of a term ending April 14, 2004.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Sheila Owsley Thomas, HC64 Box 643, Booneville, Kentucky 41314, in writing, of the General Assembly's action.

Approved April 6, 2000

CHAPTER 366

(HCR 22)

A CONCURRENT RESOLUTION confirming the appointment of Margaret Katherine Harris to the Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Margaret Katherine Harris as a member of the Postsecondary Education Nominating Committee for a term ending April 14, 2004; and

WHEREAS, appointments to the Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of April 22, 1998, the Governor has delivered the name of Margaret Katherine Harris of Loyall, Kentucky for confirmation as a member of the committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Margaret Katherine Harris meets the requirements established in KRS 164.005 for membership on the Postsecondary Education Nominating Committee;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Margaret Katherine Harris to the Postsecondary Education Nominating Committee for a term ending April 14, 2004.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Margaret Katherine Harris, P.O. Box 523, Loyall, Kentucky 40854, in writing, of the General Assembly's action.

Approved April 6, 2000

CHAPTER 367

(HB 792)

AN ACT relating to coal mining.

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

Section 1. KRS 350.445 is amended to read as follows:

The following performance standards shall be applicable to steep-slope strip mining and shall be in addition to those general performance standards required by KRS 350.405 to 350.435; provided, however, that the provisions of this section shall not apply to those situations in which a permittee or operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area, or where a permittee or operator is in compliance with the provisions of KRS 350.450(2):

(1) The permittee or operator shall insure that when performing strip mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter not be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of KRS 350.410 or 350.445(2) shall be permanently stored pursuant to KRS 350.440.

(2) The permittee or operator shall complete backfilling with spoil material and shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation.

(3) The permittee or operator may not disturb land above the top of the highwall unless the cabinet finds that the disturbance will facilitate compliance with the environmental protection standards of this subsection; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate compliance. ***The land above the highwall may be disturbed for construction of a permanent road only where the applicant affirmatively demonstrates, and the cabinet makes a detailed and written determination, that the proposed disturbance facilitates compliance with this chapter and provided that the land disturbed shall be limited to that amount necessary to facilitate such compliance. The cabinet shall make this determination upon a demonstration by the permittee that:***

(a) The permittee will completely eliminate the production highwall and backfill the mined areas to approximate original contour with no road remaining on the bench;

(b) The road will be placed on a solid base rather than on fill material and drainage will be diverted from the mining area;

(c) The road will comply with all applicable design criteria, including a drainage plan for avoiding seepage or uncontrolled discharge of water into the backfilled areas;

(d) The spoil calculations and spoil disposal plans include the road cut material and the extent, if any, that road cut material will be used to eliminate a production highwall;

(e) The road will connect to another road or roads and is necessary in order to support the approved postmining land uses;

(f) Where practical and feasible, an undisturbed barrier will be left between the production highwall and the road itself. When an undisturbed barrier is not feasible, witness monuments will be left at a minimum of two (2) locations above the production highwall;

(g) The road will be constructed to a size and design appropriate to support coal mining activities and the proposed post-mining land use;

(h) The proposed mine plan and sequencing of the road construction in relation to the mining activity will minimize placement of spoil material into valley or hollow fills and will maximize permanent retention of mined spoil on the mine bench;

(i) There will be no coal removal from the construction of the permanent road except for incidental nonmerchantable coal that is disposed of in an approved manner; and

(j) All other performance standards of the chapter are met.

(4) For the purposes of this section, the term "steep slope" is any slope above twenty (20) degrees or such lesser slope as may be defined by the cabinet, by regulation, after consideration of soil, climate, and other characteristics of the region.

Approved April 6, 2000

CHAPTER 368

(HB 808)

AN ACT relating to candidates for city elections.

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

Section 1. KRS 83A.040 is amended to read as follows:

(1) A mayor shall be elected by the voters of each city at a regular election. ***A candidate for mayor shall be a resident of the city for not less than one (1) year prior to his or her election.*** His term of office shall begin on the first day of January following his election and shall be for four (4) years and until his successor qualifies. A mayor shall be at least twenty-five (25) years of age, shall be a qualified voter in the city, and shall reside in the city throughout his term of office.

(2) If a vacancy occurs in the office of mayor, the following provisions shall apply:

(a) The legislative body of the city shall fill the vacancy within thirty (30) days.

(b) A member of the legislative body in any city organized and governed under the commission plan as provided by KRS 83A.140 or city manager plan as provided by KRS 83A.150 may vote for himself.

(c) A member of the legislative body in any city organized and governed under the mayor-council plan as provided by KRS 83A.130 and in any city of the first class organized under the mayor-alderman plan as provided by KRS Chapter 83 shall not vote for himself.

(d) The legislative body shall elect from among its members an individual to preside over meetings of the legislative body during any vacancy in the office of mayor in accordance with the provisions of KRS 83A.130 to 83A.150.

(3) When voting to fill the vacancy created by a resignation of a mayor the resigning mayor shall not vote on his successor.

(4) Each legislative body member shall be elected at-large by the voters of each city at a regular election. ***A candidate for a legislative body shall be a resident of the city for not less than one (1) year prior to his or her election.*** His term of office shall begin on the first day of January following his election and shall be for two (2) years, except as provided by KRS 83A.050. A member shall be at least twenty-one (21) years of age, shall be a qualified voter in the city and shall reside in the city throughout his term of office.

(5) If one (1) or more vacancies on a legislative body occur in a way that one (1) or more members remain seated, the remaining members shall within thirty (30) days fill the vacancies one (1) at a time, giving each new appointee reasonable notice of his selection as will enable him to meet and act with the remaining members in making further

appointments until all vacancies are filled. If vacancies occur in a way that all seats become vacant, the Governor shall appoint qualified persons to fill the vacancies sufficient to constitute a quorum. Remaining vacancies shall be filled as provided in this section.

(6) If for any reason, any vacancy in the office of mayor or the legislative body is not filled within thirty (30) days after it occurs, the Governor shall promptly fill the vacancy by appointment of a qualified person who shall serve for the same period as if otherwise appointed.

(7) No vacancy by reason of voluntary resignation in the office of mayor or on a legislative body shall occur unless a written resignation which specifies a resignation date is tendered to the legislative body. The resignation shall be effective at the next regular meeting of the city legislative body.

(8) Pursuant to KRS 118.305(7), if a vacancy occurs which is required by law to be filled temporarily by appointment, the legislative body or the Governor, whichever is designated to make the appointment, shall immediately notify in writing both the county clerk and the Secretary of State of the vacancy.

(9) Except in cities of the first class, any elected officer, in case of misconduct, incapacity, or willful neglect in the performance of the duties of his office, may be removed from office by a unanimous vote of the members of the legislative body exclusive of any member to be removed, who shall not vote in the deliberation of his removal. No elected officer shall be removed without having been given the right to a full public hearing. The officer, if removed, shall have the right to appeal to the Circuit Court of the county and the appeal shall be on the record. No officer so removed shall be eligible to fill the office vacated before the expiration of the term to which originally elected.

(10) Removal of an elected officer in cities of the first class shall be governed by the provisions of KRS 83.660.

Section 2. This Act takes effect January 1, 2001.

Approved April 6, 2000

CHAPTER 369

(HCR 114)

A CONCURRENT RESOLUTION requesting the Interim Joint Committee on Education to conduct a study of the salaries of classified employees in local school districts.

WHEREAS, classified employees make significant contributions to the well-being of pupils, the school environment, and the improvement and progress of schools across the Commonwealth; and

WHEREAS, over 45,000 persons are employed as classified staff in local school districts across the state in a variety of positions in athletics, fiscal management, food services, health, instruction, maintenance and operations, secretarial and clerical, security and law enforcement, student services, and transportation; and

WHEREAS, classified employees contract with local school boards and are paid for services as salaried or hourly salaried employees; and

WHEREAS, many classified employees have reported that their salaries have not kept pace with the rising cost of living and are inadequate and noncompetitive;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Interim Joint Committee on Education shall conduct a study of the compensation of classified employees to determine its adequacy and make recommendations regarding the propriety of a statewide salary schedule, cost of living adjustments, and the financial impact of these measures on the state and local school districts. The study report shall be submitted to the Legislative Research Commission by August 31, 2001.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 6, 2000

CHAPTER 370

(HCR 8)

A CONCURRENT RESOLUTION confirming the appointment of Nick Orlando Rowe to the Governor's Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Nick Orlando Rowe as a member of the Governor's Postsecondary Education Nominating Committee representing the 5th Supreme Court District for a term expiring April 14, 2004; and

WHEREAS, appointments to the Governor's Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of April 22, 1998, the Governor has delivered Nick Orlando Rowe's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Nick Orlando Rowe meets the requirements established in KRS 164.005 for membership on the Governor's Postsecondary Education Nominating Committee;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Nick Orlando Rowe to the Governor's Postsecondary Education Nominating Committee for a term ending April 14, 2004.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Nick Orlando Rowe, 1101 Beaumont Centre Lane, Apartment 4104, Lexington, Kentucky 40513, in writing, of the General Assembly's action.

Approved April 6, 2000

CHAPTER 371

(SB 115)

AN ACT relating to economic development.

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

Section 1. KRS 154.20-030 is amended to read as follows:

It shall be the purpose of the Kentucky Economic Development Finance Authority to develop and expand existing and alternative sources of energy and the conservation of energy, to assist business enterprise in obtaining additional sources of financing to aid this state in achieving the goal of long-term economic growth and full employment, to meet the growing competition for business enterprises, to preserve existing jobs, to create new jobs, to reduce the cost of business and production, to reduce the costs and liabilities by encouraging and financing efforts to reduce and avoid the generation of hazardous waste and toxic by-products, to foster export activity, to foster economic development on surface mining land, and to alleviate and prevent unemployment through the retention, promotion, and development of agriculture and agricultural facilities, agribusiness, forestry and forestry facilities, commerce and commercial facilities, health care and health related facilities, export markets and export activities, industry and industrial buildings and facilities, ***riverport facilities,*** tourism and tourist facilities, including the sites therefor, and agricultural, forestry, commercial, and industrial machinery and equipment, water and air pollution control equipment, and solid waste disposal facilities with respect thereto or for use by individuals for private sector employment. Such purposes shall be public purposes for which public money may be spent.

Section 2. KRS 154.20-035 is amended to read as follows:

(1) The authority may, upon approval of the board, borrow money and issue bonds or notes in accordance with KRS 154.10-035 and other provisions of this chapter appertaining, subject to KRS 42.420, for the following purposes:

(a) To provide sufficient funds for achieving the authority's purposes and objectives, including but not limited to, amounts necessary to pay the costs of acquiring projects or any part thereof; ***to make loans for the maintenance, operation, expansion, or development of riverport facilities that are under the authority of a developmental riverport authority established under KRS 65.520;*** to make loans for the cost of a project or any part thereof; to make loans pursuant to KRS 154.10-030(11) for an export-related transaction; to make grants; to provide money to guarantee or insure loans, leases, bonds, notes, or other indebtedness; to make working capital loans; for all other expenditures of the authority incident to and necessary or convenient to carry out the authority's purposes, objectives, and powers; or for any combination of the foregoing;

(b) To refund bonds or notes of the authority issued under this chapter, by the issuance of new bonds, whether or not the bonds or notes to be refunded have matured or are subject to prior redemption or are to be paid, redeemed, or surrendered at the time of issuance of the refunding bonds or notes; and to issue bonds or notes partly to refund such bonds or notes and partly for any other purpose provided for by this section; or

(c) To pay the costs of issuance of bonds or notes under this chapter; to pay interest on bonds or notes becoming payable prior to the receipt of the first revenues available for payment thereof as determined by the board; and to establish, in full or in part, a reserve for the payment of the principal and interest on the bonds or notes in such amount as shall be determined by the board.

(2) The bonds and notes, including, but not limited to, commercial paper, shall be authorized by resolution adopted by the authority, shall bear the date or dates, and shall mature at the time or times, not exceeding fifty (50) years from the date of issuance, as the resolution provides. The bonds and notes shall bear interest at the rate or rates set, reset, or calculated from time to time as provided in the resolution. The bonds and notes shall be in the denominations; be in the form, either coupon or registered; carry the registration privileges; be transferable; be executed in the manner; be payable in the medium of payment, at the place or places; and be subject to the terms of prior redemption at the option of the authority or the holders thereof as the resolution or resolutions provide. The bonds and notes of the authority may be sold at public or private, negotiated sale, at the price or prices the authority determines. Bonds and notes may be sold at a discount.

(3) Bonds or notes may be:

(a) Made the subject of a put or agreement to repurchase by the authority or others;

(b) Secured by a letter of credit or by any other collateral which the resolution may authorize;

(c) Resold by the authority, once acquired by the authority, pursuant to any put or repurchase agreement without the acquisition being considered the extinguishment of the bond or note.

(4) The authority may authorize its chairman or other officer to, by order:

(a) Sell and deliver, and receive payment for notes or bonds;

(b) Refund notes or bonds by the delivery of new notes or bonds, whether or not the notes or bonds to be refunded have matured, are subject to prior redemption, or are to be paid, redeemed, or surrendered at the time of the issuance of refunding bonds or notes;

(c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purposes;

(d) Buy notes or bonds so issued at not more than the face value of the notes or bonds; or

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(5) Except as provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of revenues, properties, or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging particular receipts, revenues, properties, or money as security therefor.

(6) The notes or bonds of the authority shall be and are hereby made negotiable instruments within the meaning of and for all purposes of the Uniform Commercial Code, subject only to the provisions of the notes or bonds for registration.

(7) A resolution authorizing notes or bonds may contain any or all of the following covenants which shall be a part of the contract with the holders thereof:

(a) A pledge of all or a part of the fees, charges, and revenues made or received by the authority, or all or a part of the money received in payment of lease rentals, or loans and interest thereon, and other money received or to be received to secure the payment of the notes or bonds or an issue thereof, subject to agreements with bondholders or noteholders as may then exist;

(b) A pledge of all or a part of the assets of the authority, including leases, or notes or mortgages and obligations securing the same to secure the payment of the notes or bonds or of an issue of notes or bonds, subject to agreements with noteholders or bondholders as may then exist;

(c) A pledge of a loan, grant, or contribution from the federal, state, or municipality, or source in aid of a project as provided for in this chapter;

(d) A provision as to the use and disposition of the revenues and income from leases, or from loans, notes, and mortgages owned by the authority;

(e) A provision as to the establishment and setting aside of reserves or sinking funds and the regulation and disposition thereof subject to this chapter;

(f) Limitations on the purpose to which the proceeds of sale of the notes or bonds may be applied and limitations on pledging those proceeds to secure the payment of other bonds or notes;

(g) Authority for and limitations on the issuance of additional notes or bonds for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured;

(h) A provision for the procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent thereto, and the manner in which the consent may be given;

(i) Vesting in a trustee, or a secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the authority may determine necessary to appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the rights of the noteholders and bondholders. A trust agreement may be executed by the authority with any trustee who may be located inside or outside this state to accomplish any of the foregoing;

(j) Providing for the payment of maintenance and repair costs of a project;

(k) Establishing the insurance to be carried on a project and the use and disposition of insurance money and condemnation awards;

(l) Establishing the terms, conditions, and agreements upon which the holder of the bonds, or a portion thereof, shall be entitled to the appointment of a receiver by the Circuit Court. A receiver may enter and take possession of the project and maintain it or lease or sell it for cash or on an installment sales contract and prescribe rentals and payments therefor and collect, receive, and apply all income and revenues thereafter arising in the same manner and to the same extent as the authority; and

(m) Providing for any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

(8) A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged and received by the authority shall immediately be subject to the lien of the pledge without a physical delivery or further act. The lien of the pledge shall be valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the authority and shall be valid and binding against the transfer of the money or property pledged, irrespective of whether the parties have notice. It shall not be necessary to record the resolution, the trust agreement, or any other instrument by which a pledge is created.

(9) Neither the members of the authority nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to personal liability or accountability by reason of the issuance thereof.

(10) The state shall not be liable for any financial obligations of the authority nor shall any such obligations or bonds be considered a debt of the state. The obligations shall contain on the face thereof a statement indicating this fact.

(11) The notes and bonds of the authority shall be securities in which the public officers and bodies of this state and municipalities and municipal subdivisions, insurance companies, associations, and other persons carrying on an insurance business, banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, and administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are authorized to invest in bonds or other obligations of the state, may properly and legally invest funds.

(12) The property of the authority and its income and operation shall be exempt from all taxation by this state or any of its political subdivisions. All bonds and notes of the authority, the interest thereon, and their transfer shall be exempt from all taxation by this state or any of its political subdivisions, except for estate, gift, and inheritance taxes, notwithstanding that interest on bonds or notes of the authority may be or become subject to federal income taxation as a result of legislative action by the federal government. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the authority under this chapter, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the authority, issued pursuant to this chapter, the interest thereon, the transfer thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or to be received and pledged to pay or secure the payment of the notes or bonds shall at all times be free and exempt from all state or local taxation provided by the laws of this state, except for estate, gift, and inheritance taxes.

Section 3. KRS 154.20-060 is amended to read as follows:

(1) Insurance, guarantees, or letters of credit provided or procured pursuant to KRS 154.20-040 and 154.20-045 shall be provided or procured only for projects within this state which are consistent with the purposes and objectives of the authority and this chapter.

(2) The authority shall give paramount priority in providing or procuring insurance, guarantees, and letters of credit to projects which have the greatest potential for creating new jobs or retaining current jobs within this state.

(3) Notwithstanding the provisions of subsection (2) of this section, when considering project applications from a riverport facility established under KRS 65.520, the authority shall not give priority to regulatory criteria pertaining to direct employment at these facilities and shall instead give priority to the indirect employment maintained or created.

Approved April 7, 2000

CHAPTER 372

(SB 119)

AN ACT relating to motor vehicle insurance.

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

Section 1. KRS 304.39-030 is amended to read as follows:

(1) If the accident causing injury occurs in this Commonwealth every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits, unless he has rejected the limitation upon his tort rights as provided in KRS 304.39-060(4).

(2) If the accident causing injury occurs outside this Commonwealth but within the United States, its territories and possessions, or Canada, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits:

(a) Basic reparation insureds;~~[and]~~

(b) The driver and other occupants of a secured vehicle who have not rejected the limitation upon their tort rights, other than:

1. A vehicle***, except for a vehicle as provided in paragraph (c) of this subsection,*** which is regularly used in the course of the business of transporting persons or property and which is one ***(1)*** of five (5) or more vehicles under common ownership; or

2. A vehicle owned by an obligated government other than this Commonwealth, its political subdivisions, municipal corporations, or public agencies***; and***

(c) The driver and other occupants of a bus, who have not rejected the limitation upon their tort rights, are Kentucky residents, and boarded a bus in Kentucky, if the bus is:

1. A secured vehicle;

2. Registered in Kentucky;

3. Regularly used in the course of the business of transporting persons or property; and

4. One (1) of five (5) or more vehicles under common ownership.

Approved April 7, 2000

CHAPTER 373

(SB 259)

AN ACT relating to boards of directors for community colleges.

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

Section 1. KRS 164.600 is amended to read as follows:

(1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(2) There shall be a board of directors for each community college under the Kentucky Community and Technical College System, except as provided in KRS 165.160. Each board of directors shall:

(a) Recommend one (1) candidate for the community college president from three (3) candidates provided by the president of the Kentucky Community and Technical College System. The president shall have the authority to make the final appointment and shall not be bound by the recommendation from the board of directors;

(b) Evaluate the community college president and advise the chancellor of his or her performance. The president has final authority for the appointment and termination of the community college president;

(c) Approve budget requests for recommendation to the Kentucky Community and Technical College System;

(d) Adopt and amend an annual operating budget and submit it to the board of regents of the Kentucky Community and Technical College System for approval as to the compliance with its guidelines;

(e) Approve and implement a strategic plan that is developed in coordination with local employers, civic leaders, campus constituents, and other postsecondary institutions in the region and that is consistent with the strategic agenda of the General Assembly.

(3) The president of each community college shall have full authority and discretion regarding the use and management of the budget approved by the board of regents for the Kentucky Community and Technical College System under KRS 164.350.

(4) Each board of directors shall consist of ***ten (10)***~~[nine (9)]~~ members, seven (7) of whom shall be appointed by the Governor for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The other ***three (3)***~~[two (2)]~~ board members shall be one (1) member of the teaching faculty***, one (1) member of the staff,*** and one (1) member of the student body. An appointed member's term shall be six (6) years.

(5) The faculty member shall be on the teaching or research faculty of the community college. ***The faculty member***~~[He]~~ shall be elected by secret ballot of all full-time faculty members of the community college. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the boards if they cease to be members of the teaching staff of the community college. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original election.

(6) ***The staff member shall be a classified or mid-management employee who does not hold faculty rank and who does not hold an upper administrative position. The staff member shall be elected by secret ballot of all full-time staff members of the community college. Staff members shall serve for terms of three (3) years and until their successors are elected and qualified. Staff members shall be eligible for reelection, but shall be ineligible to continue to serve as members of the boards if they cease to be members of the staff of the community college. An election to fill a vacancy for an unexpired term shall be held in the same manner as an election to an original full term.***

(7) The student member shall be the president of the student body of the community college. If the president of the student body is not a full-time student who maintains permanent residency in the Commonwealth of Kentucky, a special election shall be held to select a full-time student who does maintain permanent residency in this Commonwealth as the student member.

(8)~~[(7)]~~ The members of the board of directors shall receive no compensation for their services but shall be paid for their actual and necessary expenses.

(9)~~[(8)]~~ No citizen member of the board of directors shall be a relative of any employee of the community college under its jurisdiction. A person who is a member of the board on July 15, 1998, who is a relative of an employee of the community college may finish out the appointed term of office but the member may not be reappointed.

(10)~~[(9)]~~ The board of regents of the Kentucky Community and Technical College System may extend this type of local governance authority to each postsecondary technical institution under its control, subject to review and approval by the Council on Postsecondary Education.

Approved April 7, 2000

CHAPTER 374

(HB 103)

AN ACT relating to reorganization.

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

Section 1. KRS 15.728 is amended to read as follows:

All law enforcement agencies and investigative bodies shall notify the ***Department***~~[Division]~~ of Charitable Gaming of any investigation or prosecution of any violation of the charitable gaming laws as soon as reasonably possible after commencing the investigation or prosecution and shall coordinate any investigation with the ***department***~~[division]~~.

Section 2. KRS 238.505 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "***Department***~~[Division]~~" means the ***Department***~~[Division]~~ of Charitable Gaming within the ***Public Protection and Regulation***~~[Justice]~~ Cabinet;

(2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;

(3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;

(4) "Bingo" means a specific game of chance in which participants use cards or paper sheets***, or card-minding device representations thereof,*** divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;

(5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. Charity game ticket shall include pulltabs;

(6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;

(7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;

(8) "Charity fundraising event" means a fundraising activity of limited duration at which games of chance approved by the ***department***~~[division]~~ are conducted, ***including bingo, raffles, charity game tickets, special limited charitable games, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such activities include events that attract patrons for community, social, and entertainment purposes apart from charitable gaming, such as***~~[and examples of which include]~~ fairs, festivals, carnivals, ***and*** bazaars~~[, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding]~~;

(9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:

(a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and

(b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;

(10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include***:***

(a) A resident printer who prints raffle tickets at the request of a licensed charitable organization; ***and***

(b) A licensed charitable organization that affects a one-time donation of charitable gaming supplies or equipment to another licensed charitable organization if the donation is first approved by the department.

(11) "Charitable gaming facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations during a one (1) year period for the conduct of charitable gaming;

(12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;

(13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;

(14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;

(15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;

(16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;

(17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; and any other game of chance as identified, defined, and approved by administrative regulation of the ***department***~~[division]~~;

(18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;

(19) "Session or bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, ***excluding***~~[including]~~ bingo ***played***~~[held]~~ at a charity fundraising event;

(20) "Immediate family" means:

(a) Spouse and parents-in-law;

(b) Parents and grandparents;

(c) Children and their spouses; and

(d) Siblings and their spouses; and

(21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility***;***

(22) "Secretary" means the secretary of the Public Protection and Regulation Cabinet;

(23) "Commissioner" means the commissioner of the Department of Charitable Gaming within the Public Protection and Regulation Cabinet;

(24) "Chairperson" means the chief executive officer and any officer, member, or employee of a licensed charitable organization who will be involved in the management and supervision of charitable gaming as designated in the organization's charitable gaming license application under subsection (9)(g) of Section 8 of this Act;

(25) "Year" means calendar year except as used in subsection (7) of Section 13 of this Act, subsection (4) of Section 11 of this Act, and KRS 238.547(1), when "year" means the licensee's license year; and

(26) "Card-minding device" means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card face. A card-minding device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

Section 3. KRS 238.510 is amended to read as follows:

(1) The ***Department***~~[Division]~~ of Charitable Gaming is created as a ***department***~~[division]~~ within the ***Public Protection and Regulation***~~[Justice]~~ Cabinet. The ***department***~~[division]~~ shall license and regulate the conduct of charitable gaming and license and regulate charitable organizations that desire to engage in charitable gaming, charitable gaming facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.

(2) The ***department shall be headed by a commissioner who shall be appointed by the Governor upon recommendation of the secretary. The commissioner shall employ staff***~~[secretary of justice shall employ a division director, an assistant director, and other staff]~~ as may be necessary to administer and enforce the provisions of this chapter.

(3) All ***department***~~[division]~~ staff shall be classified and employed in accordance with applicable personnel requirements of the Personnel Cabinet ***in accordance with***~~[. The division director shall be a nonmerit employee and all other staff shall be merit employees with all rights and privileges afforded under]~~ KRS Chapter 18A.

(4) No employee of the ***department***~~[division]~~ during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the ***department***~~[division]~~ during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility, or

have a financial interest in any business that is licensed as a manufacturer, distributor, or charitable gaming facility.

(5) The commissioner shall appoint charitable gaming investigators who shall have the powers of peace officers throughout the Commonwealth; however, those powers shall be limited to:

(a) Enforcement of the provisions of KRS Chapter 238, relating to charitable gaming;

(b) Violations of KRS Chapter 528, relating to:

1. Unlicensed and illegal charitable gaming;

2. Gambling offenses committed on licensed charitable gaming premises; and

3. Gambling offenses committed in conjunction with charitable gaming;

(c) Violations of KRS Chapter 514, relating to theft, embezzlement, or other illegal diversions of charitable gaming proceeds;

(d) Violations of KRS Chapters 516 and 517, relating to forgery and fraud in the conduct of charitable gaming;

(e) Violations relating to the damage or destruction of real or personal property owned or leased by a charitable gaming licensee; and

(f) Violation of any criminal felony offense committed:

1. On licensed charitable gaming premises; and

2. In the presence of a charitable gaming investigator.

(6) Charitable gaming investigators shall satisfy the certification standards established by the Department of Criminal Justice Training pursuant to KRS Chapter 15. The commissioner may possess peace officer powers granted under subsection (5) of this section, if he or she is duly qualified. Charitable gaming investigators shall not qualify for hazardous duty coverage under the Kentucky Employees Retirement System.

(7) Charitable gaming investigators so appointed shall not possess peace officer powers other than those provided in subsection (5) of this section.

Section 4. KRS 238.515 is amended to read as follows:

The ***department***~~[division]~~ shall license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the ***department***~~[division]~~ shall have the following powers and duties:

(1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming;

(2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;

(3) Prescribing reasonable fees for licenses;

(4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;

(5) Establishing a process for reviewing complaints and allegations of wrongdoing, and for investigating complaints with merit. In furtherance of this duty, the ***department***~~[division]~~

shall have the authority to issue administrative subpoenas and summonses. The ***department***~~[division]~~ shall also establish toll-free telephone service for receiving complaints and inquiries;

(6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;

(7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;

(8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the ***department***~~[division]~~; and

(9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter.

Section 5. KRS 238.520 is amended to read as follows:

(1) The Charitable Gaming Advisory Commission is created to be composed of nine (9) members consisting of:

(a) The secretary of the ***Public Protection and Regulation***~~[Justice]~~ Cabinet or his designee;

(b) The Attorney General or his designee;

(c) One (1) representative from the Kentucky Commonwealth's Attorneys Association;

(d) One (1) representative from the Kentucky Charitable Gaming Association;

(e) One (1) certified public accountant; and

(f) Four (4) members selected from the public at large.

The certified public accountant, the four (4) at-large members, and the representatives from the Kentucky Commonwealth's Attorneys Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

(2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. No member from the public at large shall be appointed in the same year. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.

(3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the ***department***~~[division]~~ and to the General Assembly ***but shall not establish policy or become directly involved in***~~[to assist in establishing effective policy for]~~ the licensing and regulation of charitable gaming ***by the department***.

(4) The commission shall meet quarterly or as otherwise directed by the ***department***~~[division]~~. Five (5) members shall constitute a quorum for conducting business. The commission shall

annually elect a chairman from its membership***, and no person elected chairman shall serve more than two (2) consecutive terms of one (1) year each***. Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

Section 6. KRS 238.525 is amended to read as follows:

(1) Licenses shall be issued by the ***department***~~[division]~~ on an annual or biennial basis, except as otherwise permitted in KRS 238.530 and 238.545. A license term may be determined by the ***department***~~[division]~~ in any manner it deems appropriate to facilitate efficient licensing. The ***department***~~[division]~~ shall charge a renewal fee not to exceed the maximum amounts established in KRS 238.530, 238.535, and 238.555.

(2) The ***department***~~[division]~~ may issue a temporary license to an applicant who has met the requirements for a license. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and shall not exceed a total of nine (9) months in length.

(3) An applicant for any license to be issued under KRS 238.530 and 238.555 shall be subjected to a state and national criminal history background check by the ***department***~~[division]~~, with the assistance of the Kentucky State Police and the Federal Bureau of Investigation. An applicant for any license to be issued under KRS 238.535 shall be subjected to a state criminal history background check and may, if deemed reasonably necessary, be subjected to a national criminal history background check by the ***department***~~[division]~~ with the assistance of the Kentucky State Police and the Federal Bureau of Investigation. The criminal history background check shall apply to the chief executive officer and the chief financial officer or director of an applicant; any employee or member of an applicant who has been designated as chairperson of the charitable gaming activity; the applicant itself; and any individual with a ten percent (10%) or more financial interest in the applicant. The ***department***~~[division]~~ shall require the fingerprinting of all applicants for licensure under KRS 238.530 and 238.555 and may require, if deemed reasonably necessary, the fingerprints of all applicants for licensure under KRS 238.535, who are natural persons in connection with the national criminal history background check to assure the identity of the applicant or applicants. The ***department***~~[division]~~ may charge a reasonable fee not to exceed the actual cost of fingerprinting and records searching.

(4) No applicant shall be licensed ***and no license holder shall be able to maintain a license*** if an individual associated with the applicant ***or license holder*** in a capacity listed in subsection (3) of this section or the applicant ***or license holder*** itself has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995(7), or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B within ten (10) years preceding the application for licensure.

(5) No applicant shall be licensed unless all applicants required to be fingerprinted under the provision of subsection (3) of this section have been fingerprinted. The Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for the national criminal history background check. The ***department***~~[division]~~ may by

administrative regulation impose additional qualifications to meet the requirements of Pub. L. 92-544.

(6) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the ***department***~~[division]~~ in writing within thirty (30) days of the date the change occurred.

Section 7. KRS 238.530 is amended to read as follows:

(1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the ***department***~~[division]~~ as a distributor. The ***department***~~[division]~~ shall charge a license fee not to exceed one thousand dollars ($1,000).

(2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the ***department***~~[division]~~ as a manufacturer. The ***department***~~[division]~~ shall charge a license fee not to exceed ***one thousand***~~[five hundred]~~ dollars ***($1,000)***~~[($500)]~~.

(3) No person who is licensed as a charitable organization, and no owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. No affiliate of an owner, officer, or employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be licensed as a distributor or manufacturer. No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.

(4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the ***department***~~[division]~~ and shall submit as part of the application process the following:

(a) The full name, address, date of birth, and Social Security number of the applicant;

(b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;

(c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;

(d) Federal employer tax number;

(e) A sworn statement by the applicant or the appropriate officer that all information provided is true and correct and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;

(f) The name, address, and telephone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and

(g) Any other information the ***department***~~[division]~~ deems appropriate.

(5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the ***department***~~[division]~~ to document all activities related to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment in the Commonwealth of

Kentucky. These records shall be available for inspection by the ***department***~~[division]~~ at reasonable times, and all records shall be maintained for a minimum of three (3) years. The ***department***~~[division]~~ may require a licensed manufacturer and distributor to report on its activity, with the content and frequency of these reports to be prescribed by administrative regulation promulgated by the ***department***~~[division]~~.

(6) A distributor who does not receive payment in accordance with the terms of its sales or lease agreement from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the ***department***~~[division]~~ of the delinquency in writing in a form and manner prescribed by the ***department***~~[division]~~. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the ***department***~~[division]~~ of the delinquency in writing in a form and manner prescribed by the ***department***~~[division]~~.

(7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.

(8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor or a charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure under the provisions of this chapter.

(9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer or distributor in the Commonwealth of Kentucky.

(10) No officer, owner, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates and no member of the immediate family of an owner, officer, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates, shall, with respect to a licensed charitable organization:

(a) Manage or otherwise be involved in the conduct of charitable gaming;

(b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;

(c) Handle any moneys generated in the conduct of charitable gaming;

(d) Advise a licensed charitable organization on the expenditure of net receipts;

(e) Provide transportation services in any manner to patrons of a charitable gaming activity;

(f) Provide advertisement or marketing services in any manner to a licensed charitable organization;

(g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;

(h) Provide training or consulting on the conduct of charitable gaming, except in connection with the use of its own equipment or supplies;

(i) Store its charitable gaming equipment or supplies in or on the premises of a licensed charitable gaming facility; or

(j) Donate or give any prize to be awarded in the conduct of charitable gaming.

Section 8. KRS 238.535 is amended to read as follows:

(1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the ***department***[~~division~~]. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:

(a) Bingo in which the gross receipts do not exceed a total of ***twenty-five***[~~fifteen~~] thousand dollars ***($25,000)***[~~($15,000)~~] per year;

(b) A raffle or raffles for which the gross receipts do not exceed ***twenty-five***[~~fifteen~~] thousand dollars ***($25,000)***[~~($15,000)~~] per year; and

(c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed ***twenty-five***[~~fifteen~~] thousand dollars ***($25,000)***[~~($15,000)~~] per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed ***twenty-five***[~~fifteen~~] thousand dollars ***($25,000)***[~~($15,000)~~].

(2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the ***department***[~~division~~] in writing, on a ***simple*** form issued by the ***department***[~~division~~], of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter ***relating to the conduct of charitable gaming***, except:

(a) Payment of the fee imposed under the provisions of KRS 238.570; and

(b) The ***quarterly*** reporting requirements imposed under the provisions of KRS 238.550***(5)***[~~(2)~~], unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.

Before the last day of each year, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file with the department a financial report detailing the type of gaming activity in which it engaged during that year, the total gross receipts derived from gaming, the amount of charitable gaming expenses paid, the amount of net receipts derived, and the disposition of those net receipts. This report shall be filed on a form issued by the department. Upon receipt of the yearly financial report, the department shall notify the charitable organization submitting it that its exemption is renewed for the next year. If the department determines that information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the department shall revoke the exemption. The organization may request an appeal of this revocation pursuant to Section 15 of this Act. If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (3) of this section.

(3) If an organization exceeds the limit imposed by any subsection of this section it shall:

(a) Report the amount to the ***department***[~~division~~]; and

(b) Apply for a retroactive charitable gaming license.

(4) Upon receipt of a report and application for a retroactive charitable gaming license, the ***department***~~[division]~~ shall investigate to determine if the organization is otherwise qualified to hold the license.

(5) If the ***department***~~[division]~~ determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.

(6) If the ***department***~~[division]~~ determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.

(7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.

(8) In order to qualify for licensure, a charitable organization shall:

(a) 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or

2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;

(b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;

(c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the ***department***~~[division]~~, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "***reasonable progress in*** accomplishing its charitable purposes" means ***the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish*** relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3)***. In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the department a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph***; and

(d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the ***department***~~[division]~~; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share

office space. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fund raising event.

(9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:

(a) The name and address of the charitable organization;

(b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;

(c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;

(d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;

(e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;

(f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;

(g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

(h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;

(i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

(j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;

(k) An agreement that the charitable organization's records may be released by the federal Internal Revenue Service to the ***department***~~[division]~~; and

(l) Any other information the ***department***~~[division]~~ deems appropriate.

(10) ***An organization or a group of individuals that does not meet the licensing requirements of subsection (8) of this section may hold a raffle if the gross receipts do not exceed one hundred fifty dollars ($150) and all proceeds from the raffle are distributed to a charitable organization. The organization or group of individuals may hold up to three (3) raffles each year, and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (9) of this section.***

(11) The ***department***~~[division]~~ may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.

(12)~~[(11)]~~ The ***department***~~[division]~~ shall charge a fee for each license issued and renewed, not to exceed three hundred dollars ($300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

(13) (a) A licensed charitable organization may place its charitable gaming license in escrow if:

1. The licensee notifies the department in writing that it desires to place its license in escrow; and

2. The license is in good standing and the department has not initiated disciplinary action against the licensee.

(b) During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under Section 9 of this Act.

(c) A charitable organization may apply for reinstatement of its active license and the license shall be reinstated provided:

1. The charitable organization continues to qualify for licensure;

2. The charitable organization has not engaged in charitable gaming during the escrow period; and

3. The charitable organization pays a reinstatement fee established by the department.

Section 9. KRS 238.536 is amended to read as follows:

(1) The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. ***A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the benefits or financial gain of an individual.*** Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. ***The***

following fees and taxes shall be excluded from the calculation of the percentage retained, retroactive to calculations made for calendar year 1999:

(a) All fees paid to the ***department***[~~division~~] during the calendar year***:***

(b) Any sales or use taxes levied under KRS Chapter 139 on charitable gaming supplies and equipment that are paid by a licensed charitable organization during the calendar year; and

(c) Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid by a licensed charitable organization during the calendar year[~~shall be excluded from the calculation of percentage retained~~].

(2) The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:

(a) If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of ***six (6) months***[~~one (1) year~~] and shall be required to submit to the ***department***[~~division~~] an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the ***calendar year in which the probation is imposed***[~~probationary period~~];

(b) If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall ***be placed on probation***[~~have its license suspended~~] for a period of one (1) year ***and shall be required to submit to the department a financial plan as described in paragraph (a) of this subsection. The department shall conduct a six (6) month review of the charitable gaming activities of a licensee placed on probation pursuant to this subsection to evaluate the licensee's compliance with its financial plan***; [~~and~~]

(c) If the percentage retained falls ***between twenty-nine and nine-tenths percent (29.9%) and twenty-five percent (25%), the licensee shall be placed on probation for a period of one (1) year, shall submit to the department an acceptable financial plan as described in paragraph (a) of this subsection, and shall participate in a mandatory training program designed by the department. The department shall conduct a quarterly review of the licensee's activities to evaluate the licensee's compliance with its financial plan and its progress toward achievement of the forty percent (40%) threshold during the probationary period;***

(d) If the percentage falls below ***twenty-five***[~~thirty~~] percent ***(25%)***[~~(30%)~~] or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive ***calendar year***[~~time~~], the licensee shall have its license suspended for a period of ***one (1) year; and***[~~two (2) years~~]

(e) For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of probation and suspension shall commence, unless appealed, from the date the department notifies the licensee of its failure to satisfy the retention requirement for the previous calendar year. If a probation or suspension is appealed, the action shall commence on the date final adjudication of the matter is complete.

(3) Any licensee that has had its license suspended under the provisions of subsection (2)***)d)***[~~(b) or (c)~~] of this section shall be required to submit to the ***department***[~~division~~] an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license. ***As a condition of reinstatement, the licensee shall be on probation for a period of one (1) year and shall be subject to quarterly review by the department in accordance with paragraph (c) of subsection (2) of this section.***

(4) Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke***, suspend,*** or deny its license for failure to meet the forty percent (40%) retention threshold prior to ***the effective date of this Act***[~~April 1, 1998~~], may petition the ***department***[~~division~~] for reconsideration of its action or proposed action. Upon petition for reconsideration, the ***department***[~~division~~] shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The ***department***[~~division~~] shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.

Section 10. KRS 238.540 is amended to read as follows:

(1) Charitable gaming shall be conducted by a licensed charitable organization at ***the***[~~only one (1)~~] location***,***[~~ and at the~~] date***,*** and time which shall be stated on the license. A license holder shall notify the ***department***[~~division~~] at least thirty (30) days in advance of its intent to change its location, date, or time and approval by the ***department***[~~division~~] shall be received by the licensee prior to the conduct of charitable gaming at a new location.

(2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.

(3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the ***department***[~~division~~], law enforcement officials, and other interested officials.

(4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the ***administration and conduct of the*** charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. ***No net receipts derived from charitable gaming shall inure to the private benefit or financial gain of any individual.*** Any effort or attempt to disguise any other type of compensation ***or private inurement*** shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.

(5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.

(6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.

(7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.

(8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number. ***An advertisement for a bingo session or sessions shall not advertise a bingo prize in excess of the limitation of five thousand dollars ($5,000) per twenty-four (24) hour period set forth in subsection (1) of Section 11 of this Act.***

Section 11. KRS 238.545 is amended to read as follows:

(1) A licensed charitable organization shall be limited by the following:

(a) In the conduct of bingo, to ***one (1) session per day,*** two (2) sessions per week, for a period not to exceed five (5) consecutive hours in any day and not to exceed ten (10) total hours per week. No licensed charitable organization shall conduct bingo at more than one (1) location during the same twenty-four (24) hour period. No licensed charitable organization shall award prizes for bingo that exceed five thousand dollars ($5,000) in fair market value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to purchase bingo supplies or play bingo. A charitable organization may permit persons under age eighteen (18) to play bingo for noncash prizes if they are accompanied by a parent or legal guardian and only if the value of any noncash prize awarded does not exceed ten dollars ($10);

(b) ***A licensed charitable organization may provide card-minding devices for use by players of bingo games. If a licensed charitable organization offers card-minding devices for use by players, the devices shall be capable of being used in conjunction with bingo cards or paper sheets at all times. The department shall have broad authority to define and regulate the use of card-minding devices and shall promulgate an administrative regulation concerning use and control of them;***

(c) Charity game tickets shall be sold only at the address of the location designated on the license to conduct charitable gaming;

(d)[~~(c)~~] Charity game tickets may be sold, with prior approval of the ***department***[~~division~~]:

1. At any authorized special charity fundraising event conducted by a licensed charitable organization at any off-site location; or

2. By a licensed charitable organization possessing a special limited charitable gaming license at any off-site location; and

(e)[~~(d)~~] An automated charity game ticket dispenser may be utilized by a licensed charitable organization, with the prior approval of the ***department***[~~division~~], only at the address of the location designated on the license to conduct charitable gaming, and only during bingo sessions. The ***department***[~~division~~] shall promulgate administrative

regulations regulating the use and control of approved automated charity game ticket dispensers.

(2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars ($599) in value, not including the value of cumulative or carryover prizes awarded in seal card games. Cumulative or carryover prizes in seal card games shall not exceed two thousand four hundred dollars ($2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars ($50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. Any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky that does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the ***department***~~[division]~~. No person under the age of eighteen (18) shall be permitted to purchase, or open in any manner, a charity game ticket.

(3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All raffle tickets shall be sold for the price stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.

(4) ***With respect to charity fundraising events, a licensed charitable organization shall be limited as follows:***

(a) No licensed charitable organization shall conduct a charity fundraising event or a special limited charity fundraising event unless they have a license for the respective event issued by the ***department;***~~[division.]~~

(b) No special license shall be required for any wheel game, such as a cake wheel, that awards only noncash prizes the value of which does not exceed one hundred dollars ($100)***;***~~[.]~~

(c) The department may grant approval for a licensed charitable organization to play bingo games at a charity fundraising event. Cash prizes for bingo games played during a charity fundraising event may not exceed five thousand dollars ($5,000) for the entire event. No person under the age of eighteen (18) shall be permitted to play bingo at a charity fundraising event unless accompanied by a parent or legal guardian;

(d) The department may grant approval for a licensed charitable organization to play special limited charitable games at a charity fundraising event authorized under this section. The department shall not grant approval for the playing of special limited charitable games under the provisions of a charity fundraising event license unless the proposed event meets the definition of a charity fundraising event held for community, social, or entertainment purposes apart from charitable gaming in accordance with subsection (8) of Section 2 of this Act; and

(e) Except for state, county, city fairs, and special limited charity fundraising events, a charity fundraising event license issued under this section shall not exceed seventy-two (72) consecutive hours. A licensed charitable organization shall not be eligible for more than four (4) total charity fundraising event licenses per year, including two (2) special limited charity fundraising event licenses. No person under eighteen (18) years of age shall be allowed to play or conduct any special limited charitable game. The ***department***~~[division]~~ shall have broad authority to regulate the conduct of special limited charity fundraising events in accordance with the provisions of KRS 238.547.

(5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution that may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

Section 12. KRS 238.550 is amended to read as follows:

(1) All adjusted gross receipts from charitable gaming shall be handled only by chairpersons, officers, or employees of the licensed charitable organization.

(2) ***Within two (2) business days after the completion of a charitable gaming event or session,*** all ***gross receipts and*** adjusted gross receipts shall be deposited~~[within two (2) business days]~~ into ***one***~~[a]~~ checking account devoted exclusively to charitable gaming. ***This checking account shall be designated the "charitable gaming account," and the licensed charitable organization shall maintain its account at a financial institution located in the Commonwealth of Kentucky. No other funds may be deposited or transferred into the charitable gaming account.***

(3) All payments for charitable gaming expenses, ***payments made for*** prizes purchased, and any charitable donations from charitable gaming receipts shall be made from ***the charitable gaming***~~[this checking]~~ account and ***the***~~[any]~~ payments or donations shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. ***No check drawn on the charitable gaming account may be made payable to "cash," or "bearer," except that a licensed charitable organization may withdraw start-up funds for a charitable gaming event or session from the charitable gaming account by check made payable to "cash" or "bearer," if these start-up funds are redeposited into the charitable gaming account together with all adjusted gross receipts derived from the particular event or session. Checks shall be imprinted with the words "charitable gaming account" and shall contain the organization's license number on the face of each check. Payments for charitable gaming expenses, prizes purchased, and charitable donations may be made by electronic funds transfer if the payments are made to specific persons or organizations.*** The ***department***~~[division]~~ may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.

(4) ***A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an***

institution of higher education, or a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.

(5)~~[(2)]~~ Accurate records and books shall be maintained by each ***organization exempt from licensure under subsection (1) of Section 8 of this Act and each*** licensed charitable organization for a period of three (3) years. ***Department***~~[Division]~~ staff shall have access to these records at reasonable times. ***Licensed charitable organizations and exempt organizations shall maintain their charitable gaming records at their offices or places of business within the Commonwealth of Kentucky as identified in their license applications or applications for exempt status.*** All licensed charitable organizations shall be required to submit reports to the division at least quarterly. ***An exempt organization shall submit a yearly financial report in accordance with subsection (2) of Section 8 of this Act, and failure to file this report shall constitute grounds for revocation of the organization's exempt status. Failure by a licensed charitable organization to file reports required under this chapter shall constitute grounds for revocation of the organization's license or denial of the organization's application to renew its license in accordance with subsection (3) of Section 14 of this Act. Reports filed by a licensed charitable organization***~~[These reports]~~ shall include, but shall not be limited to, the following information:

(a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;

(b) The amounts or values of all prizes paid out during the reporting period, including a listing of all prizes donated ***having a fair market value in excess of fifty dollars ($50)***, the names of donors, and the fair market value of the donated prizes;

(c) The names and addresses of all persons who are winners of prizes ***having a fair market value*** of six hundred dollars ($600) or more;

(d) All expenses paid and the names and addresses of all persons to whom expenses were paid;

(e) All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and

(f) Any other information the ***department***~~[division]~~ deems appropriate.

(6)~~[(3)]~~ No licensed charitable organization shall incur ***charitable gaming*** expenses, except as provided in this chapter. No licensed charitable organization shall be permitted to expend amounts in excess of prevailing market rates for the following ***charitable gaming*** expenses:

(a) Charitable gaming supplies and equipment;

(b) Rent;

(c) Utilities;

(d) Insurance;

(e) Advertising;

(f) Janitorial services;

(g) Bookkeeping and accounting services;

(h) Security services;

(i) Membership dues for its participation in any charitable gaming trade organization; and

(j) Any other expenses the ***department***~~[division]~~ may determine by administrative regulation to be legitimate.

No licensed charitable organization shall expend receipts from charitable gaming activities nor incur expenses to form, maintain, or operate as a labor organization.

Section 13. KRS 238.555 is amended to read as follows:

(1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The ***department***~~[division]~~ shall charge a license fee not to exceed two thousand five hundred dollars ($2,500). Specific license fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulation and based on the number of sessions which the facility holds per week or other applicable factors or combination of factors. Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.

(2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:

(a) The address of the facility;

(b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;

(c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;

(d) The name, address, date of birth, and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;

(e) A copy of the lease agreement used by the applicant; and

(f) Any other information the ***department***~~[division]~~ deems appropriate.

(3) No owner, officer, employee, or contractee of a licensed charitable gaming facility or an affiliate, or any member of the immediate family of any officer, employee, or contractee of a licensed charitable gaming facility or an affiliate shall, concerning a lessee:

(a) Manage or otherwise be involved in the conduct of charitable gaming;

(b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;

(c) Handle any moneys generated in the conduct of charitable gaming;

(d) Advise a licensed charitable organization on the expenditure of net receipts;

(e) Provide transportation services in any manner to patrons of a charitable gaming activity;

(f) Provide advertisement or marketing services in any manner to a licensed charitable organization;

(g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;

(h) Influence or require a licensed charitable organization to use a certain distributor or any particular gaming supplies; or

(i) Donate or give any prize to be awarded in the conduct of charitable gaming.

(4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. The licensed charitable gaming facility shall agree in the lease to provide gaming space, utilities, insurance for the premises, parking, tables and chairs, and other nongaming equipment necessary for the conduct of charitable gaming, adequate storage space, security, and janitorial services. The costs of the goods and services provided shall be itemized in the lease. A licensed charitable organization may elect to provide for itself any of the goods and services that a charitable gaming facility is required to provide under this subsection, provided these arrangements are clearly noted in the lease agreement, and provided the total compensation to be paid the charitable gaming facility is reduced commensurate with the cost of the goods and services as itemized in the lease. The amount of rent, goods, and services charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The ***department***~~[division]~~ by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the ***department***~~[division]~~. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.

(5) The number of bingo sessions conducted at a charitable gaming facility shall be limited to the following:

(a) No more than eighteen (18) sessions per week if the charitable gaming facility is located in a city of the first class, in a city of the second class, in an urban-county or charter county government, or in a county containing a city of the first class or second class;

(b) No more than eight (8) sessions per week if the charitable gaming facility is located in a city of the third class, fourth class, fifth class, or sixth class, or in a county that does not contain a city of the first class or second class.

(6) A licensed charitable gaming facility shall report at least quarterly to the ***department***~~[division]~~ and shall provide any information concerning its operation that the ***department***~~[division]~~ may require.

(7) A charity fundraising event at which special limited charitable games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.

(8) A licensed charitable gaming facility shall conspicuously display a sign bearing the name and the license number of the charitable organization that is conducting charitable gaming activities in the facility.

(9) The license to operate the charitable gaming facility shall be prominently displayed on or in the premises where charitable gaming activity is being conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the ***department***~~[division]~~, law enforcement officials, and other interested officials.

Section 14. KRS 238.560 is amended to read as follows:

(1) The ***department***~~[division]~~ may investigate allegations of wrongdoing upon complaint or upon its own volition. The ***department***~~[division]~~ by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.

(2) In carrying out its enforcement responsibilities, the ***department***~~[division]~~ may:

(a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;

(b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;

(c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining compliance with laws and administrative regulations relative to charitable gaming; and

(d) Conduct in-depth audits and investigations, when warranted.

(3) The ***department***~~[division]~~ may take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder. The ***department***~~[division]~~ may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand, and levy a fine. An administrative fine shall not exceed one thousand dollars ($1,000) for each offense. ***The department may deny the issuance of a license or a license renewal if the applicant or licensee has failed to pay a fine levied by the department.*** The ***department***~~[division]~~ shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the ***history of previous violations and the*** nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.

(4) The ***department***~~[division]~~ may reinstate a license that has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.

(5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the ***department***~~[division]~~ in carrying out its enforcement responsibilities.

(6) The ***department***~~[division]~~ shall report any activity or action which would constitute a criminal offense to the appropriate authorities in the county where the activity or action occurred and to the Attorney General.

Section 15. 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***~~[division]~~ 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***~~[secretary of justice through the division director]~~ a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the ***commissioner***~~[secretary of justice]~~ 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***~~[division]~~ 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 Franklin Circuit Court 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 16. KRS 238.570 is amended to read as follows:

(1) A fee is imposed on charitable gaming in the amount of four-tenths of one percent (0.4%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. Each licensed charitable organization shall remit to the ***department***~~[division]~~ all moneys due on a quarterly basis. ***Failure by a licensed charitable organization to timely remit the fee required under this subsection upon notice of delinquency shall constitute grounds for disciplinary action in accordance with Section 14 of this Act.***

(2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the ***Public Protection and Regulation***~~[Justice]~~ Cabinet. All revenues generated from the fee levied in subsection (1) of this section from license fees and from administrative fines imposed by the ***department***~~[division]~~ shall be deposited in this account. Moneys in this account shall be expended by the ***department***~~[division]~~ only in the administration and enforcement of provisions of this chapter. No later than July of each odd-numbered year, the ***department***~~[division]~~ shall assess the amount of funds raised by all fees levied in this chapter and shall make recommendations to the Legislative Research Commission concerning legislative amendments to adjust fee rates as indicated by the assessment.

(3) If the provision of subsection (1) of this section that imposes a fee of four-tenths of one percent (0.4%) of all gross receipts derived from all charitable gaming conducted by licensed charitable organizations is declared unconstitutional in a final decision of the highest appellate court of the Commonwealth of Kentucky, for the privilege of conducting charitable gaming in the Commonwealth of Kentucky, there is hereby levied upon the use, sale, rental, lease, or distribution by sale or by gift of charitable gaming supplies and equipment a fee of ten percent (10%) of the value of all supplies and equipment used, sold, rented, leased, or otherwise distributed by a licensed distributor to any licensed charitable organization in the Commonwealth of Kentucky.

(a) Every distributor of charitable gaming supplies and equipment shall pay and report the fee levied pursuant to this subsection on or before the twentieth day of the calendar month next succeeding the month in which possession of the charitable gaming supplies and equipment is transferred from the distributor to the licensed charitable organization, in accordance with administrative regulations promulgated by the ***department***~~[division]~~.

(b) The ***department***~~[division]~~ may require a bond from distributors in accordance with the administrative regulations promulgated by the ***department***~~[division]~~.

(4) If the alternative license fee schedule as provided in subsection (3) of this section is activated due to a final decision of the highest appellate court in the Commonwealth of Kentucky as provided in subsection (3) of this section, the distributor's license fee as provided in KRS 238.530(1) shall become inapplicable.

Section 17. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutory-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.

2. Lieutenant Governor.

3. Department of State.

(a) Secretary of State.

(b) Board of Elections.

(c) Registry of Election Finance.

4. Department of Law.

(a) Attorney General.

5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   (a) Department of State Police.
   (b) Department of Criminal Justice Training.
   (c) Department of Corrections.
   (d) Department of Juvenile Justice.
   (e) Office of the Secretary.
   (f) Offices of the Deputy Secretaries.
   (g) Office of General Counsel.
   (h) Division of Kentucky State Medical Examiners Office.
   (i) Parole Board.
   (j) Kentucky State Corrections Commission.
   (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
   (a) Department of Education.
      (1) Kentucky Board of Education.
      (2) Education Professional Standards Board.
   (b) Department for Libraries and Archives.
   (c) Kentucky Arts Council.
   (d) Kentucky Educational Television.
   (e) Kentucky Historical Society.
   (f) Kentucky Teachers' Retirement System Board of Trustees.
   (g) Kentucky Center for the Arts.
   (h) Kentucky Craft Marketing Program.
   (i) Kentucky Commission on the Deaf and Hard of Hearing.
   (j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

(n) Department of Charitable Gaming.

7. Cabinet for Families and Children:

(a) Department for Social Insurance.

(b) Department for Social Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Aging Services.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of Program Support.

(i) Office of the Inspector General.

9. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Budget.

(c) Office of Financial Management and Economic Analysis.

(d) Office of the Controller.

(e) Department for Administration.

(f) Department of Facilities Management.

(g) Department of Information Systems.

(h) State Property and Buildings Commission.

(i) Kentucky Pollution Abatement Authority.

(j) Kentucky Savings Bond Authority.

(k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Are Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workhorse Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workhorse Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Are.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Post secondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

Section 18. KRS 15.380 is amended to read as follows:

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:

(a) State Police officers;

(b) City, county, and urban-county police officers;

(c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);

(d) State or public university safety and security officers appointed pursuant to KRS 164.950;

(e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;

(f) Airport safety and security officers appointed under KRS 183.880;

(g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and

(h) Division of Insurance Fraud Investigators appointed under KRS 304.47-040.

(2) The requirements of KRS 15.380 to 15.402 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

(3) Additional training in excess of the standards set forth in KRS 15.380 to 15.402 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may, upon request of the employing agency, be certified by the council:

(a) Deputy coroners;

(b) Deputy constables;

(c) Deputy jailers;

(d) Deputy sheriffs under KRS 70.045 and 70.263(3);

(e) Officers appointed under KRS 61.360;

(f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;

(g) Private security officers;~~[and]~~

(h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080***; and***

(i) Investigators employed by the Department of Charitable Gaming in accordance with Section 3 of this Act.

(5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:

(a) Sheriffs;

(b) Coroners;

(c) Constables; and

(d) Jailers.

(6) Federal peace officers cannot be certified under KRS 15.380 to 15.402.

Section 19. The General Assembly hereby confirms Executive Order 98-905 of the Public Protection and Regulation Cabinet, to the extent it is not otherwise confirmed by this Act. This executive order creates the Department of Charitable Gaming within the Public Protection and Regulation Cabinet, including the Office of General Counsel, Division of Licensing and Compliance, and Division of Enforcement; and it abolishes the Division of Charitable Gaming within the Justice Cabinet and transfers all personnel, files, equipment, and funding to the Department of Charitable Gaming within the Public Protection and Regulation Cabinet.

Section 20. (1) The Interim Joint Committee on Licensing and Occupations is directed to study during the 2000-2001 interim, the following issues related to charitable gaming:

(a) The impact of the 40% Rule on charitable organizations, with particular emphasis on charitable organizations located in areas that are in close proximity to competitive forms of gaming, such as riverboat casinos;

(b) Development of a reasonable and workable method of establishing facility rental rates, to include a review of basing rental rates on attendance or gross receipts;

(c) The impact of inflation on charitable gaming expenses and the need to adjust accordingly prize limits and other policies limiting gross receipts; and

(d) Any other issue brought to the attention of the committee.

(2) The Interim Joint Committee on Licensing and Occupations shall conduct the study in cooperation with the Department of Charitable Gaming and the committee is encouraged to seek input from the:

(a) Kentucky Charitable Gaming Advisory Committee;

(b) Kentucky Charitable Gaming Association;

(c) Licensed charitable organizations, manufacturers, distributors, and facility operators; and

(d) Any other interested individuals or groups.

Approved April 7, 2000

CHAPTER 375

(HB 161)

AN ACT relating to speech-language pathology.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) The Education Professional Standards Board shall have the authority and responsibility to certify as a teacher of exceptional children/communication disorders, an individual who has:

(a) Completed an approved program of preparation that corresponds to the certificate;

(b) Achieved a passing score on an appropriate assessment as determined by the Education Professional Standards Board;

(c) Fulfilled other requirements for teacher certification as determined by the Education Professional Standards Board, in accordance with KRS Chapter 161 and administrative regulations promulgated thereunder; and

(d) Completed the requirements set forth in subsection (2) of this section.

(2) The Education Professional Standards Board shall issue two (2) levels of certification for teachers of exceptional children/communication disorders:

(a) Baccalaureate level certification shall be issued to a person who has:

1. Completed an approved program of preparation leading to a bachelor's degree in speech-language pathology;

2. Been granted licensure as a speech-language pathology assistant from the Kentucky Board of Speech-Language Pathology and Audiology, under KRS Chapter 334A; and

3. Completed the other requirements set forth in subsection (1) of this section; and

(b) Master's level certification shall be issued to a person who has:

1. Completed an approved program of preparation leading to a master's degree in speech-language pathology; and

2. Completed the other requirements specified in subsection (1) of this section.

(3) A person holding licensure through the Kentucky Board of Speech-Language Pathology and Audiology as a speech-language pathology assistant, but not certified as a teacher of exceptional children/communication disorders, may:

(a) Continue to work in the public schools as a classified employee under the provisions of KRS Chapter 334A and administrative regulations promulgated by the Kentucky Board of Speech-Language Pathology and Audiology; or

(b) Pursue certification as a baccalaureate level teacher of exceptional children/communication disorders while working as a speech-language pathology assistant.

(4) Candidates for certification as a teacher of exceptional children/communication disorders shall participate in the teacher internship program under KRS 161.030.

(5) A bachelor's level teacher of exceptional children/communication disorders shall work under requirements for speech-language pathology assistants set forth in KRS Chapter 334A.

(6) The Education Professional Standards Board shall develop a policy through the promulgation of administrative regulations by June 30, 2001, to permit a speech-language pathology assistant with two (2) years or more of successful professional experience pursuing certification as a baccalaureate level teacher of exceptional children to:

(a) Substitute prior professional experience for student teaching requirements; and

(b) Substitute prior professional experience for beginning teacher internship requirements.

(7) A teacher of exceptional children/communication disorders shall receive salary and benefits, including membership in the Teachers' Retirement System, commensurate with their education, certification, and experience as prescribed by law. Years of experience as a speech-language pathology assistant shall be included in the calculation of all benefits, including membership in the Teachers' Retirement System, for individuals with baccalaureate level certification as a teacher of exceptional children/communication disorders.

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

A public postsecondary education institution with a degree program in speech-language pathology and a teacher education program, under the direction of the Council on Postsecondary Education, and in consultation with the Education Professional Standards Board and the Kentucky Board of Speech-Language Pathology and Audiology, shall:

(1) Align the programs of studies for speech-language pathology and teacher education to permit a student to successfully prepare for licensure as a speech-language pathology assistant and certification as a bachelor's level teacher of exceptional children/communication disorders;

(2) Increase the number of qualified students accepted into programs leading to licensure as a speech-language pathologist or speech-language pathology assistant and certification as a teacher of exceptional children/communication disorders, subject to:

(a) Requirements for program certification by national certifying bodies, including, but not limited to, student to faculty ratios;

(b) The strategic plans of the Council on Postsecondary Education and the postsecondary education institution; and

(c) The budgetary considerations of the postsecondary education institution.

(3) Provide expanded opportunities for speech-language pathology assistants working in public schools to pursue licensure as a speech-language pathologist and certification as a teacher of exceptional children/communication disorders, which may include:

(a) Expanded opportunities for admission to on-campus programs;

(b) The development and expansion of distance learning opportunities in collaboration with the Kentucky Commonwealth Virtual University; and

(c) Admissions requirements that take into account successful professional experience as a speech-language pathology assistant in lieu of other admissions requirements.

Section 3. KRS 161.030 is amended to read as follows:

(1) Notwithstanding the age of the pupil, the certification of all teachers and other school personnel, in public schools only, is vested in the Education Professional Standards Board. When so certified, teachers and other school personnel shall not be required to have licensure, certification, or other forms of approval from any other state agency for the performance of their respective assignments within the common schools, except as provided

for by law. All certificates authorized under KRS 161.010 to 161.126 shall be issued in accordance with the administrative regulations of the Education Professional Standards Board. After July 15, 1994, all certificate applications and other data collection instruments of the board shall include a request for voluntary information about the applicant's ethnic background. This information shall be available to help local school districts locate minority candidates. A person who holds a certificate prior to this requirement may request that ethnic information be added to his file. Nothing in this section shall preclude the right of an individual in a nonpublic school from seeking voluntary certification by the Education Professional Standards Board.

(2) Certificates shall be issued upon written application and in accordance with statutes and regulations in effect at the time of application to persons who have completed, at colleges, universities, or local school district programs approved by the Education Professional Standards Board for the preparation of teachers and other school personnel, the curricula prescribed by the administrative regulations of the Education Professional Standards Board.

(3) Certification of all new teachers and teachers seeking additional certification shall require the successful completion of appropriate assessments prior to certification. The assessments shall be selected by the Education Professional Standards Board and shall measure knowledge in the specific teaching field of the applicant, including content of the field and teaching of that content. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each assessment. The assessments shall measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky. Upon successful completion of the assessments and the approved teacher preparation program, a certificate valid for one (1) year shall be issued. If an out-of-state teacher with less than two (2) years experience comes to Kentucky after the deadline for taking the assessments, a temporary certificate may be issued for a period up to six (6) months provided the local board cannot fill the vacant position with a certified teacher. The teacher shall take the assessments if they are administered during the period of the temporary certificate. The certificate shall be extended for the remainder of the year if the teacher successfully completes the assessments. If the teacher fails the assessments, the temporary certificate shall be valid only for the current semester.

(4) A reasonable fee to be paid by the teacher and directly related to the actual cost of the administration of the assessments shall be established by the Education Professional Standards Board. Provisions shall be made for persons having less than minimum levels of performance on any assessment to repeat that assessment, and candidates shall be informed of their strengths and weaknesses in the specific performance areas. The Department of Education shall provide for confidentiality of the individual assessment scores. Scores shall be available only to the candidate and to the education officials who are responsible for determining whether established certification standards have been met. Scores shall be used only in the assessment for certification of new teachers and of out-of-state teachers with less than two (2) years of teaching experience who are seeking initial certification in Kentucky.

(5) All new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. The teacher shall be a full-time employee or shall have an annual contract and serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship. The internship may be served in a public school or a nonpublic school which meets the state performance standards as established in KRS

156.160 or which has been accredited by a regional or national accrediting association. Successful completion shall be determined by a majority vote of the beginning teacher committee. The internship period shall be counted as experience for the purpose of continuing contract status, retirement eligibility, and benefits for single salary experience increments. Upon successful completion of the beginning teacher program, the one (1) year initial teaching certificate shall be extended for the remainder of the usual duration period established for that particular certificate by Education Professional Standards Board administrative regulations.

(6) The beginning teacher committee shall be composed of three (3) persons who have successfully completed special training in the supervision and assessment of the performance of beginning teachers as provided in subsection (8) of this section***, except as provided in paragraph (g) of this subsection***. The committee shall consist of a resource teacher, the school principal of the school where the internship is served, and a teacher educator appointed by a state-approved teacher training institution.

(a) If more than two (2) teacher interns are employed in the same school, the principal's responsibility may be shared with an assistant principal who holds certification as a principal.

(b) In unusual situations, the Education Professional Standards Board may permit the assistant principal to serve in lieu of the principal on a beginning teacher committee.

(c) If the teacher training institution is unable to provide a member, the district superintendent shall appoint an instructional supervisor from the school district.

(d) If the intern is teaching in a regionally or nationally accredited nonpublic school without a principal, the person filling the principal member position may have other appropriate qualifications as required by administrative regulations promulgated by the Education Professional Standards Board.

(e) If the teacher training institution is unable to provide a member to serve on the beginning teacher committee in a nonpublic school, the chief officer of the school shall appoint an instructional supervisor or a teacher with like qualifications and responsibilities to serve on the beginning teacher committee in lieu of the teacher educator.

(f) The resource teacher shall be appointed by the Department of Education from a pool of qualified resource teachers, and, any statutes to the contrary notwithstanding and to the extent of available appropriations, shall be entitled to be paid a reasonable stipend by the Department of Education for work done outside normal working hours. In the case of a resource teacher in a nonpublic school, payment shall be made directly to the resource teacher by the Department of Education. Priority shall be given to resource teachers in the following order***, except as provided in paragraph (g) of this subsection***:

1. Teachers with the same certification in the same school;

2. Teachers with the same certification in the same district;

3. Teachers in the same school;

4. Teachers in the same district; and

5. Teachers in an adjacent school district.

(g) ***1. The resource teacher for an individual pursuing initial certification as a baccalaureate level teacher of exceptional children/communication disorders shall be a master's level teacher of exceptional children/communication disorders, if one is available.***

2. If a master's level teacher of exceptional children/communication disorders is not available, the Education Professional Standards Board may allow a licensed speech-language pathologist to serve on the beginning teacher committee in lieu of a resource teacher.

(h) The committee shall meet with the beginning teacher a minimum of three (3) times per year for evaluation and recommendation with all committee members present. In addition, each member of the committee shall observe the beginning teacher in the classroom a minimum of three (3) times per year. If the teacher's first year performance is judged by the committee to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time if the teacher is employed by a school district.

(7) The resource teacher shall spend a minimum of seventy (70) hours working with the beginning teacher; twenty (20) of these hours shall be in the classroom setting; fifty (50) of these hours shall be in consultation other than class time or attending assessment meetings. The resource teacher shall have completed at least four (4) years of successful teaching experience as attested to by his or her immediate supervisor or by having achieved tenure and be able to show evidence of continuing professional development by having achieved a master's degree or its equivalent or the accumulation of two thousand (2,000) hours of continuing professional activities.

(8) By contract with teacher education institutions in the Commonwealth, the chief state school officer shall provide special training for persons who will be serving on the beginning teacher committees. Completion of special training shall be evidenced by successfully passing the assessments as prescribed by the Education Professional Standards Board. A principal hired after July 15, 1996, shall be required to complete the beginning teacher committee training program within one (1) year after his appointment.

(9) If an applicant establishes eligibility for a one (1) year certificate under the provisions of subsection (3) of this section, but does not become employed on the basis needed to satisfy the one (1) year internship requirement, the applicant shall be eligible for the issuance of a certificate for substitute teaching as provided by the administrative regulations of the Education Professional Standards Board. The applicant shall remain eligible for the one (1) year certificate, as provided in subsection (3) of this section, and for the opportunity to serve the internship for a period of five (5) years after establishing eligibility. If the internship is not completed within the five (5) year period, the applicant must reestablish eligibility by repeating and passing the assessment program in effect for new teachers at that time or by completing a minimum of six (6) graduate hours toward completion of a graduate program required by administrative regulations promulgated by the Education Professional Standards Board. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility.

(10) The Education Professional Standards Board shall approve the curricula of any standard college or university, or of any department thereof, for the training of teachers, and shall

also approve the curricula of any local district alternative certification program, when the curricula comply with the administrative regulations of the Education Professional Standards Board for the issuance of certificates and when the institution has met the terms and conditions provided in KRS 161.010 to 161.120. Any student who has completed any of these curricula, as approved by the Education Professional Standards Board, and who has completed the prescribed requirements for the issuance of certificates shall be granted a certificate corresponding to the curricula completed.

Section 4. KRS 334A.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;

(2) "Person" means any individual, organization, or corporate body, except that only individuals can be licensed under this chapter;

(3) "Speech-language pathologist" means one who practices speech-language pathology. A speech-language pathologist may describe himself to the public by any title or description of services incorporating the words "speech-language pathologist," "speech-language pathology," "speech-language therapy," "speech-language correction," "speech-language correctionist," "speech-language therapist," "speech clinic," "speech clinician," "language pathologist," "language pathology," "language therapist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "phoniatrist," "communication disorders," or any similar titles or descriptions;

(4) "The practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, instruction, and research related to the development and disorders of speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies for the purpose of designing and implementing programs for the amelioration of these disorders and conditions. Any representation to the public by title or by description of services, methods, or procedures for the evaluation, counseling, remediation consultation, measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, instruction, and research of persons suffering or suspected of suffering from conditions or disorders affecting speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies shall be considered to be the practice of speech-language pathology;

(5) "Audiologist" is defined as one who practices audiology. An audiologist may describe himself to the public by any title or description of services incorporating the words "audiologist," "audiology," "audiological," "hearing center," "hearing clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist," "audiometrics," "otometry," "otometrist," or any similar titles or descriptions of service;

(6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and disorders of hearing for the purpose of modifying communicative disorders involving speech, language, auditory behavior, or other aberrant behavior related to hearing

loss; planning, directing, conducting, or participating in identification and hearing conservation programs; and habilitative and rehabilitative programs, including hearing aid recommendations and evaluation, auditory training, or speech reading;

(7) "Continuing professional education" in speech-language pathology and audiology consists of planned learning experiences beyond a basic educational program leading to a degree. These experiences are designed to promote knowledge, skills, and attitudes of speech-language pathology and audiology practitioners to enable them to provide improved health care to the public.

(8) "Speech-language pathology assistant" means one who assists in the practice of speech-language pathology only under the supervision and direction of an appropriately qualified supervisor and only within the public school system in the Commonwealth. Any speech pathology services provided without appropriate supervision, or outside the public school system shall be deemed to be the unlicensed practice of speech pathology and shall subject the offending party to penalties established pursuant to KRS 334A.990.

(9) "Assisting in the practice of speech pathology" means the provision of certain specific components of a speech or language service program provided by a speech-language pathology assistant under the supervision and direction of an appropriately qualified supervisor.

(a) If the training, supervision, documentation, and planning are appropriate, the following tasks may be delegated to a speech-language pathology assistant:

1. Conduct speech-language and hearing screenings without interpretation following specified screening protocols developed by a speech-language pathologist and audiologist, respectively;

2. Follow documented treatment plans or protocols as prescribed by the supervisor;

3. Document student progress toward meeting established objectives as stated in the treatment plan;

4. Provide direct treatment assistance to identified students under the supervision of the supervisor;

5. Assist with clerical and other related duties as directed by the supervisor;

6. Report to the supervisor about the treatment plan based on a student's performance;

7. Schedule activities, prepare charts, records, graphs, or otherwise display data. This shall not include report generation;

8. Perform simple checks and maintenance of equipment;

9. Participate with the supervisor in research projects, inservice training, and public relations programs;

10. Assist in the development and maintenance of an appropriate schedule for service delivery;

11. Assist in implementing collaborative activities with other professionals; ~~[and]~~

12. Assist in administering tests for diagnostic evaluations and progress monitoring***; and***

13. Participate in parent conferences, case conferences, or any interdisciplinary team in consultation with, or in the presence of, the supervisor.

(b) The following activities shall be outside the scope of practice of the speech-language pathology assistant:

1. Performing any activity which violates the code of ethics promulgated by the board by administrative regulation;

2. Interpreting test results, or performing diagnostic evaluations without supervision;

3.~~[Participating in parent conferences, case conferences, or any interdisciplinary team without consultation with, or in the presence of, the supervisor;~~

~~4.]~~ Conducting client or family counseling without the recommendation, guidance, and approval of the supervisor;

4.~~[5.]~~Writing, developing, or modifying a student's individualized treatment plan in any way without the recommendation, guidance, and approval of the supervisor;

5.~~[6.]~~Treating students without following the individualized treatment plan prepared by the supervisor or without access to supervision;

6.~~[7.]~~Signing any due process document without the co-signature of the supervisor;

7.~~[8.]~~Selecting or discharging students;

8.~~[9.]~~Disclosing clinical or confidential information, either orally or in writing, to anyone not designated by the supervisor;

9.~~[10.]~~ Making referrals for additional services; and

10.~~[11.]~~ Representing themselves as something other than a speech-language pathology assistant.

(10) "Supervisor" means a person who holds a Kentucky license as a speech-language pathologist or who holds Education Professional Standards Board ***"master's level"*** certification as a teacher of exceptional children in the areas of speech and communication disorders as established by administrative regulation.

Section 5. KRS 334A.035 is amended to read as follows:

(1) A person who has a master's degree in the area of speech-language pathology or audiology or substantive equivalent course work as defined by the board's administrative regulations and who has completed supervised direct clinical practicum with individuals presenting a variety of disorders of communication, the experience being obtained with a training institution or in one (1) of its cooperating programs, shall apply for an interim license during the time that person is completing postgraduate professional experience deemed necessary by the board. This postgraduate professional experience shall be completed under the supervision of a speech-language pathologist who holds a Kentucky license, if the applicant is seeking interim licensure in speech-language pathology, or under an audiologist who holds a Kentucky license, if the applicant is seeking interim licensure in audiology. A person with interim licensure shall make every effort to take and pass an examination approved by the board. Upon completion of postgraduate professional experience deemed necessary by

the board, the speech-language pathologist or audiologist shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(2) A person who has a baccalaureate degree in the area of speech-language pathology as defined by administrative regulation and who does not hold a valid and current ***master's degree level*** credential as a speech-hearing specialist issued by the ***Education Professional Standards Board***[~~Department of Education~~], shall apply for an interim license as a speech-language pathology assistant during the time that person is completing their professional experience as established by the board by administrative regulation. This professional experience shall be completed under the supervision of an appropriately qualified supervisor. Upon completion of the professional experience, the speech-language pathology assistant shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(3) In order to regulate the quality of professional service to children in the public schools of the Commonwealth, any speech-language pathologist employed by the public schools shall apply for and maintain appropriate licensure until the time the Kentucky Education Professional Standards Board promulgates an administrative regulation requiring speech-language pathologists to meet the requirements of KRS 334A.050(2)(a) and (b).

Section 6. KRS 334A.060 is amended to read as follows:

(1)[~~The board may waive the examination and educational requirements for those applicants for licensure as a speech-language pathology assistant who hold a valid and current credential as a speech and hearing specialist issued by the Education Professional Standards Board or graduate with a baccalaureate degree in the area of speech-language pathology as defined by the board prior to December 31, 1994. The authority of the board to grant licensure under these circumstances shall end on March 1, 1995.~~

~~(2)~~] The board may waive the examination and grant a license to applicants who present proof of current licensure in a state which has standards that are at least equivalent to those of this state.

(2)[~~(3)~~] The board may waive the examination and grant a license to those who hold the Certificate of Clinical Competence of the American Speech and Hearing Association in the area for which they are applying for licensure.

Section 7. KRS 334A.033 is amended to read as follows:

(1) The board may issue a license to practice as a speech-language pathology assistant under the following conditions:

(a) The practice shall be limited to the public schools and shall be under the supervision of an appropriately qualified supervisor;

(b) The requirements for supervision shall be set forth in administrative regulations promulgated by the board ***and shall include requirements that:***

1. A person holding an interim license as a speech-language pathology assistant shall receive no less than three (3) hours per week of documented direct

supervision and three (3) hours per week of indirect supervision from an appropriate supervisor as determined by the board;

2. A person holding a license as a speech-language pathology assistant with less than three (3) years of full-time experience shall receive no less than two (2) hours per week of documented direct supervision and two (2) hours per week of indirect supervision from an appropriate supervisor as determined by the board;

3. A person holding a license as a speech-language pathology assistant with three (3) or more years of full-time experience shall receive no less than one (1) hour per week of documented direct supervision and one (1) hour per week of indirect supervision, unless, in the professional judgment of the supervisor, the ability of the speech-language pathology assistant requires a higher level of supervision in order to avoid compromising the quality of services provided to students; and

4. Supervision shall be adjusted proportionally for less than full-time employment;

(c) An individual shall not supervise or be listed as the supervisor for more than two (2) speech-language pathology assistants; and

(d) The supervisor shall delegate to the assistant the appropriate tasks pursuant to KRS 334A.020 and the supervisor and assistant shall work together to provide the appropriate services to all assigned pupils ***taking into account the severity and complexity of the needs of individual students and the respective workloads of the supervisor and assistant***. The maximum number of pupils served by each speech-language pathology assistant shall not exceed the direct service caseload of the speech-language pathologist as established in KRS 334A.190.

(2) To be eligible for licensure by the board as a speech-language pathology assistant, the applicant shall meet the following requirements:

(a) A baccalaureate degree in the area of speech-language pathology as defined by administrative regulation;

(b) Completion of postgraduate professional experience deemed appropriate by the board by administrative regulation; and

(c) List on the application the name of the appropriately qualified supervisor who has agreed to provide supervision as set forth by the board by administrative regulation.

Section 8. KRS 334A.190 is amended to read as follows:

(1) The caseload limitations for speech-language pathologists in the public schools shall ***not exceed sixty-five (65) pupils.***~~[be as follows:~~

~~(1) The individual direct service caseload of a speech-language pathologist in the public schools shall not exceed the following:~~

~~(a) Seventy-five (75) pupils for the school year 1997-1998;~~

~~(b) Seventy (70) pupils for the school year 1998-1999;~~

~~(c) Sixty-five (65) pupils for the school year 1999-2000 and thereafter;]~~

(2) The total caseload of speech-language pathologists who supervise assistants may be increased by no more than one-half (1/2) of the amount set forth in subsection (1) of this section for each speech-language pathology assistant working under their supervision.

Approved April 7, 2000

CHAPTER 376

(HB 177)

AN ACT relating to the use of information technology in the delivery of health services.

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

Section 1. KRS 45A.605 is amended to read as follows:

(1) As used in this section:

(a) "Information highway" means a communication network for voice, data, and video communications technologies; and

(b) "Agencies of the Commonwealth of Kentucky" includes all authorities; boards; commissions; councils; departments; program cabinets; the Kentucky Lottery Corporation; vocational schools; the Kentucky School for the Deaf; the Kentucky School for the Blind; upon written request of the Chief Justice, the Court of Justice; upon written request of the co-chairmen of the Legislative Research Commission, the General Assembly and the Legislative Research Commission; and upon written request of presidents, state institutions of higher education.

(2) The provisions of any other law notwithstanding, the Finance and Administration Cabinet may enter into one (1) or more contracts, on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The information highway shall enable the Commonwealth to benefit from cost-effective telecommunications technologies and shall provide opportunities for the private sector. ***These opportunities shall include, but not be limited to, the provision of telehealth by licensed health care providers as provided in KRS Chapters 205, 211, 304.17A, 310, 311, 312, 313, 314, 314A, 315, 319, 319A, 320, 327, 334A, and 335.***

(3) Upon implementation, all agencies of the Commonwealth of Kentucky shall obtain all available communications services under contracts executed pursuant to subsection (2) of this section, except as provided under subsection (4) of this section.

(4) The secretary of the Finance and Administration Cabinet may grant exceptions to the mandatory use of the information highway upon good cause shown.

(5) Any contract awarded under subsection (2) of this section shall be deemed, for purposes of KRS 45A.050, a state agency price contract to which all political subdivisions and state-licensed nonprofit institutions of higher education may have access and use on the same terms as agencies of the Commonwealth of Kentucky. In addition, nonprofit schools providing elementary or secondary education and nonprofit health care organizations shall be allowed to have access and use the contract on the same terms as agencies of the Commonwealth of Kentucky. "Nonprofit schools" and "nonprofit health care organizations" mean those schools and health care organizations which have been granted tax-exempt status under the United States Internal Revenue Code.

SECTION 2. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

(1) The Telehealth Board is created and placed for administrative purposes under the Governor's Office for Technology. This seven (7) member board shall consist of the:

(a) Chancellor, or a designee, of the medical school at the University of Kentucky;

(b) Chancellor, or a designee, of the medical school at the University of Louisville;

(c) Commissioner, or a designee, of the Department for Public Health;

(d) Chief information officer, or a designee, of the Governor's Office for Technology; and

(e) Three (3) members at large, appointed by the Governor, who are health professionals or third parties as those terms are defined in Section 3 of this Act. To ensure representation of both groups, no more than two (2) health professionals or two (2) third parties shall be members of the board at the same time. These members shall serve a term of four (4) years, may serve no more than two (2) consecutive terms, and shall be reimbursed for their costs associated with attending board meetings.

(2) The members shall elect a chair and hold bimonthly meetings or as often as necessary for the conduct of the board's business.

(3) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to:

(a) Establish telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and one (1) each in western Kentucky and eastern Kentucky, with the sites to be determined by the board;

(b) Develop a telehealth network, to coordinate with the training centers, of no more than twenty-five (25) rural sites, to be established based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the telehealth network, ten (10) local health departments, five (5) of which shall be administered by the University of Kentucky and five (5) of which shall be administered by the University of Louisville;

(c) Establish protocols and standards to be followed by the training centers and rural sites; and

(d) Maintain the central link for the network with the Kentucky information highway.

(4) The board shall, following consultation with the Governor's Office for Technology, recommend the processes and procedures for the switching and running of the telehealth network.

(5) The University of Kentucky and the University of Louisville shall report semiannually to the Interim Joint Committee on Health and Welfare on the following areas as specified by the board through an administrative regulation promulgated in accordance with KRS Chapter 13A.

(a) Data on utilization, performance, and quality of care;

(b) Quality assurance measures, including monitoring systems;

(c) The economic impact on and benefits to participating local communities; and

(d) Other matters related to telehealth at the discretion of the board.

(6) The board shall receive and dispense funds appropriated for its use by the General Assembly or obtained through any other gift or grant.

Section 3. KRS 205.510 is amended to read as follows:

As used in this chapter as it pertains to medical assistance unless the context clearly requires a different meaning:

(1) ***"Chiropractor" means a person authorized to practice chiropractic under KRS Chapter 312;***

(2) "Council" means the Advisory Council for Medical Assistance;

(3)[~~(2)~~] "Dentist" means a person authorized to practice dentistry under laws of the Commonwealth;

(4)[~~(3)~~] ***"Health professional" means a physician, physician assistant, nurse, doctor of chiropractic, mental health professional, optometrist, dentist, or allied health professional who is licensed in Kentucky;***

(5) "Medical care" as used in this chapter means essential medical, surgical, ***chiropractic,*** dental, optometric, podiatric, ***telehealth,*** and nursing services, in the home, office, clinic, or other suitable places, which are provided or prescribed by physicians, optometrists, podiatrists, or dentists licensed to render such services, including drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing-home and convalescent care, hospital care as defined in KRS 205.560(1)(a), and such other essential medical services and supplies as may be prescribed by such persons; but not including abortions, or induced miscarriages or premature births, unless in the opinion of a physician such procedures are necessary for the preservation of the life of the woman seeking such treatment or except in induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child. However, this section does not authorize optometrists to perform any services other than those authorized by KRS Chapter 320;

(6)[~~(4)~~] "Nurse" means a person authorized to practice professional nursing under the laws of the Commonwealth;

(7)[~~(5)~~] "Nursing home" means a facility which provides routine medical care in which physicians regularly visit patients, which provide nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond that which the untrained person possesses, and which maintains complete records on patient care, and which is licensed pursuant to the provisions of KRS 216B.015;

(8)[~~(6)~~] "Optometrist" means a person authorized to practice optometry under the laws of the Commonwealth;

(9) "Other persons eligible for medical assistance" may include the categorically needy excluded from money payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as

prescribed by administrative regulation of the secretary for health services or his designee;

(10)[~~(7)~~] "Pharmacist" means a person authorized to practice pharmacy under the laws of the Commonwealth;

(11)[~~(8)~~] "Physician" means a person authorized to practice medicine or osteopathy under the laws of the Commonwealth;

(12)[~~(9)~~] "Podiatrist" means a person authorized to practice podiatry under the laws of the Commonwealth;

(13)[~~(10)~~] "Primary-care center" means a facility which provides comprehensive medical care with emphasis on the prevention of disease and the maintenance of the patients' health as opposed to the treatment of disease;

(14)[~~(11)~~] "Public assistance recipient" means a person who has been certified by the Department for Social Insurance of the Cabinet for Families and Children as being eligible for, and a recipient of, public assistance under the provisions of this chapter;

(15) "Telehealth consultation" means a medical or health consultation, for purposes of patient diagnosis or treatment, that requires the use of advanced telecommunications technology, including, but not limited to:

(a) Compressed digital interactive video, audio, or data transmission;

(b) Clinical data transmission via computer imaging for teleradiology or telepathology; and

(c) Other technology that facilitates access to health care services or medical specialty expertise.

(16) "Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including, but not limited to, a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparations Act, subtitle 39 of KRS Chapter 304, who is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act, 42 U.S.C. sec. 1396 et seq.; and

[~~(12) "Other persons eligible for medical assistance" may include the categorically needy excluded from money payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as prescribed by regulation of the secretary for health services or his designee;~~]

(17)[~~(13)~~] "Vendor payment" means a payment for medical care which is paid by the Cabinet for Health Services directly to the authorized person or institution which rendered medical care to an eligible recipient[~~;~~

~~(14) "Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including but not limited to a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparation Act, who is or may be liable to pay all or part of the medical cost~~

~~of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act~~].

SECTION 4. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Health Services and any regional managed care partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program shall provide Medicaid reimbursement for a telehealth consultation that is provided by a Medicaid-participating practitioner who is licensed in Kentucky and that is provided in the telehealth network established in subsection (3)(b) of Section 2 of this Act.

(2) (a) The cabinet shall establish reimbursement rates for a telehealth consultations. A request for reimbursement shall not be denied solely because an in-person consultation between a Medicaid-participating practitioner and a patient did not occur.

(b) A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.

(3) A health-care facility that receives reimbursement under this section for consultations provided by a Medicaid-participating provider who practices in that facility and a health professional who obtains a consultation under this section shall establish quality-of-care protocols and patient confidentiality guidelines to ensure that telehealth consultations meet all requirements and patient care standards as required by law.

(4) The cabinet shall not require a telehealth consultation if an in-person consultation with a Medicaid-participating provider is reasonably available where the patient resides, works, or attends school or if the patient prefers an in-person consultation.

(5) The cabinet shall request any waivers of federal laws or regulations that may be necessary to implement this section.

(6) (a) The cabinet and any regional managed care partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program shall study the impact of this section on the health care delivery system in Kentucky and shall, upon implementation, issue a quarterly report to the Legislative Research Commission. This report shall include an analysis of:

1. The economic impact of this section on the Medicaid budget, including any costs or savings as a result of decreased transportation expenditures and office or emergency room visits;

2. The quality of care as a result of telehealth consultations rendered under this section; and

3. Any other issues deemed relevant by the cabinet.

(b) In addition to the analysis required under paragraph (a) of this subsection, the cabinet report shall compare telehealth reimbursement and delivery among all regional managed care partnerships or other entities under contract with the cabinet for the administration or provision of the Medicaid program.

(7) The cabinet shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms, records required, and authorization procedures to be followed in conjunction with this section.

SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The Department for Public Health may develop programs for local health departments to participate in telehealth and to seek reimbursement for services as provided for other health care providers under KRS Chapter 205 or 304.17A.

Section 6. KRS 304.17A-005 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

(1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;

(2) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;

(3) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);

(4) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);

(5) "COBRA" means any of the following:

(a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;

(b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or

(c) 42 U.S.C. sec. 300bb;

(6) (a) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

1. A group health plan;

2. Health insurance coverage;

3. Part A or Part B of Title XVIII of the Social Security Act;

4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;

5. Chapter 55 of Title 10, United States Code;

6. A medical care program of the Indian Health Service or of a tribal organization;

7. A state health benefits risk pool;

8. A health plan offered under Chapter 89 of Title 5, United States Code;

9. A public health plan, as defined in regulations; or

10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)).

(b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (10) of this section;

(7) "Eligible individual" means an individual:

(a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;

(b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;

(c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);

(d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and

(e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;

(8) "Employer-organized association" means any of the following:

(a) Any entity that was qualified by the commissioner as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;

(b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or

(c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.

Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;

(9) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the

employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;

(10) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:

(a) Coverage only for accident, or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics;

(h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(i) Limited scope dental or vision benefits;

(j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

(k) Such other similar, limited benefits as are specified in administrative regulations;

(l) Coverage only for a specified disease or illness;

(m) Hospital indemnity or other fixed indemnity insurance;

(n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;

(o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and

(p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan;

(11) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);

(12) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals;

(13) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program;

(14) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;

(15) "Guaranteed acceptance program qualified individual" means an individual who:

(a) Is not an eligible individual;

(b) Is not eligible for or covered by other health benefit plan coverage;

(c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);

(d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and

(e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:

1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;

2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or

3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;

(16) "Guaranteed acceptance plan supporting insurer" means either an insurer that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;

(17) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;

(18) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

(a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;

(b) Chiropractors licensed under KRS Chapter 312;

(c) Dentists licensed under KRS Chapter 313;

(d) Optometrists licensed under KRS Chapter 320;

(e) Physician assistants regulated under KRS Chapter 311;

(f) Nurse practitioners licensed under KRS Chapter 314; and

(g) Other health care practitioners as determined by the department by administrative regulations promulgated under KRS Chapter 13A;

(19) (a) "High-cost condition" means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the commissioner in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the commissioner under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.

(b) The commissioner by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:

1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and

2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the commissioner, the scoring scale for which shall be established by the commissioner.

(c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and Wilson's disease;

(20) “Index rate” means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;

(21) “Individual market” means the market for the health insurance coverage offered to individuals other than in connection with a group health plan;

(22) “Insurer” means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;

(23) "Insurer-controlled" means that the commissioner has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;

(24) “Large group” means:

(a) An employer with fifty-one (51) or more employees; or

(b) An affiliated group with fifty-one (51) or more eligible members;

(25) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;

(26) “Market segment” means the portion of the market covering one (1) of the following:

(a) Individual;

(b) Small group;

(c) Large group; or

(d) Association;

(27) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;

(28) "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;

(29) "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;

(30) "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;

(31) "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;

(32) "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;

(33) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;

(34) "Small group" means:

(a) A small employer with two (2) to fifty (50) employees; or

(b) An affiliated group or association with two (2) to fifty (50) eligible members;~~[and]~~

(35) "Standard benefit plan" means the plan identified in KRS 304.17A-250***; and***

(36) "Telehealth" has the meaning provided in Section 8 of this Act.

SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) A health benefit plan shall not exclude a service from coverage solely because the service is provided through telehealth and not provided through a face-to-face consultation if the consultation is provided through the telehealth network established under Section 2 of this Act. A health benefit plan may provide coverage for a consultation at a site not within the telehealth network at the discretion of the insurer.

(b) A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.

(2) Benefits for a service provided through telehealth required by this section may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the health benefit plan for the same service provided through a face-to-face consultation.

(3) Payment made under this section may be consistent with any provider network arrangements that have been established for the health benefit plan.

(4) The department shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained in conjunction with this section.

Section 8. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

(1) "Board" means the State Board of Medical Licensure;

(2) "President" means the president of the State Board of Medical Licensure;

(3) "Secretary" means the secretary of the State Board of Medical Licensure;

(4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;

(5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;

(6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;

(7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;

(8) "Temporary permit" means a permit issued to a person who has applied for a regular or limited license, and who appears from verifiable information in the application to the secretary to be qualified and eligible therefor;

(9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;

(10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;

(11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by emergency medical technicians or medical emergency dispatchers certified by the Cabinet for Health Services, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;

(12) "Physician" means a doctor of medicine or a doctor of osteopathy;

(13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;

(14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;

(15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;

(16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;

(17) "Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or who possesses a current physician assistant certificate issued by the board prior to July 15, 1998;

(18) "Supervising physician" means a physician licensed by the board who supervises physician assistants; and

(19) "Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, or other telecommunication device. Each team of physicians and physician assistants shall ensure that the delegation of medical tasks is appropriate to the physician assistant's level of training and experience; that the identification of and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

(20) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education.

SECTION 9. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED TO READ AS FOLLOWS:

(1) A treating physician who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of medical services and in the provision of continuing medical education.

SECTION 10. A NEW SECTION OF KRS CHAPTER 310 IS CREATED TO READ AS FOLLOWS:

(1) A treating dietitian or nutritionist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of dietitian and nutrition services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 11. A NEW SECTION OF KRS CHAPTER 312 IS CREATED TO READ AS FOLLOWS:

(1) A treating chiropractor who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of chiropractic services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 12. A NEW SECTION OF KRS CHAPTER 313 IS CREATED TO READ AS FOLLOWS:

(1) A treating dentist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of dental services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 13. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

(1) A treating nurse who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of nursing services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 14. A NEW SECTION OF KRS CHAPTER 314A IS CREATED TO READ AS FOLLOWS:

(1) A treating respiratory care practitioner who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of respiratory care services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 15. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

(1) A treating pharmacist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of pharmacy services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 16. A NEW SECTION OF KRS CHAPTER 319 IS CREATED TO READ AS FOLLOWS:

(1) A treating psychologist or psychological associate who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of psychological services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 17. A NEW SECTION OF KRS CHAPTER 319A IS CREATED TO READ AS FOLLOWS:

(1) A treating occupational therapist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of occupational therapy services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 18. A NEW SECTION OF KRS CHAPTER 320 IS CREATED TO READ AS FOLLOWS:

(1) A treating optometrist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of optometric services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 19. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

(1) A treating physical therapist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of physical therapy and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 20. A NEW SECTION OF KRS 335.010 TO 335.160 IS CREATED TO READ AS FOLLOWS:

(1) A treating clinical social worker who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of clinical social work services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 21. A NEW SECTION OF KRS 335.300 TO 335.399 IS CREATED TO READ AS FOLLOWS:

(1) A treating marriage and family therapist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of marriage and family therapy services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

SECTION 22. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

(1) A treating speech-language pathologist or audiologist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality

shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of speech-language pathology or audiology services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

Section 23. KRS 197.020 is amended to read as follows:

(1) The Department of Corrections shall:

(a) Formulate and prescribe all necessary regulations and bylaws for the government and discipline of the penitentiary, the rules for the government and official conduct of all officials connected with the penitentiary and for the government of the prisoners in their deportment and conduct;

(b) Prescribe the character of food and diet of the prisoners; rules for the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; and quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;

(c) Adopt, amend, and rescind, as the department deems necessary, administrative regulations governing the disposition of abandoned, lost, or confiscated property of prisoners; and

(d) Cause the administrative regulations prescribed by them, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.

(2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.

(3) The department may promulgate administrative regulations in accordance with KRS Chapter 13A to implement a program that provides for reimbursement of telehealth consultations.

Section 24. (1) The provisions of Sections 3 to 4 of this Act shall take effect on July 15, 2001, or upon approval of any federal waivers, whichever first occurs.

(2) The provisions of Sections 6 to 7 of this Act shall take effect on July 15, 2001, and shall apply to a health benefit plan that is delivered, issued, or renewed on or after that date.

Approved April 7, 2000

CHAPTER 377

(HB 181)

AN ACT relating to waiver of tuition fees for dependents of veterans.

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

Section 1. KRS 164.505 is amended to read as follows:

(1) ***A***~~[Any]~~ person ***shall not be required to pay any matriculation or tuition fees upon admission to any state supported university, junior college, or vocational training institution, if the person's deceased parent or stepparent, or if the person's deceased spouse, if the person has not remarried***~~[whose parent or any nonremarried widow or widower whose spouse]~~ was a resident of the Commonwealth of Kentucky upon joining the Kentucky National Guard or ***upon entering***~~[entrance into]~~ military service and***;***~~[who]~~

(a) Was killed while serving in state active duty, active duty for training, ***or*** inactive duty training with the Kentucky National Guard***,*** or ***while on active duty*** in the Armed Forces of the United States***,*** during a national emergency, or wars declared by Congress***,*** or actions of the United Nations***,*** or was killed by hostile fire while on active duty in the Armed Forces of the United States or the Kentucky National Guard***;*** or

(b) ~~[who]~~Died as a result of a service-connected disability ***acquired while serving in state active duty, active duty for training, or inactive duty training with the Kentucky National Guard or Reserve Component, or while on active duty in the Armed Forces of the United States, during a national emergency, or wars declared by Congress, or actions of the United Nations***~~[shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, junior college, or vocational training institution]~~.

(2) In order to obtain the benefits conferred by subsection (1), the parent-child relationship must be shown by birth certificate, adoption papers, ***marriage certificate,*** or other documentary evidence. ***A stepchild must have been a member of the veteran's household at the time of the veteran's death.*** The spousal relationship must be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death must be evidenced by certification from the records of the Kentucky Department of Military Affairs or the Veterans Administration Records, or the Department of Defense of the United States. In the event one so admitted to a state-supported university, junior college, or vocational training institution under the provisions of this section shall have obtained a cash scholarship paid or payable to ***the***~~[such]~~ institution, from whatever source, the amount of ***the***~~[such]~~ scholarship shall be applied to the credit of ***the***~~[such]~~ applicant in the payment of incidental expenses of~~[his]~~ attendance at ***the***~~[such]~~ institution, and any balance, if the terms of the scholarship permit, shall be returned to ***the***~~[such]~~ applicant.

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The nonremarried spouse, regardless of age, and any child, stepchild, or orphan, between the ages of seventeen (17) and twenty-three (23), of a deceased veteran shall not be

required to pay any matriculation or tuition fees upon admission to any state supported university, junior college, or vocational training institute for a period not in excess of the thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion, if the deceased parent or spouse:

(a) 1. Served in the Armed Forces of the United States during a national emergency, wars declared by Congress, or actions of the United Nations; or

2. Died while on active duty in the Armed Forces of the United States regardless of wartime service; or

3. Died as a result of a service connected disability acquired while on active duty with the Armed Forces of the United States regardless of wartime service; and

(b) 1. Was a resident of the Commonwealth of Kentucky at the time of death; and

2. If discharged, was under honorable conditions.

(2) In order to obtain the benefits conferred by subsection (1), the parent-child relationship must be shown by birth certificate, adoption papers, marriage certificate, or other documentary evidence. A stepchild must have been a member of the veteran's household at the time of the veteran's death. The spousal relationship must be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death must be evidenced by certification from the records of the Kentucky Department of Military Affairs, the Veterans Administration Records, or the Department of Defense of the United States. In the event one so admitted to a state-supported university, junior college, or vocational training institution under this section shall have obtained a cash scholarship paid or payable to the institution, from whatever source, the amount of the scholarship shall be applied to the credit of the applicant in the payment of incidental expenses of attendance at the institution, and any balance, if the terms of the scholarship permit, shall be returned to the applicant.

Section 3. KRS 164.515 is amended to read as follows:

(1) The spouse, regardless of age, and any child***, stepchild,*** or orphan of a permanently and totally disabled member of the Kentucky National Guard ***or Reserve Component*** injured while on state active duty, active duty for training, or inactive duty training, ***or*** a permanently and totally disabled war veteran***, or a one hundred percent (100%) service connected disabled veteran regardless of wartime service,*** or prisoner of war or member of the Armed Services declared missing in action, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition ***fees***~~[fee]~~ upon his admission to any state supported institution of higher education or to any state supported vocational training school for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.

(2) To be entitled to benefits under this section the parent ***or stepparent*** of the child claiming benefits if living must be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the United States Veterans Administration or the Department of Defense or if deceased the claim to benefits is to be based on the rating held by the veteran at the time of death or if a prisoner of war or missing in action, must have been declared as such by the Department of Defense. Members of the Kentucky National Guard must be rated permanently and totally disabled as provided in KRS Chapter 342. The parent's***, stepparent's,*** or spouse's service and rating must be

evidenced by certification from the records of the Kentucky Department of Military Affairs, Veterans Administration Records, or the Department of Defense of the United States.

(3)[~~ In the absence of certification of permanent and total disability by the Kentucky Department of Workers' Claims, the United States Veterans Administration or the Department of Defense, medical evidence showing permanent and total disability or the existence of permanent and total disability for a period of at least thirty (30) days immediately prior to death may be accepted, if this evidence is signed by a physician licensed to practice or an official of an accredited medical hospital.~~

~~(4)~~] The parent-child relationship must be shown by birth certificate, legal adoption papers***, marriage certificate,*** or other documentary evidence. ***A stepchild must be a member of the veteran's household.*** The spousal relationship must be shown by a marriage certificate or other documentary evidence.

(4)[~~(5)~~] To entitle a spouse, child***, stepchild,*** or orphan to benefit under this section the disabled member of the National Guard or ***Reserve Component***[~~ war~~] veteran living or deceased must have served on state active duty, active duty for training, or inactive duty training[~~ with the National Guard~~] or ***active duty with***[~~during time of war or the Korean conflict or subsequent periods of federally recognized hostilities or have been disabled by hostile fire in~~] the Armed Forces of the United States, and his discharge [~~therefrom ~~]must have been under honorable conditions. He must be a resident or if deceased, was a resident of the Commonwealth of Kentucky.

(5)[~~(6)~~] No provision of this section shall serve to deny these benefits to an eligible spouse, child, ***stepchild,*** or orphan, who enlists, or who fulfills a military obligation, in the Armed Forces of the United States and is discharged[~~ therefrom~~] under honorable conditions; ***the***[~~such~~] period of time spent in the military service to be compensated by like time, beyond the age of twenty-three (23) years if required, but not in excess of the period of enrollment as set forth in subsection (1) of this section.

(6)[~~(7)~~] The marriage of an eligible child, ***stepchild,*** or orphan, shall not serve to deny full entitlement to the benefits provided in this section.

Approved April 7, 2000

CHAPTER 378

(HB 278)

AN ACT relating to military burial honors, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth of Kentucky recognizes the need to provide for honorable burials for Kentuckians who have served their state and nation in the Armed Forces. Historically these burial services have been conducted by the active military units in Kentucky, the Kentucky National Guard, the military reserves, and the veterans' service organizations. However, increasing death rates, declining military resources, and an aging membership

of veterans' service organizations present the need for new initiatives in support of military burial honors.

(2) To correct this situation, and recognizing the immediate need, the Department of Military Affairs shall oversee a military burial honors program, in coordination with the Department of Veterans' Affairs, on behalf of the Commonwealth of Kentucky.

(3) The Department of Military Affairs, in consultation with and as a supplement to the Department of Defense, active United States military commands in Kentucky, the Department of Veterans Affairs, the military reserves, and veterans service organizations, shall implement and administer the provisions of Sections 1 to 4 of this Act through the promulgation of administrative regulations. These regulations shall be in accordance with the provisions of KRS Chapter 13A and shall comply with and supplement the Department of Defense and the Armed Services' guidance.

SECTION 2. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) There is established and created in the State Treasury a fund entitled the "Burial Honor Guard Trust Fund" to provide funds to offset the costs of the burial honor guard program. The fund may receive state appropriations, gifts, grants, federal funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the Adjutant General or his representative. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the burial honor guard program.

(2) The fund shall be used to support the costs, beyond federal reimbursements, that the Department of Military Affairs and the Department of Veterans Affairs incur and deem necessary in providing and supporting the personnel and activities of Sections 1 to 4 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Department of Military Affairs shall promulgate administrative regulations to implement the burial honor guard program.

(2) The Department of Military Affairs shall coordinate military burial honors for those who are determined to be eligible by federal and state regulations.

(3) The Department of Veterans Affairs shall coordinate the burial honors program with veterans' service organizations, Kentucky veterans and their dependents, and the United States Department of Veterans Affairs in support of the Department of Military Affairs.

SECTION 4. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) Recognizing the participation of secondary school students in the military burial honor program, excused absences may be granted by local school boards to students of secondary school JROTC programs or other students who participate in the burial honor guard program. This includes time spent training, traveling, and participating in the burial honor guard program.

(2) Local school boards may also adopt a policy to allow students to participate in the military burial honor guard program as a part of the instructional program.

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) An excused absence may be granted, subject to approval by the local school board, to all students of Kentucky secondary schools who participate in the burial honor guard program, as set out in Sections 1 to 4 of this Act. Most likely these would be students already participating in JROTC, drum corps, or other military programs, however, the burial honor guard program is not limited to these students. This excused absence should include time spent training, traveling, and participating in the burial honor guard program.

(2) The local school board may also adopt a policy to allow students to participate in the military burial honor guard program as a part of the instructional program.

(3) This policy of either excused absences or including burial honor guard program participation as a part of the instructional program shall not in any way penalize the local school district.

Section 6. Whereas the Commonwealth's next fiscal year begins on July 1 and the General Assembly finds that it is critical that the provisions of this Act take effect at the beginning of the fiscal year, an emergency is declared to exist and this Act takes effect July 1, 2000.

Section 7. This Act takes effect July 1, 2000.

Approved April 7, 2000

CHAPTER 379

(HB 310)

AN ACT relating to medical licensure.

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

Section 1. KRS 311.571 is amended to read as follows:

(1) No applicant who is a graduate of a medical or osteopathic school located within the United States and its territories and protectorates or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:

(a) Is able to understandably speak, read, and write the English language;

(b) Has graduated from an accredited college or university or has satisfactorily completed a collegiate course of study necessary for entry into an approved medical or osteopathic school or college;

(c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated in the United States or Canada and approved by the board;

(d) Has satisfactorily completed a prescribed course of postgraduate training of ***a***~~[at least one (1) full year's]~~ duration ***to be established***~~[and approved]~~ by the board ***in an administrative regulation promulgated in accordance with KRS Chapter 13A, after***

consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine;

(e) Has successfully completed, in a single sitting, an examination prescribed by the board;

(f) Has complied with the requirements of KRS 214.615(1); and

(g) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.

(2) No applicant who is a graduate of a medical or osteopathic school located outside the United States or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:

(a) Is able to understandably speak, read, and write the English language;

(b) Has successfully completed a course of study necessary for entry into an approved medical or osteopathic school or college;

(c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated outside the United States or Canada and approved by the board or is a citizen of the United States and has been awarded a diploma by an approved medical or osteopathic school located within the United States or Canada as part of a program designed to allow for the transfer of students to such schools from schools located outside the United States or Canada;

(d) Has successfully completed, in a single sitting, an examination prescribed by the board;

(e) Has been certified by the educational commission for foreign medical graduates or by an approved United States specialty board;

(f) Has satisfactorily completed ***a***~~[at least three (3) full years of]~~ prescribed ***course***~~[courses]~~ of postgraduate training ***of a duration to be established***~~[approved]~~ by the board ***in an administrative regulation promulgated in accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine***;

(g) Has complied with the requirements of KRS 214.615(1); and

(h) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.

(3) No applicant shall be eligible for a limited license-institutional practice unless the applicant:

(a) Has fulfilled all the requirements for regular licensure as delineated in subsection (1) of this section; or

(b) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a) through (e) and (h) of subsection (2) of this section and in addition has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board;

(c) Has complied with the requirements of KRS 214.615(1); and

(d) Has fulfilled all other reasonable qualifications for limited licensure that the board may prescribe by regulation.

(4) The board may grant an applicant a limited license-institutional practice for an unrenewable period of one (1) year if the applicant:

(a) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a), (b), (d), (e), and (h) of subsection (2) of this section;

(b) Has fulfilled the requirements for a limited license-institutional practice as indicated in subsection (3)(d) of this section;

(c) Has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board; and

(d) Has complied with the requirements of KRS 214.615(1).

(5) An applicant seeking regular licensure in the Commonwealth who was originally licensed in another state may obtain licensure in the Commonwealth without further testing and training if the applicant:

(a) Has been endorsed in writing by the applicant's original licensing state as being currently licensed in good standing in that state; and

(b) Would have satisfied all the requirements for regular licensure described in the preceding subsections had the applicant sought original licensure in this state.

(6) No applicant shall be granted licensure in the Commonwealth unless the applicant has successfully completed an examination prescribed by the board in accordance with any rules that the board may establish by regulation concerning passing scores, testing opportunities and test score recognition.

(7) Notwithstanding any of the requirements for licensure established by subsections (1) to (6) of this section, the board may deny licensure to an applicant or the reregistrant of an inactive license without a prior hearing upon a finding that the applicant or reregistrant has violated any provision of KRS 311.595 or 311.597 or is otherwise unfit to practice. Orders denying licensure may be appealed pursuant to KRS 311.593.

(8) Notwithstanding any of the foregoing, the board may grant licensure to an applicant in extraordinary circumstances upon a finding by the board that based on the applicant's exceptional education, training, and practice credentials, the applicant's practice in the Commonwealth would be beneficial to the public welfare.

Approved April 7, 2000

CHAPTER 380

(HB 354)

AN ACT relating to insurance.

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

Section 1. KRS 304.13-011 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

(1) A "market" is the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications, and underwriting. A geographic market component is a geographical area in which buyers have a reasonable degree of access to insurance sales outlets. Determination of a geographic market component shall consider existing market patterns.

(2) "Supplementary ***rating***~~[rate]~~ information" ***includes***~~[is]~~ any manual or plan of rates, classification, rating schedule, minimum premium, policy ***fees***~~[fee]~~, rating ***rules***~~[rule]~~, ***or***~~[and]~~ any other similar information needed to determine the applicable rate ***or premium. This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the insurer decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to an insurer***~~[in effect or to be in effect]~~.

(3) "Supporting information" is the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any ***other***~~[statistical]~~ data relied on by the filer, descriptions of methods used in making the rates, and any other~~[similar]~~ information required to be filed by the commissioner.

(4) "Personal risks" ***means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other***~~[are those covered by]~~ property and casualty insurance for personal, family, or household needs.

(5) "Commercial risks" are any kinds of risks that are not personal risks.

(6) "Joint underwriting" is a voluntary arrangement established~~[on an ad hoc basis]~~ to provide insurance coverage for a~~[commercial]~~ risk pursuant to which two (2) or more insurers ***jointly***~~[separately]~~ contract with the insured at a price and under policy terms agreed on between the insurers.

(7) A "pool" is a voluntary arrangement, other than by a contract of reinsurance, established on a general and continuing basis pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate through an association, syndicate or other pooling agreement.

(8) A "residual market mechanism" is an agreement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance that may be afforded applicants who are unable to obtain insurance through ordinary methods.

(9) An "advisory organization" is any ***entity, including its affiliates or subsidiaries,***~~[organization]~~ which either has two (2) or more member insurers or is controlled ***either directly or indirectly*** by two (2) or more insurers and which assists insurers in ratemaking related activities. Two (2) or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer ***for purposes of this definition***.

(10) A "competitive market" is a market that has not been found to be noncompetitive pursuant to KRS 304.13-041 and for which no such order is in effect.

(11) A "noncompetitive market" is a market for which there is an order in effect pursuant to KRS 304.13-041 that a reasonable degree of competition does not exist.

(12) "~~[Loss]~~Trending" is any~~[appropriate]~~ procedure for projecting developed losses to the average date of loss***, or premiums or exposures to the average date of writing,*** for the period during which the policies are to be effective.

(13) "Expenses" are those portions of any rate attributable to~~[unallocated loss adjustment expenses,]~~ acquisition, field supervision, and collection expenses, general expenses, and ***premium*** taxes, licenses, and fees.~~[Expenses do not include those directly allocated by the insurer to the settlement of specific losses.]~~

(14) "Profit" is the portion of any rate attributable to funds needed for growth, contingencies, and return to stockholders.

(15) "Pure premium" ***means the loss cost per unit of exposure excluding all loss adjustment expenses***~~[is the loss cost per unit of exposure plus the loss adjustment expense directly allocated to the settlement of specific losses]~~.

(16) "Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in cost may be recognized.

(17) "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to their ultimate anticipated value.

(18) "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(19) "Form provider" means a person who prepares, files, and distributes policy contract forms and endorsements and consults with members, subscribers, customers, or others relative to their use and application, but is not an advisory organization as defined in this subtitle.

(20) "Loss adjustment expenses" means the expenses incurred by the insurer in the course of settling claims.

(21) "Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses or output from simulation models and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time. Loss costs, derived in part or entirely upon output form simulation models, must be approved by the commissioner before they become effective.

(22) "Rate" means the expected value of the future cost of insurance per exposure unit which accounts for the treatment of losses, expenses, and profit prior to any application of individual risk variations based on loss or expense considerations, but does not include minimum premium.

(23) "Special assessments" means guaranty fund assessments, residual market mechanism assessments, and other similar assessments which are included in ratemaking. Special assessments shall not be considered as either expenses or losses. Additional charges collected by the insurer and returned to a governmental agency on behalf of an insured are not special assessments. Examples of these additional charges include, but are not limited to, the Special Fund charge for workers' compensation imposed by KRS Chapter

342, local government premium tax imposed by KRS 91A.080, and the Revenue Cabinet surcharge imposed by KRS Chapter 136.

(24) "Statistical agent" means an entity that has been licensed by the commissioner to collect statistics from insurers and provide reports developed from these statistics to the commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers under this chapter.

Section 2. KRS 304.13-021 is amended to read as follows:

KRS 304.13-011 to 304.13-161 apply to all types of insurance written on risks in this state by any insurer authorized under this chapter to do business in this state, except:

(1) Life insurance;

(2) Annuities;

(3) ***Wet***~~[Ocean]~~ marine ***and transportation*** insurance;

(4) Accident and health insurance;

(5) Reinsurance;

(6) Assessment or cooperative companies operating under the provisions of KRS Chapter 299;~~[and]~~

(7) Individual and group workers' compensation self-insurers***;***

(8) Title insurance; and

(9) Liability self-insurance groups.

Section 3. KRS 304.13-031 is amended to read as follows:

(1) In a noncompetitive market, rates shall be made in accordance with the following provisions:

(a) Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated;

(b) Rates shall not be excessive, inadequate or unfairly discriminatory;

(c) Due consideration shall be given:

1. To past and prospective loss experience within and outside this state;

2. To the conflagration and catastrophe hazards;

3. To a reasonable margin for underwriting profit and contingencies;

4. To dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;

5. To past and prospective expenses both ***countrywide***~~[countywide]~~ and those specially applicable to this state;

6. To all other relevant factors within and outside this state; and

7. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during a period of not less than the most recent three (3) year period for which such experience is available;

(d) The~~[systems of]~~ expense provisions included in the rates for use by any insurer or group of insurers ***shall***~~[may differ from those of other insurers or group of insurers to]~~ reflect the requirements of the operating methods of any such insurer or group ***and its anticipated expenses,*** with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;

(e) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks which ***can be demonstrated to***~~[may]~~ have a probable effect upon losses or expenses. Rates made in accordance with this section may be used subject to this subtitle.

Section 4. KRS 304.13-061 is amended to read as follows:

(1) The information furnished in support of a filing may include:

(a) The experience or judgment of the insurer;

(b) The insurer's interpretation of any statistical data it relies on;

(c) The experience of other insurers; and

(d) Any other relevant factors.

(2) The commissioner may adopt reasonable ***administrative regulations***~~[rules]~~ for use by insurers to record and report to the commissioner their rates and other information determined by the commissioner to be necessary or appropriate for the administration of KRS 304.13-011 to 304.13-161***, and the effectuation of its purposes. The commissioner may adopt reasonable administrative regulations to assure that the experience of all insurers is made available at least annually in such form and detail as is necessary to aid in determining whether rating systems comply with the standards set forth in this subtitle***. ~~[However, except for workers' compensation reports, no insurer shall be required to report its loss experience on a classification basis that is inconsistent with the rating system filed by it.]~~ The commissioner may designate one (1) or more advisory organizations ***or statistical agents*** to assist him in gathering, compiling, and reporting such information***, which shall be a matter of public record. The scope of these rules may include the data which must be reported by insurers, definitions of data elements, the timing and frequency of statistical reporting by insurers, data quality standards, data edit and audit requirements, data retention requirements, reports to be generated by advisory organizations or statistical agents to fulfill the requirements of this section, and the timing of such reports***.~~[Insurers shall record and report their workers' compensation experience on a classification basis consistent with that of an advisory organization designated by the commissioner.]~~

(3) The commissioner may promulgate administrative regulations for the interchange of data necessary for the application of rating plans.

(4) In order to further uniform administration of rate regulatory laws, the commissioner and every insurer, advisory organization, and statistical agent may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations

in other states and may consult with them with respect to the application of rating systems and the collection of statistical data.

Section 5. KRS 304.13-081 is amended to read as follows:

(1) All rates, supplementary rate information, and supporting information filed under KRS 304.13-011 to 304.13-161 shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a charge specified in Subtitle 4 of this chapter.

(2) The commissioner shall ***utilize,***~~[designate certain types of personal risks coverages for which the commissioner shall]~~ develop***, or cause to be developed*** a consumer information system that will ***provide and*** disseminate price and other relevant information on a readily available basis ***to purchasers of homeowners or private passenger insurance. The commissioner may utilize, develop, or cause to be developed a consumer information system which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified in this section. Such activity may be conducted internally within the department, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner. To the extent the commissioner considers necessary and appropriate,***~~[.]~~ insurers, advisory organizations, ***statistical agents,*** and other persons or organizations involved in conducting the business of insurance in this state***, to which this section applies,*** shall cooperate with the commissioner in the development and ***utilization***~~[in the operation]~~ of a consumer information system. The reasonable cost of developing a consumer information system shall be assessed against insurers subject to this chapter on an equitable basis.

SECTION 6. KRS 304.13-091 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) No advisory organization, statistical agent, or form provider shall provide any otherwise permitted service, and no insurer shall utilize the services unless the organization has obtained a license pursuant to subsection (3) of this section.

(2) No advisory organization, statistical agent, or form provider shall refuse to supply any services for which it is licensed in Kentucky to any insurer authorized to do business in Kentucky and offering to pay the fair and usual compensation for the services.

(3) An advisory organization, statistical agent, or form provider applying for a license shall include with its application:

(a) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;

(b) A list of its members, subscribers, and customers;

(c) The name and address of one (1) or more residents of Kentucky upon whom notices, process affecting it, or orders of the commissioner may be served;

(d) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;

(e) A biography of the ownership and management of the organization; and

(f) Any other relevant information and documents that the commissioner may require.

(4) Every organization which has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.

(5) If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, he or she shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market. At the request of the licensee, licenses issued under this section may be renewed on an annual basis.

(6) Licenses issued pursuant to this section shall remain in effect for one (1) year unless:

(a) The licensee fails to pay fees required by law for the continuance or renewal of its license;

(b) The licensee withdraws from the state; or

(c) The license is suspended or revoked.

The commissioner may at any time, after a hearing to be conducted in accordance with the provisions of this chapter and KRS 304.2-310, revoke or suspend the license of an advisory organization, statistical agent, or form provider which does not comply with the requirements and standards of this chapter.

(7) The commissioner shall by administrative regulation establish a written summary of information that shall be included in an application for licenses issued under this section.

(8) Advisory organizations wishing to operate as statistical agents or form providers may be so authorized under their license as an advisory organization. A separate license is not required.

(9) Each advisory organization, statistical agent, and form provider shall pay fees as required by KRS 304.4-010 for the application, continuance, or renewal of its license.

Section 7. KRS 304.13-111 is amended to read as follows:

No advisory organization ***or statistical agent*** shall:

(1) Make an agreement with an insurer or another advisory organization that has the purpose or effect of substantially lessening competition in an insurance market; ***or***

(2) After January 1, 1983, compile or distribute recommendations relating to rates that include profit or expenses, except loss adjustment expenses[~~; or~~

~~(3) File rates or other information on behalf of an insurer~~].

Section 8. KRS 304.13-121 is amended to read as follows:

Any[~~An~~] advisory organization ***in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to***[~~may~~]:

(1) Collect statistical data from members***, subscribers,*** or any other source;

(2) Develop statistical plans including territorial and class definitions;

(3) ***Prepare, file, and distribute prospective loss costs which may include provisions for special assessments. Loss costs, derived in part or entirely upon output form simulation models, must be approved by the commissioner before they become effective***[~~Distribute pure premium data, adjusted for loss development and loss trending, in accordance with its statistical plans~~];

(4) ***Prepare, file, and*** distribute manuals of rating rules***,***[~~ and~~] rating schedules, ***and other supplementary rating information that do***[~~except that the manuals may~~] not include final rates***, expense provisions, profit provisions, or minimum premiums***[~~ or permit calculation of final rates without outside information~~];

(5) ***Prepare, file, and distribute factors, calculations, or formulas pertaining to classification, territory, increased limits, and other variables***[~~Distribute information by circulars that are filed with the commissioner and open to public inspection~~];

(6) ***Distribute information that is required or directed to be filed with the commissioner;***

(7) Conduct research and ***on-site***[~~field~~] inspections ***in order*** to prepare ***classifications of*** public fire ***defenses,***[~~defense classifications~~] and to consult with public officials regarding public fire protection as it would affect members***, subscribers*** and others;

(8)[~~(7)~~] Conduct research ***in order*** to ***discover,*** identify***,*** and classify information ***relating to***[~~on the~~] causes or prevention of losses;

(9) Conduct research relating to the impact of statutory changes upon prospective loss costs and special assessments;

(10)[~~(8)~~] Prepare***, file, and distribute*** policy forms and endorsements and consult with members***, subscribers,*** and others ***relative to their***[~~on~~] use and application;

(11)[~~(9)~~] Conduct research and ***on-site***[~~field~~] inspections ***for the purpose of providing risk***[~~to collect~~] information[~~ for calculating rates or collecting statistics~~] relating to individual ***structures***[~~risks~~];[~~ and~~]

(12) Conduct on-site inspections to determine rating classifications for individual insureds;

(13) For workers' compensation insurance, establish a committee which may include insurance company representatives to review the determination of the rating classification for individual insureds and suggest modifications to the classification system, pursuant to subsection (1) of Section 11 of this Act;

(14)[~~(10)~~] ***Collect,*** compile***,*** and ***publish***[~~distribute~~] past and current prices of ***individual*** insurers, if such information is ***also***[~~filed with the commissioner and is~~] made available to the public ***at a reasonable cost;***

(15) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings;

(16) File final rates, at the direction of the commissioner, for residual market mechanisms; and

(17) Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

SECTION 9. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

In addition to other activities not prohibited, any statistical agent is authorized, on behalf of its members and subscribers, to:

(1) Develop statistical plans including territorial and class definitions;

(2) Collect historical data from members, subscribers, or any other source;

(3) Distribute information that is required or directed to be filed with the commissioner;

(4) Collect, compile, and distribute past and current prices of individual insurers and publish such information;

(5) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings; and

(6) Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

SECTION 10. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Every advisory organization shall file with the commissioner every statistical plan, all prospective loss costs, provisions for special assessments, and all supplementary rating information, and every change or amendment or modification of any of the foregoing proposed for use in Kentucky. Each filing shall be filed thirty (30) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty (30) days, if written notice is given within the initial thirty (30) day period to the advisory organization that additional time is needed for the consideration of the filing. The commissioner may, upon giving written notice to the advisory organization, request additional information that is needed to complete the review of the filing. If the commissioner requests such additional information prior to the filing becoming effective, the filing shall become effective thirty (30) days after the additional information is provided to the commissioner.

(2) Upon written application by the advisory organization, the commissioner may authorize an earlier effective date.

(3) All filings shall be subject to the provisions of Section 5 of this Act and all other provisions of this chapter relating to filings made by insurers.

SECTION 11. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the commissioner by an advisory organization designated by the commissioner.

(2) Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the commissioner.

(3) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally.

(4) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally.

(5) The commissioner shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.

SECTION 12. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No person shall willfully withhold information which will affect the rates or premiums chargeable under this subtitle from, or knowingly give false or misleading information to, the commissioner, any statistical agent, any advisory organization, or any insurer.

Section 13. KRS 304.13-131 is amended to read as follows:

(1) No insurer ***or advisory organization*** shall make ***any arrangement***~~[an agreement]~~ with any other insurer, advisory organization, or ***other*** person that has the purpose or effect of unreasonably restraining trade or ***unreasonably***~~[of substantially]~~ lessening competition in ***the business of***~~[an]~~ insurance~~[market]~~.

(2) ***No insurer or advisory organization shall:***

(a) Attempt to monopolize, or combine, or conspire with any other person to monopolize an insurance market; or

(b) Engage in a boycott, on a concerted basis, of an insurance market.

(3) No insurer shall agree with any other insurer or with an advisory organization to ***mandate adherence***~~[adhere]~~ to***, or to mandate use of,*** any rate, ***prospective loss cost,*** rating plan, rating schedule, rating rule, ***policy or bond form,*** rate classification, rate territory, underwriting rule,~~[or]~~ survey, ***inspection or similar material,*** except as needed to ***facilitate the reporting of statistics to advisory organizations, statistical agents, or the commissioner***~~[develop and maintain statistical plans permitted by KRS 304.13-011 to 304.13-161]~~. ***The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, prospective loss cost, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.***

(4)~~[(3)]~~ Two (2) or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to ***any matters pertaining to*** those activities authorized in this chapter as if they ***constituted***~~[were]~~ a single insurer.

Section 14. KRS 304.13-141 is amended to read as follows:

(1) The commissioner may examine any insurer, pool, advisory organization, ***statistical agent, form provider,*** or residual market or joint underwriting mechanism as deemed necessary to ascertain compliance with ***this chapter***~~[KRS 304.13-011 to 304.13-161]~~. Any examination made by the commissioner or by examiners designated by him shall be at the expense of the organization examined as specified in Subtitle 2 of KRS Chapter 304.

(2) Every insurer, pool, advisory organization, ***statistical agent,*** and residual market or joint underwriting mechanism shall maintain reasonable records, adapted to its method of operation, containing its experience or the experience of its members. Records shall include the statistics and other information used by it in its activities. The records shall be available at all reasonable times and at a reasonable location to enable the commissioner to determine whether the activities of an insurer, ***pool,*** advisory organization, ***statistical agent, residual market or joint underwriting mechanism***[~~or other association formed pursuant to KRS 304.13-011 to 304.13-161~~] are in compliance with this chapter.

(3) In lieu of an examination, the commissioner may accept the report of an examination by the insurance supervisory official of another state, if the report is made pursuant to the laws of that state.

Section 15. KRS 304.13-151 is amended to read as follows:

(1) Notwithstanding ***subsection (2)(a) of*** KRS 304.13-131, insurers participating in joint underwriting, ***joint reinsurance*** pools, or residual market mechanisms may, in connection with such activity, cooperate ***with each other*** in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics ***or***[~~ and~~] other information, ***or carrying on***[~~and the undertaking of~~] research. [~~A~~]Joint underwriting***, joint reinsurance pools, and***[~~ pool or~~] residual market ***mechanisms***[~~mechanism~~] shall not be deemed[~~ an~~] advisory ***organizations***[~~organization~~].

(2) ***Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool and residual market mechanism activities are subject to the provisions of this chapter.***

(3) ***Every***[~~A~~] pool shall file with the commissioner a copy of its constitution, bylaws, rules***, and regulations*** governing its activities, and articles of incorporation, agreement, or association. It shall also file with the commissioner a list of its members and the name and address of a resident of this state on whom notices or orders of the commissioner ***or process*** may be served***, and any changes in amendments or changes in the foregoing***.

(4)[~~(3)~~] Any ***residual market mechanism,*** plan***,*** or agreement to implement a residual market mechanism***, and any changes or amendments in the plan*** shall be submitted ***in writing*** to the commissioner for ***consideration and*** approval***, together with any other information as may be reasonably required***. The commissioner shall approve only those agreements that ***he or she finds contemplates both***[~~contemplate~~] the use of rates ***which meet the standards of this chapter and activities and practices***[~~that are adequate but not excessive~~], that are not ***unfair, unreasonable, or*** [~~unfairly discriminatory, and that are~~] otherwise ***inconsistent with the provisions of this chapter***[~~consistent with KRS 304.13-011 to 304.13-161~~]. ***At any time after any agreements are in effect, the commissioner may review the practices and activities of the adherents to these agreements and if, after a hearing, the commissioner finds that any practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this Chapter, the commissioner may issue a written order to the parties and either require the discontinuance of these acts or revoke approval of any such agreement.***

(5)[~~(4)~~] If the commissioner finds after a hearing that ***any***[~~an~~] activity ***or practice*** of an insurer participating in joint underwriting ***or***[~~,~~] a pool ***is unfair, is unreasonable***,[~~ or a residual market mechanism~~] will tend to[~~ substantially~~] lessen competition in ***any***[~~an insurance~~]

market, or is otherwise inconsistent with the provisions ***or purposes*** of ***this chapter***~~[KRS 304.13-011 to 304.13-161]~~, an order may be issued~~[specifying in what respects the activity is anticompetitive or inconsistent with KRS 304.13-011 to 304.13-161 and]~~ requiring the discontinuance of the activity ***or practice***.

(6)~~[(5)]~~ As a condition of its authority under this chapter to transact casualty insurance (as defined in KRS 304.5-070) in this state, every insurer so authorized shall become and remain a signatory to the "Kentucky automobile insurance plan" as it is presently formulated or as it is hereafter amended with the approval of the commissioner. The "Kentucky automobile insurance plan" shall be deemed to be a mandated "residual market mechanism" as defined in KRS 304.13-011(8).

Section 16. KRS 304.13-350 is amended to read as follows:

The commissioner shall review, approve**,** and hear appeals on the assignment, reassignment**,** or modification of any fire protection classification of any fire protection district, municipality**,** or locality in the state which is made by any lawful ***insurer, advisory***~~[rating]~~ organization**,** or agency operating in the Commonwealth.

Section 17. KRS 304.13-355 is amended to read as follows:

Any fire protection district, municipality**,** or locality in the state which is assigned a fire protection classification by any lawful ***advisory***~~[rating]~~ organization or insurer which makes its own rates, operating in the Commonwealth, may appeal to the commissioner for modification or reassignment of the classification within thirty (30) days of receipt of the classification. The commissioner shall determine the manner in which an appeal may be filed.

Section 18. KRS 304.13-360 is amended to read as follows:

(1) The commissioner shall make such investigation as he deems necessary or convenient for proper determination regarding an appeal.

(2) The books, accounts, papers and records of every fire protection classification ***advisory***~~[rating]~~ organization or insurer which makes its own rates, operating in the Commonwealth, shall be available to the commissioner for inspection and examination. By notice and order, the commissioner may require their production or the production of verified copies at such time and place as he designates, any expense incurred to be borne by the rating organization or insurer so ordered.

Section 19. 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***~~[Chapter 13B]~~. Whenever the commissioner determines that a fire protection classification is unreasonable, he 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***~~[rating]~~ 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 20. KRS 304.13-370 is amended to read as follows:

(1) No insurer may increase premiums for fire insurance based on a fire protection classification until the expiration of the thirty (30) day period for appeal by the fire protection district, municipality or locality, as provided in KRS 304.13-355. If an appeal is filed, no insurer may increase such premiums until approval of the fire protection classification by the commissioner.

(2) If the commissioner's reassignment or modification of a fire protection classification results in lower fire insurance premiums, the appropriate insurers shall make any refunds of paid premiums due to customers within the affected fire protection district, municipality or locality. Such refunds shall be determined from the date the ***advisory***~~[rating]~~ organization or insurer last assigned or reassigned the classification appealed.

Section 21. KRS 304.14-120 is amended to read as follows:

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to any rates filed under Subtitle 17A of this chapter, surety bonds, or to specially-rated inland marine risks, or to policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner.

(a) As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages ***(other than accident and health)*** the filing required by this subsection may be made by ***advisory***~~[rating]~~ organizations ***or form providers*** on behalf of ***their***~~[its]~~ members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(b) Every advisory organization and form provider shall file with the commissioner for approval every property and casualty policy form and endorsement before distribution to members, subscribers, customers, or others.

(c) Every property and casualty insurer shall file with the commissioner notice of adoption before use of any approved form filed by an advisory organization or form provider or filed by the insurer pursuant to paragraph (a) of this subsection.

(2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the

initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.

(6) For the purposes of this section, unless the context requires otherwise:

(a) "Advisory organization" has the meaning provided in Section 1 of this Act; and

(b) "Form provider" has the meaning provided in Section 1 of this Act.

SECTION 22. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used Sections 22 to 28 of this Act:

(1) "Rental vehicle agent" means an individual or business entity that is licensed to sell, solicit, or negotiate rental vehicle insurance under this subtitle.

(2) "Managing employee" means a salaried full-time employee of a licensed business entity that holds a license as an individual under Section 24 of this Act and is responsible for the supervision of the other employees engaged in the placement of insurance under this section.

(3) "Rental agreement" means any written agreement that states the terms and conditions that govern the use or lease of a rental vehicle during the rental period.

(4) "Rental period" means the term of the rental agreement that is sixty (60) days or less.

(5) "Rental vehicle" or "vehicle" means a motor vehicle operated by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either a private motor vehicle or a cargo van. A "private motor vehicle" includes a passenger vehicle, passenger van, minivan, or sport utility vehicle. A "cargo van" includes a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand (26,000) pounds.

(6) "Rental vehicle insurance" means insurance underwritten by an insurer authorized to transact business in this state that is sold in connection with and incidental to a rental agreement.

SECTION 23. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A rental vehicle agent may sell, solicit, or negotiate insurance at the rental vehicle company office as specified in this section for any of the following types of insurance:

(a) Insurance that covers the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses that result from the operation or use of the rental vehicle during the rental period;

(b) Liability insurance that provides coverage to renters and other authorized drivers of rental vehicles for liability that arises from the operation or use of the rental vehicle, which may include uninsured motorist and underinsured motorist coverage, whether offered separately or in combination with other liability insurance;

(c) Personal property insurance that provides coverage to renters and other rental vehicle occupants for the loss of or damage to personal effects that occurs during the rental period;

(d) Roadside assistance;

(e) Emergency sickness protection programs; and

(f) Any other insurance incidental to the rental of a motor vehicle and approved by the commissioner.

(2) When a renter purchases any of the rental vehicle insurance coverages listed in subsection (1) of this section, the coverages shall be primary over any other coverages which may be available to the renter or authorized driver covering the same loss.

SECTION 24. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A license issued under this section shall permit rental vehicle insurance sales by the license holder provided the sales are conducted in accordance with the provisions of Section 25 of this Act.

(2) A business entity licensee shall register with the commissioner each separate business location where its employees sell, solicit, or negotiate insurance and may pay a location registration fee for each separate location.

(3) The commissioner may issue to an applicant qualified under this section a license to act as a rental vehicle agent.

(4) For a license to be issued under this section, the applicant shall submit to the commissioner all of the following:

(a) A written application, signed by the applicant, on a form prescribed by the commissioner, that contains the information prescribed by the commissioner;

(b) A certification by an insurer authorized to do business in this state, signed, and affirmed as true under penalty of perjury by an officer stating that:

1. The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and

2. The insurer has appointed the applicant to act as agent for the type of insurance specified;

(c) The application fee, appointment fee, and location registration fee as provided in KRS 304.4-010 and Sections 22 to 28 of this Act;

(d) A business entity applicant shall submit a list of physical locations where activities authorized by the rental vehicle agent license will be conducted;

(e) A business entity applicant shall certify that each proposed licensed managing employee has successfully completed education and training programs, successfully passed course examinations, and will receive continuing education all approved by the commissioner in accordance with Section 28 of this Act; and

(f) A business entity applicant shall submit proof that the applicant will provide education, training, and continuing education approved by the commissioner in accordance with Section 28 of this Act for each rental vehicle employee or representative. However, a test shall not be required for each rental vehicle employee or representative who is not a licensed managing employee.

(5) The commissioner may require any documents reasonably necessary to verify the information contained in the application submitted in accordance with subsection (4) of this section.

SECTION 25. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A license issued to a business entity under Section 24 of this Act shall authorize an employee or representative of the business entity licensee to sell, solicit, or negotiate rental vehicle insurance without being licensed, registered, or otherwise individually identified, if all of the following are true:

(a) The employee, representative, or managing employee operates with permission from the business entity licensee;

(b) The business entity licensee assumes responsibility for the insurance activities of its unlicensed employees or representatives;

(c) The employee or representative operates under the supervision of a managing employee who is licensed as a rental vehicle agent and who shall be available at all times for consultation for and adequate supervision of the business locations registered with the commissioner during the sale, solicitation, or negotiation of rental vehicle insurance. However, a managing employee need not be present at each business location registered with the commissioner;

(d) The business entity maintains an adequate number of managing employees available for consultation and supervision for the employees or representatives offering insurance products;

(e) The employee, representative, or managing employee has been instructed by the rental vehicle agent with respect to the consumer disclosures that are required under Section 26 of this Act prior to the sale of the rental vehicle insurance;

(f) The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative; and

(g) The business location is registered with the commissioner.

(2) A licensee shall not advertise, represent, or otherwise hold out the licensee or any employee or representative of the licensee as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.

SECTION 26. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Insurance shall not be transacted under Sections 22 to 28 of this Act at any location unless the following consumer protection disclosures are made in writing that meets the readability standards set forth in KRS 304.14-440 and the regulations promulgated thereunder prior to the sale of rental vehicle insurance and are included with the rental vehicle agreement:

(a) A clear and concise description of the material terms and conditions of the coverage, including a description of exclusions;

(b) A description of the process for filing a claim and a toll-free telephone number for reporting a claim;

(c) A statement that the coverage offered by the rental vehicle agent may be a duplication of coverage already provided by the renter's personal automobile insurance policy or by another source of coverage;

(d) A statement that the renter is not required to purchase any insurance from the rental vehicle company in order to rent a vehicle. However, the rental vehicle company may refuse to rent a vehicle to an uninsured driver;

(e) The name and address of the underwriting insurer;

(f) A separate itemization of all costs for the rental vehicle insurance;

(g) Confirmation that the insurer underwriting coverage is authorized to transact insurance in Kentucky; and

(h) A statement that the rental vehicle insurance is primary coverage as set forth in subsection (2) of Section 23 of this Act.

SECTION 27. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A rental vehicle agent who is licensed in accordance with this subtitle shall not sell, solicit, or negotiate insurance that is not sold in conjunction with a rental vehicle transaction.

SECTION 28. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) If a licensee violates a provision of this chapter, the commissioner may take administrative action and impose penalties in accordance with this chapter.

(2) A licensed business entity under Section 24 of this Act shall provide to the commissioner its courses of instruction, course examinations for managing employees, employee training, and continuing education material for all employees subject to the commissioner's approval prior to issuance of a license under this section.

(3) A licensee under Section 24 of this Act may receive commissions or other compensation for services rendered in connection with the sale of rental vehicle insurance.

(4) Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.

(5) The commissioner shall promulgate administrative regulations to carry out the purpose of Sections 22 to 28 of this Act.

Section 29. KRS 304.2-150 is amended to read as follows:

(1) The commissioner shall carefully preserve in the department and in permanent form, a correct account of all his transactions and of all fees and moneys received by him by virtue of his office, together with all financial statements, examination reports, correspondence, filings, and documents duly received by the department. The commissioner shall hand the same over to his successor in office.

(2) The commissioner shall keep a suitable record of all insurer certificates of authority and of all licenses issued under this code, together with all applicable suspensions and revocations and of the causes thereof.

(3) Unless otherwise provided by law, records of the department shall be open to the extent provided by the Kentucky Open Records Act, KRS 61.872 to 61.884:

(a) The following records shall be open:

1. Rate and form filings and information filed in support thereof;

2. Other records as provided by law; and

3. All information filed by the department with the National Association of Insurance Commissioners, which that association makes available;

(b) The following records shall be closed:

1. All information received in confidence from ***insurance supervisory officials of other states or countries, or*** the National Association of Insurance Commissioners, including, but not limited to, information from the insurance regulatory information system. However, records described in this paragraph may be used by the commissioner in enforcement prosecutions and proceedings for disciplinary action, and may be disclosed to other law enforcement authorities; and

2. Other records as provided by law; and

(c) When inspection of department records is denied, any person challenging the denial shall follow the procedures set forth in the Kentucky Open Records Act, KRS 61.872 to 61.884.

(4) After five (5) years, the commissioner may destroy unneeded or obsolete records and filings in the department.

(5) The department shall not charge a fee inconsistent with fees charged by other state agencies for copies of records requested by the public pursuant to this section.

Section 30. The following KRS section is repealed:

304.24-410 Acquisition of insurer's securities -- Approval by commissioner -- Presumption of control.

Approved April 7, 2000

CHAPTER 381

(HB 373)

AN ACT relating to a sick leave bank for local school district employees.

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

Section 1. KRS 161.155 is amended to read as follows:

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, grandchildren, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers ***or employees*** for use by teachers ***or employees*** who have exhausted all sick leave and other available paid leave days.

(2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave~~[herein]~~ granted ***in this subsection*** may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.

(3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.

(4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

(5) Any school ***teacher or*** employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher ***or employee*** may annually contribute to the bank and limitations upon the number of days a teacher ***or employee*** may annually draw from the bank. Only those teachers ***or employees*** who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher ***or employee***. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(7) (a) A district board of education shall establish a sick leave donation program to permit teachers ***or employees*** to voluntarily contribute sick leave to teachers ***or employees*** in the same school district who are in need of an extended absence from school. A teacher ***or employee*** who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher ***or employee*** who is authorized to receive the sick leave donated. A teacher ***or employee*** may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

(b) A teacher ***or employee*** may receive donations of sick leave if:

1. ***a.*** The teacher ***or employee*** or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher ***or employee*** to be absent for at least ten (10) days; ***or***

b. The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;

2. The teacher's ***or employee's*** need for the absence and use of leave are certified by a licensed physician ***for leave requested under subparagraph 1.a. of this subsection***;

3. The teacher ***or employee*** has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and

4. The teacher ***or employee*** has complied with the school district's policies governing the use of sick leave.

(c) While ***a teacher or***~~[an]~~ employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.

(d) Any sick leave that remains unused, is not needed by a teacher ***or employee***, and will not be needed in the future shall be returned to the teacher ***or employee*** donating the sick leave.

(e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.

(8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(9) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

Approved April 7, 2000

CHAPTER 382

(HB 462)

AN ACT relating to education finance.

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

Section 1. KRS 164A.300 is amended to read as follows:

(1) The General Assembly of the Commonwealth of Kentucky hereby declares as a legislative finding of fact that the general welfare and well-being of the Commonwealth are directly related to the educational levels and skills of the citizens of the Commonwealth. Therefore, a vital and valid public purpose of the Commonwealth is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the Commonwealth.

(2) The General Assembly finds, declares, and recognizes that the Commonwealth has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in Kentucky and the general welfare of the citizens and the Commonwealth will be enhanced by creation of a program pursuant to which citizens and others may invest money in a public trust for future application to the payment of higher education costs in the Commonwealth and elsewhere

and that the creation of a means of encouragement of citizens in the investment of funds for such future higher education application represents the carrying out of a valid and vital public purpose of the Commonwealth. In order to make available to the citizens of the Commonwealth an opportunity to fund future higher education needs for beneficiaries~~[with certain public assistance]~~, it is necessary that a public trust be established in which the citizens of the Commonwealth and others may invest moneys for future educational use.~~[It is further necessary to establish and create an endowment trust, which may be funded with public funds, among other sources, the income from which will be made available to participants in the savings plan trust to enhance their savings invested for future higher education costs.]~~

(3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create the Kentucky Educational Savings Plan Trust~~[with a separate endowment trust to enhance the investment return of the savings plan trust]~~. The implementation and effectuation of the Kentucky Educational Savings Plan Trust as provided by KRS ***164A.300***~~[164A.310]~~ to 164A.380 constitutes the carrying out of a valid and vital public purpose for which public funds of the Commonwealth may be expended.

(4) It is in the best interest of the people of the Commonwealth to establish and provide for the operation of the Kentucky Educational Savings Plan Trust in a manner conforming to federal law that allows participants and beneficiaries federal income taxation benefits on contributions and earnings on contributions expended by the trust for the higher education costs of a beneficiary.

Section 2. KRS 164A.305 is amended to read as follows:

As used in KRS 164A.300 to 164A.380, except where the context clearly requires another interpretation:

(1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;

(2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;

(3) "Beneficiary" means:

(a) Any person designated at the commencement of participation by a participation agreement to benefit from payments for higher education costs at an institution of higher education;

(b) The new beneficiary, in the case of a change of beneficiaries pursuant to KRS 164A.330***(4)***~~[(7)]~~; or

(c) The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code;

(4) "Benefits" means the payment of higher education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an institution of higher education;

(5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;

(6)[~~"Endowment trust" means the endowment fund established pursuant to KRS 164A.337 which shall be administered as a separate trust;~~

~~(7)~~] "Higher education costs" means the costs specified in section 529(e)(3) of the Internal Revenue Code of 1986 as amended for attendance at an institution of higher education as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965, 20 U.S.C. sec. 1087ll, as amended;

(7)[~~(8)~~] "Institution of higher education" means an institution as defined in Section 529(e)(5) of the Internal Revenue Code of 1986, as amended;

(8)[~~(9)~~] "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;

(9)[~~(10)~~] "Participant" means an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code, an individual, firm, corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of higher education costs on behalf of a beneficiary;

(10)[~~(11)~~] "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;

(11)[~~(12)~~] "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;

(12)[~~(13)~~] "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;

(13)[~~(14)~~] "Tuition" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment;

(14)[~~(15)~~] "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

Section 3. KRS 164A.310 is amended to read as follows:

There is hereby created an instrumentality of the Commonwealth to be known as the Kentucky Educational Savings Plan Trust. The board, in the capacity of trustee, shall have the power and authority to:

(1) Sue and be sued;

(2) Make and enter into contracts necessary for the administration of the savings plan trust pursuant to KRS 164A.300 to 164A.380;

(3) Adopt a corporate seal and to change and amend it from time to time;

(4) Invest moneys within the program fund in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky

Revised Statutes, which are specifically determined to be inapplicable to the savings plan trust;

(5) Enter into agreements with any institution of higher education, the Commonwealth of Kentucky, or any federal or other state agency or other entity as required for the effectuation of its rights and duties pursuant to KRS 164A.300 to 164A.380;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund, which, in the case of any contributions from other than general funds of the Commonwealth, may be limited in application to definite classes of beneficiaries;

(7) Enter into participation agreements with participants;

(8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in KRS 164A.300 to 164A.380;

(10) Appoint a program administrator and to determine the duties of the program administrator and other staff as necessary and fix their compensation within the provisions of KRS Chapter 18A;

(11) ***Delegate to the program administrator general supervision and direction over the administrative function of the trust and its employees in carrying out the policies, programs, administrative regulations, and directives of the board;***

(12) Make provision for the payment of costs of administration and operation of the savings plan trust;

(13)[~~(12)~~] Carry out the duties and obligations of the savings plan trust pursuant to KRS 164A.300 to 164A.380 and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the savings plan trust and KRS 164A.300 to 164A.380; and

(14)[~~(13)~~] Promulgate administrative regulations to implement the provisions of KRS 164A.300 to 164A.380 consistent with the federal Internal Revenue Code and administrative regulations issued pursuant to that code.

Section 4. KRS 164A.325 is amended to read as follows:

In addition to effectuating and carrying out all of the powers granted by KRS 164A.300 to 164A.380, the board***, as trustee,*** shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of KRS 164A.300 to 164A.380 pertaining to the savings plan trust, including, but not limited to, the power to:

(1) Engage investment advisors to assist in the investment of savings plan trust assets;

(2) Carry out studies and projections in order to advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;

(3) Contract***, in accordance with the provisions of KRS 45A.345 to 45A.460 under KRS 45A.343,*** for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional,

managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;

(4) Participate in any other way in any federal, state, or local governmental program for the benefit of the savings plan trust;

(5) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the savings plan trust, and provide for reasonable service charges, including penalties for cancellations and late payments in respect of participation agreements;

(6) Procure insurance against any loss in connection with the property, assets or activities of the savings plan trust;

(7) Administer the funds of the savings plan trust;

(8) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and

(9) Promulgate reasonable rules and regulations for the administration of the savings plan trust.

Section 5. KRS 164A.330 is amended to read as follows:

The savings plan trust shall have the authority to enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

(1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans and may contain penalties for failure to make contributions when scheduled;

(2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum contribution participation agreement in connection with which a single, lump-sum contribution is made by the participant for the benefit of a beneficiary;

(3) ~~[The participation agreement shall specify the minimum rate of interest which shall be borne by the investment made by the participant;~~

~~(4) Beneficiaries designated in participation agreements may be designated from date of birth through age fourteen (14);~~

~~(5) Payment of benefits provided under participation agreements must begin not later than the first full academic semester at an institution of higher education following the eighteenth birthday of the subject beneficiary unless the participant notifies the program administrator to delay payment of benefits for a designated period of time. At the end of that designated period of time, the payment of benefits shall begin unless the participant again notifies the program administrator to delay payment of benefits;~~

~~(6) The]~~Execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will:

(a) Be admitted to an institution of higher education;

(b) If admitted, be determined a resident for tuition purposes by the institution of higher education, unless the participation agreement is vested;

(c) Be allowed to continue attendance at the institution of higher education following admission; or

(d) Graduate from the institution of higher education;

(4)[~~(7)~~] Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant[~~ prior to the date of admission of any beneficiary under a participation agreement by an institution of higher education~~] provided, however, that the substitute beneficiary shall be eligible;

(5)[~~(8)~~] Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;

(6)[~~(9)~~] Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky[~~ prior to enrollment in any other educational institution~~];

(7)[~~(10)~~] Each participation agreement shall provide that it may be canceled under the terms and conditions, including payment of the fees and costs, set forth in the rules and regulations promulgated by the board;

(8)[~~(11)~~] The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated higher education costs of the beneficiary;

(9)[~~(12)~~] The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;

(10)[~~(13)~~] Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter[~~ are confidential and~~] shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:

(a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;

(b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;

(c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and

(d) Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

Section 6. KRS 164A.335 is amended to read as follows:

The board***, as trustee,*** shall segregate moneys received by the savings plan trust into two (2) funds, which shall be identified as the program fund and the administrative fund. Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by KRS 164A.300 to 164A.380. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070. All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Contributions shall be accounted for separately for each beneficiary. Deposits and interest thereon accumulated on behalf of participants in the program fund of the savings plan trust may be used for payments to any institution of higher education.~~[However, no rights to any moneys derived from the endowment trust shall exist if moneys payable under the participation agreement are paid to an education institution which is not an institution of higher education in Kentucky, as defined by KRS 164A.300 to 164A.380.]~~

Section 7. KRS 164A.350 is amended to read as follows:

For all purposes of Kentucky law, the following shall be applicable:

(1) The ***trust***~~[participant]~~ shall ***exercise***~~[retain]~~ ownership of all contributions made under any participation agreement ***and all interest derived from the investment of the contributions made by the participant*** up to the date of utilization for payment of higher education costs for the beneficiary***.***~~[, and]~~ All ***contributions made under any participant agreement and*** interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;

(2) Any participant may cancel a participation agreement ***at any time, and terminate the trust's ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee***. In the event the participation agreement is terminated ***in part***, the ***trust***~~[participant]~~ shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and ***not returned to the participant. The participant shall retain*** a reversionary right to receive ***upon termination the actual market value of the participant's account at the time of the cancellation, including*** interest~~[on all the contributions at the rate of interest at which the contributions were invested]~~, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section;

(3) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section;

(4) The institution of higher education shall obtain ownership of the ***distributions made from the participant's account***~~[contributions made]~~ for the higher education costs paid to the institution at the time each payment is made to the institution;

(5) Any amounts ***received by the trust***~~[which may be paid]~~ pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section, shall be owned by the trust;

(6) A participant may transfer ***the participant's***~~[ownership]~~ rights to another eligible participant, including, but not limited to, a gift of the ***participant's***~~[ownership]~~ rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;

(7) Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board shall charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:

(a) The death, permanent disability, or mental incapacity of the beneficiary; or

(b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and

(8) Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

Section 8. KRS 164A.360 is amended to read as follows:

The board, as trustee, may establish, by the promulgation of administrative regulations in accordance with KRS Chapter 13A, a program of lending from any funds available to the trust, for participants and beneficiaries to~~[In connection with any participation agreement as to which benefits for payment of higher education costs have accrued and are being paid or are eligible to be paid, the participant thereof may]~~ borrow from the trust~~[, but only]~~ for the ***sole*** purpose of paying higher education costs to an institution of higher education. The interest rate payable by ***borrowers***~~[participants]~~ for any such borrowing shall be a rate~~[as]~~ established by the board from time to time. Any contribution to such loan program from ***the program fund***~~[trust funds]~~ or any loan made ***from the program fund***~~[with trust funds]~~ shall be insured.

Section 9. KRS 164A.370 is amended to read as follows:

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky or any of its political subdivisions. ***Investment income***~~[Interest]~~ earned on ***contributions***~~[moneys]~~ paid by any participant ***and used for higher education costs defined in KRS 164A.305(7) or refunded under KRS 164A.350(7)(a) or 164A.350(7)(b)*** shall not be subject to Kentucky income tax by either a participant or any beneficiary of a participation agreement, the purposes for which the ***investment income***~~[interest]~~ was accrued being deemed

and declared to be entirely public in nature. ***Earnings that are not used for higher education costs as defined in KRS 164A.305(7) and are refunded shall be subject to Kentucky income tax, except for earnings refunded pursuant to KRS 164A.350(7)(a) and 164A.350(7)(b).***

Section 10. KRS 164A.375 is amended to read as follows:

The assets of the trust, including the program fund~~[and the endowment fund]~~, shall at all times be preserved, invested and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

Section 11. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

(1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;

(2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;

(3) "ACT score" means the composite score achieved on the American College Test or an equivalent score, as determined by the council, on the Scholastic Assessment Test;

(4) "Authority" means the Kentucky Higher Education Assistance Authority;

(5) "Award period" means two (2) consecutive academic terms;

(6) "Commonwealth merit scholarship" means a scholarship provided to an eligible student to attend a participating institution;

(7) "Commonwealth merit scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;

(8) "Commonwealth merit scholarship trust fund" means the Wallace G. Wilkinson Commonwealth merit scholarship trust fund;

(9) "Council" means the Council on Postsecondary Education created under KRS 164.011;

(10) "Eligible student" means any person who is a Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the Commonwealth merit scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;

(11) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;

(12) "Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;

(13) "High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying

with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;

(14) "Maximum award amount" means the sum of the proportionate base scholarship amount earned by an eligible student in each academic year of high school study and any supplemental award earned by an eligible student. The amount so determined shall be the maximum amount available to the eligible student for any award period;

(15) "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:

(a) 1. Is publicly operated; or

2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; ***or***~~[and]~~

3. Is designated by the Council on Postsecondary Education as an approved out-of-state institution that offers a degree program in a field of study that is not offered at any institution in the Commonwealth; and

(b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;

(16) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and

(17) "Supplemental award" means commitment of additional scholarship funds under KRS 164.7879(3) to an eligible student based on the eligible student's ACT score.

SECTION 12. A NEW SECTION OF KRS CHAPTER 164.7871 TO 164.7889 IS CREATED TO READ AS FOLLOWS:

An eligible student who has earned a Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award and who is enrolled in an out-of-state institution shall be eligible to receive the Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award if he or she is enrolled in a degree program in a field of study that is not available at any participating institution in the Commonwealth. The Council on Postsecondary Education shall promulgate administrative regulations to establish procedures to designate an out-of-state institution as an approved participating institution as defined in KRS 164.7874 and to notify the Kentucky Higher Education Assistance Authority of its approval to transfer to the out-of-state institution the amount of the scholarship and supplemental award earned by the eligible student.

Section 13. Moneys held by the Kentucky Educational Savings Plan Trust on June 30, 2000, as an endowment for purposes of distributing investment earnings to beneficiaries enrolled in an institution of higher education in Kentucky may, at the discretion of the board of directors of

the Kentucky Higher Education Assistance Authority in its capacity of trustee, be distributed as follows:

(1) The investment earnings on the endowment fund accrued as of June 30, 2000, shall be allocated and proportionally added to each participant's account in the program fund; and

(2) The remainder of the moneys held in the endowment fund on June 30, 2000, including, but not limited to, any contributions to the endowment, may be distributed in any amount and combination of the following dispositions:

(a) Proportionally added to each participant's account in the program fund; or

(b) Transferred to the administrative fund.

Approved April 7, 2000

CHAPTER 383

(HB 525)

AN ACT relating to medical directors of managed care plans.

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

Section 1. KRS 304.17A-545 is amended to read as follows:

(1) A managed care plan shall appoint a medical director who***:***

(a) Is a physician licensed to practice in ***this***~~[the]~~ state***;***~~[in which he or she is employed and who]~~

(b) Is in good standing with the State Board of Medical Licensure;

(c) Has not had his or her license revoked or suspended, under KRS 311.530 to 311.620;

(d) Shall sign any decision to deny any health care benefit; and

(e) Shall be responsible for the treatment policies, protocols, quality assurance activities, and utilization management decisions of the plan.

(2) The medical director shall ensure that:

(a) Any utilization management decision to deny, reduce, or terminate a health care benefit or to deny payment for a health care service because that service is not medically necessary shall be made by a physician, except in the case of a health care service rendered by a chiropractor or optometrist, that decision shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky;

(b) A utilization management decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person or the participating provider;

(c) In the case of a managed care plan, a procedure is implemented whereby participating physicians have an opportunity to review and comment on all medical and surgical and

emergency room protocols, respectively, of the insurer and whereby other participating providers have an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice;

(d) The utilization management program is available to respond to authorization requests for urgent services and is available, at a minimum, during normal working hours for inquiries and authorization requests for nonurgent health care services; and

(e) In the case of a managed care plan, a covered person is permitted to choose or change a primary care provider from among participating providers in the provider network and, when appropriate, choose a specialist from among participating network providers following an authorized referral, if required by the insurer, and subject to the ability of the specialist to accept new patients.

(3) A managed care plan shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of health care services. These standards shall be made available to the public during regular business hours and include:

(a) An ongoing written, internal quality assurance or improvement program;

(b) Specific written guidelines for quality of care studies and monitoring, including attention to vulnerable populations;

(c) Performance and clinical outcomes-based criteria;

(d) A procedure for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;

(e) A plan for data gathering and assessment; and

(f) A peer review process.

(4) Each managed care plan shall have a process for the selection of health care providers who will be on the plan's list of participating providers, with written policies and procedures for review and approval used by the plan.

(a) The plan shall establish minimum professional requirements for participating health care providers. An insurer may not discriminate against a provider solely on the basis of the provider's license by the state;

(b) The plan shall demonstrate that it has consulted with appropriately qualified health care providers to establish the minimum professional requirements;

(c) The plan's selection process shall include verification of each health care provider's license, history of license suspension or revocation, and liability claims history;

(d) A managed care plan shall establish a formal written, ongoing process for the reevaluation of each participating health care provider within a specified number of years after the provider's initial acceptance into the plan. The reevaluation shall include an update of the previous review criteria and an assessment of the provider's performance pattern based on criteria such as enrollee clinical outcomes, number of complaints, and malpractice actions.

(5) A managed care plan shall not use a health care provider beyond, or outside of, the provider's legally authorized scope of practice.

Approved April 7, 2000

CHAPTER 384

(HB 533)

AN ACT relating to crimes and punishment.

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

Section 1. KRS 441.125 is amended to read as follows:

(1) ***(a) As used in this section, "community-service-related project" means a project involving work for:***

1. The Commonwealth or an agency of the Commonwealth;

2. A county, urban-county, charter county, city, special district, or an agency of any of these entities; or

3. A nonreligious-sponsored nonprofit, charitable, or service organization.

(b) Work on a community-service-related project shall not confer private benefit on a person except as may be incidental to the public benefit[~~As used in this section community service related project means work for a county, a city or a special district or an agency thereof. Prisoner work on community service related projects shall not confer a private benefit on a person except as may be incidental to the public benefit~~].

(2) ***Each jailer shall write a policy governing prisoners working on community-service-related projects, which shall be submitted to the fiscal court for approval. The written policy shall state at a minimum:***

(a) Which type of prisoner, if any, shall be assigned to which type of work, taking into account the physical and mental abilities of prisoners and security of the jail and the general public;

(b) That no prisoner shall be assigned to unduly hazardous work that would endanger the life or health of the prisoner or others; and

(c) That any prisoner may, for a valid medical reason, decline to work on community-service-related projects. No prisoner shall be punished or otherwise penalized for this refusal[~~Pursuant to a written policy adopted by the fiscal court on the advice of the jailer, the jailer may permit certain prisoners to work on community service related projects. Before a prisoner is permitted to work in this type project, the county judge/executive or his designee shall sign his approval to the prisoner's participation~~].

(3) ***A prisoner shall not begin work on a particular community-service-related project without the approval of the director of the relevant entity referred to in subsection (1)(a) of this section, or the director's designee***[~~In determining which prisoners may be worked on community service related projects and the nature of work to which a prisoner may be assigned, the jailer and the county judge/executive shall consider the physical and mental ability of the prisoner and the security of the jail and the general public. No prisoner shall be~~

~~assigned to unduly hazardous work that would endanger the life or health of the prisoner or others~~].

(4) ***Participation in community-service-related projects shall not be deemed employment for any purpose, and a prisoner shall not be deemed an employee or agent of the entity for which he or she performs the community service work***[~~Any prisoner may, for a valid medical reason, decline to work on community service related projects. No prisoner shall be punished or otherwise penalized for such refusal.~~

~~(5) The place of working such prisoners shall be determined by the county judge/executive and he shall enter an order on the order book of the county judge/executive, specifying the manner in which the prisoner may be worked.~~

~~(6) Participation in community services related projects shall not be deemed employment for any purpose~~].

Section 2. KRS 441.510 is amended to read as follows:

(1) If an accused is confined in a detention facility, he shall be transported as necessary in accordance with the following provisions, unless otherwise ordered by the court:

(a) If he is lodged in an urban-county facility in the county where the trial is to be held, the jailer shall carry out this duty; and

(b) In all other cases**,** the sheriff[~~ or jailer~~] of the county where the prisoner is incarcerated shall carry out this duty as provided in subsection (3) of this section.

(2) If an accused is sentenced to confinement, the sheriff shall deliver him to the proper detention facility, with the exception that in the case of a sentence to an urban-county detention facility, the jailer shall carry out this duty.

(3) In each county ***where there is no jail,*** the fiscal court or the legislative body of a charter county government, as appropriate, shall adopt a transportation plan which establishes the party responsible for transporting prisoners as necessary:

(a) The fiscal court or the legislative body of a charter county government, as appropriate, may require the jailer to serve as transportation officer to be responsible for transporting prisoners as necessary; or

(b) The fiscal court or the legislative body of a charter county government, as appropriate, may require the sheriff to serve as transportation officer to be responsible for transporting prisoners as necessary; or

(c) The fiscal court or the legislative body of a charter county government, as appropriate, may adopt any reasonable transportation plan so long as the party responsible for transporting prisoners is specified.

(4) ***Upon the recommendation of the jailer, the fiscal court shall employ a female transportation officer for purposes of assisting the jailer during the transportation of female prisoners, when deemed necessary by the jailer.***

(5) In any county where there is no jail and the jailer does not transport prisoners, the jailer shall serve as a bailiff to the Circuit and District Courts of the county as provided for in KRS 71.050.

(6) Nothing in this section shall prohibit the jailer from transporting the prisoners as he or she deems necessary.

Section 3. KRS 532.100 is amended to read as follows:

(1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.

(2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.

(3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.

(4) ***(a)*** The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this ***paragraph***~~[subsection]~~ shall be granted a waiver by the commissioner of the Department of Corrections.

(b) 1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody, shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners if:

a. Beds are available in the county jail;

b. State facilities are at capacity; and

c. Halfway house beds are being utilized at the contract level as of July 15, 2000.

2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sexual offense enumerated in KRS 197.410(1), the sentence shall be served in a state institution.

3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.

(c) Any jail that houses state inmates under paragraph (a) or (b) of this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under paragraph (a) of (b) of this subsection.

(5) The jailer of a county in which a Class D felon ***or a Class C felon*** is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody

beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.

(6) Class D felons ***and Class C felons*** serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).

(7) State prisoners, excluding the Class D felons ***and Class C felons*** qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

Approved April 7, 2000

CHAPTER 385

(HB 537)

AN ACT relating to retirement.

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

Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

(1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;

(2) "Board" means the board of trustees of the Kentucky Retirement Systems;

(3) "Employer" or "State Police" means the Department of State Police, or its successor;

(4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided~~[in KRS 61.555]~~;

(5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;

(6) "Service" means the total of current service and prior service;

(7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;

(8) "Creditable compensation" means all salary and wages***, including payments for compensatory time,*** paid to the employee as a result of services performed for the employer ***or for time during which the member is on paid leave,*** which are includable on the member's federal form W-2 wage and tax statement ***under the heading "wages, tips, other compensation"***, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4)***. A lump sum bonus, severance pay, or employer provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the employer.***[~~;~~] Living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(9) "Final compensation" at any time means the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-eight (28), one (1) or more additional fiscal years shall be used;

(10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;

(11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;

(12) "Retirement allowance" means the retirement payments to which a retired member is entitled;

(13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of State Police;

(15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959[~~. A member of the State Police Retirement System, a member of the County Employees Retirement System, or a member of the Kentucky Employees Retirement System~~

~~covered by this section with twenty (20) or more years of service credit, at least fifteen (15) of which are current, may declare his "normal retirement date" to be some date prior to his fifty-fifth birthday]~~;

(16) "Disability retirement date" means the first day of the month following total and permanent disability or hazardous disability;

(17) "Dependent child" means a child en ventre sa mere and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);

(18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;

(19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;

(20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;

(21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;

(22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;

(23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;

(24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;

(26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(27) "Person" means a natural person;

(28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(29) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed

contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;

(30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month***. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions***;

(31) "Objective medical evidence" means~~[medical histories;]~~ reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;

(32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;~~[and]~~

(33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543***; and***

(34) "Month" means a calendar month.

Section 2. KRS 16.560 is amended to read as follows:

(1) The member contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 16.510 to 16.652 shall be credited; only funds from this account shall be used to return accumulated contributions of a member when required by reason of any provision of KRS 16.510 to 16.652. ***Prior to the member's retirement, death, or refund in accordance with Section 21 of this Act, no funds shall be made available from the member's contribution account.***

(2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member.

(3) Each member on June 30 of each year shall have his individual account credited with interest at a rate determined by the board but not less than two and one-half percent (2.5%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year and the amounts so credited shall be transferred from the retirement allowance account.

(4) Upon the retirement of a member, his accumulated contribution shall be transferred from the member's contribution account to the retirement allowance account.

(5) Included as a part of such member's contribution account shall be his accumulated contributions in the Kentucky Employees Retirement System, if any, transferred to this system.

Section 3. KRS 16.577 is amended to read as follows:

(1) Upon retirement at early retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date, with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced to reflect the earlier commencement of benefits.

(2) There shall be no reduction in the retirement allowance of a member who has twenty (20) or more years of service credit, at least fifteen (15) of which are current service.

Section 4. KRS 16.582 is amended to read as follows:

(1) (a) Total and permanent disability means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent.

(b) Hazardous disability means a disability which results in the member's total incapacity to continue as a regular full-time officer or as an employee in a hazardous position, as defined in KRS 61.592, but which does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit.

(c) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered.

(d) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability.

(2) Any person may qualify to retire on disability, subject to the following:

(a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;

(b) The person shall ***not be eligible for an unreduced retirement allowance***~~[be less than normal retirement age]~~;

(c) The person's application shall be on file in the retirement office no later than ***twenty-four (24)***~~[twelve (12)]~~ months after the person's last day of paid employment, as defined in KRS 16.505, as a regular full-time officer or in a regular full-time hazardous position under KRS 61.592;

(d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and

(e) ***A***~~[No]~~ ***person's*** disability application based on the same claim of incapacity shall be accepted and ***reconsidered***~~[considered]~~ for disability ***if***~~[for any person who has previously applied for and been denied disability benefits unless it is]~~ accompanied by ***new objective medical*** evidence~~[of a substantial change in the person's condition which shall satisfy subsection (4) of this section]~~. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day

of paid employment as a regular full-time officer or in a regular full-time hazardous position.

(3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:

(a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;

(b) The incapacity is deemed to be permanent; and

(c) The incapacity does not result directly or indirectly from:

1. Injury intentionally self-inflicted while sane or insane;

2. Injury or disease resulting from military service; or

3. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:

a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or

b. The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

(4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a position as regular full-time officer or a hazardous position.

2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.

(b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.

(c) The person's physical exertion requirements shall be determined based on the following standards:

1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.

2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.

4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.

5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.

(5) The disability retirement allowance shall be determined as provided in KRS 16.576, subject to the following:

(a) If the member's total service credit on his last day of paid employment in a regular full-time position is less than twenty (20) years, service shall be added beginning with his last date of paid employment and continuing to his fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his last day of paid employment, and the maximum service credit for calculating his retirement allowance, including his total service and service added under this section, shall not exceed twenty (20) years;

(b) If the member's total service credit on his last day of paid employment is twenty (20) or more years, then his total service credit shall be used.

(6) If the member receives a satisfactory determination of total and permanent disability or hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty, the member's retirement allowance shall be calculated as follows:

(a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and

(b) For each dependent child of the member on his disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.

(7) No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is age fifty-five (55) or older.

(8) If a regular full-time officer or hazardous position member has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the system's medical examiner.

(9) For a member of the State Police Retirement System, in lieu of the allowance provided in subsection (5) or (6) of this section, the member may be retained on the regular payroll and receive the compensation authorized by KRS 16.165, if he is qualified.

Section 5. KRS 16.601 is amended to read as follows:

(1) If the death of a member in service occurs on or after August 1, 1992, as a direct result of an "act in line of duty" and the member has on file in the retirement office at the time of his death a written designation of only one (1) beneficiary, who is his spouse, the beneficiary may elect to receive a lump-sum payment of ten thousand dollars ($10,000) and a monthly payment equal to twenty-five percent (25%) of the member's monthly final rate of pay beginning in the month following the member's death and continuing each month until death or until the spouse remarries, whichever occurs first.

(2) If the death of a member in service occurs on or after July 1, 1968, as a direct result of an "act in line of duty" and the member has on file in the retirement office at the time of his death a written designation of ***only one***~~[a]~~ beneficiary other than his spouse, who is a dependent receiving at least one-half (1/2) of his support from the deceased member, the beneficiary may elect to receive a lump-sum payment of ten thousand dollars ($10,000).

(3) In the period of time following a member's death during which dependent children survive, monthly payments shall be made for each dependent child who is alive, equal to ten percent (10%) of the deceased member's monthly final rate of pay; however, total maximum dependent children's benefits shall not be greater than forty percent (40%) of the deceased member's monthly final rate of pay at the time any particular payment is due. The payments shall commence in the month following the date of death of the member and shall be payable to the beneficiaries, or to a legally appointed guardian or as directed by the system. Benefits shall be payable under this subsection notwithstanding an election by a beneficiary to withdraw the deceased member's accumulated contributions as provided in KRS 61.625 or benefits under any other provisions of KRS 16.510 to 16.652.

(4) A beneficiary eligible for benefits under subsection (1) or (2) of this section who is also eligible for benefits under any other provisions of KRS 16.510 to 16.652 may elect benefits under this section or any other section of KRS 16.510 to 16.652 but cannot elect to receive both.

Section 6. KRS 16.640 is amended to read as follows:

The government and control of the system is hereby vested in the board of trustees of the Kentucky Retirement Systems. The board shall carry out the provisions of KRS 16.510 to 16.652 in the same manner in which it administers the Kentucky Employees Retirement System. In all matters concerning the administration of KRS 16.510 to 16.652, the same rights, duties, and obligations shall apply to the board, as now apply under the provisions of KRS 61.510 to 61.692, except that members of the board, when acting for the State Police Retirement System, shall be paid a per diem of ***thirty dollars ($30)***~~[ten dollars ($10)]~~ plus actual expenses.

Section 7. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

(1) Cessation of membership, as provided for by KRS 61.535;

(2) Medical examiners and hearing procedures, as provided for by KRS 61.665;

(3) Actuarial bases, as provided for by KRS 61.670;

(4) Duties of the employer, as provided for by KRS 61.675;

(5) Exemption of benefits of the system for taxation, as provided for by KRS 61.690;

(6) Retirement allowance increase, as provided for by KRS 61.691;

(7) Calculation of retirement allowance, as provided for by KRS 61.595(3) and (4);

(8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;

(9) Year of service credit, as provided for by KRS 61.545;

(10) Refund of contributions, death after retirement, as provided by KRS 61.630;

(11) Custodian of fund, payments made, when, as provided for by KRS 61.660;

(12) Credit for service prior to membership date, as provided for by KRS 61.526;

(13) Transfer of dormant accounts, as provided for by KRS 61.626;

(14) Member's account, confidential, as provided for by KRS 61.661;

(15) Cessation of membership, loss of benefits, as provided for by KRS 61.550;

(16) Correction of errors in records, as provided for by KRS 61.685;

(17) Maximum disability benefit, as provided for by KRS 61.607;

(18) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;

(19) Employer contributions, as provided for by KRS 61.565;

(20) Reinstatement of lost service credit, purchase of service credit, interest paid, delayed contribution and installment payments, as provided for by KRS 61.552;

(21) Reciprocal arrangement between systems, as provided by KRS 61.680;

(22) Refund of contributions, conditions, as provided by KRS 61.625;

(23) Hospital and medical insurance plan, as provided by KRS 61.702;

(24) Death benefit, as provided by KRS 61.705;

(25) Disability retirement allowance, reduction, discontinuance, as provided by KRS 61.615;

(26) Service credit, Armed Forces, as provided by KRS 61.555;

(27) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;

(28) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;~~[and]~~

(29) Retirement of persons in hazardous positions, as provided for by KRS 61.592***; and***

(30) Direct deposit of recipient's retirement allowance as provided in Section 30 of this Act.

SECTION 8. A NEW SECTION OF KRS 16.510 TO 16.652 IS CREATED TO READ AS FOLLOWS:

(1) There are created and established:

(a) An excess benefit plan to be known as the State Police Retirement System Excess Benefit Plan. The plan is created for the purpose of providing the retirement allowances payable from the retirement system under KRS 16.510 to 16.652 that would otherwise be limited by 26 U.S.C. sec. 415; and

(b) A state fund to be known as the "State Police Retirement System Excess Benefit Fund" which shall consist of all the assets of the plan.

(2) The administration and assets of the plan shall be as set forth in Section 32 of this Act.

Section 9. KRS 61.510 is amended to read as follows:

As used in KRS 61.515 to 61.705, unless the context otherwise requires:

(1) "System" means the Kentucky Employees Retirement System created by KRS 61.515 to 61.705;

(2) "Board" means the board of trustees of the system as provided in KRS 61.645;

(3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.515 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;

(4) "Examiner" means the medical examiners as provided in KRS 61.665;

(5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.515 to 61.705;

(6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;

(7) "State" means the Commonwealth of Kentucky;

(8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;

(9) "Service" means the total of current service and prior service as defined in this section;

(10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided~~[in KRS 61.552(7) and 61.555]~~, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he occupies the position during a legislative biennium subsequent to January 1, 1960;

(11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he occupied the position during a legislative biennium prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service; except that for an employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems whose prior service was in a position in an office of a Commonwealth's attorney the prior service may be validated by at least twelve (12) months of current service in the Kentucky Employees Retirement System or by at least fifteen (15) years of current service in the County Employees Retirement System. An employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems who wishes to validate prior service in a position in an office of a Commonwealth's attorney with fifteen (15) years of County Employees Retirement System service shall notify the Kentucky Retirement Systems of his or her eligibility for the service prior to January 1, 1999;

(12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon;

(13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees***, including payments for compensatory time,*** paid to the employee as a result of services performed for the employer ***or for time during which the member is on paid leave,*** which are includable on the member's federal form W-2 wage and tax statement ***under the heading "wages, tips, other compensation"***, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), except that for members of the General Assembly, it shall mean an assumed salary of twenty-seven

thousand five hundred dollars ($27,500) per annum which shall include per diem and expense payments authorized by KRS Chapter 6. The creditable compensation of members, officers, and employees of the General Assembly shall be calculated as having been received in equal amounts for each month of the biennium. ***A lump sum bonus, severance pay, or employer provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the employer.*** In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. ***Living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded.*** Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(14) "Final compensation" of a member means the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12), except that for members of the General Assembly who retire pursuant to KRS 61.600, or who die in office, "final compensation" shall be twenty-seven thousand five hundred dollars ($27,500). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). In the case of members of the General Assembly, the "final rate of pay" shall be the creditable compensation. The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are from time to time adopted by the board, except in cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.515 to 61.705;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150 and the assistants if employed by the General Assembly for at least six (6) legislative bienniums;

(21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:

(a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;

(b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;

(c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months;~~[and]~~

(d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; ***and***

(e) Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months;

(22) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;

(23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;

(24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;

(25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;

(27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a

dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded past service liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded past service liability shall be projected to be fully amortized at the conclusion of the set period;

(29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;

(30) "Person" means a natural person;

(31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month***. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions***;

(33) "Objective medical evidence" means~~[medical histories;]~~ reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;~~[and]~~

(34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543***; and***

(35) "Month" means a calendar month.

Section 10. KRS 61.520 is amended to read as follows:

(1) Each department shall participate in the system when the Governor by appropriate executive order, the authority to issue such executive order being granted, directs such department to participate in the system. The effective date of such participation shall be fixed by the Governor in his executive order.

(2) (a) Notwithstanding the provisions of subsection (1) of this section the Governor is authorized to permit any state college or university, which he directs by appropriate executive order to participate in the system after January 1, 1972, to include its noninstructional employees in the membership of the system while excluding the instructional employees of the state college or university from membership.

(b) All employees of an agency participating under authority of subsection (2)(a) of this section shall be considered noninstructional employees except the members of the

instructional staff of the state college or university who are responsible for teaching and the administrative positions which are included in the Teachers' Insurance and Annuity Association (TIAA) or the Kentucky Teachers' Retirement System.

(3) All executive orders issued under authority of this section since July 1, 1956, are hereby ratified by the General Assembly and each participating and contributing department, board, agency, corporation, mental health-mental retardation board, or entity participating since that date under such executive order is hereby declared to be a participating department under the Kentucky Employees Retirement System.

(4) Once a department participates it shall thereafter continue to participate. ***Any position initially required to participate in the Kentucky Employees Retirement System shall continue to participate as long as the position exists.***

Section 11. KRS 61.525 is amended to read as follows:

Membership in the system shall consist of the following:

(1) All persons who become employees of a participating department after the date such department first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3);

(2) ***(a)*** All persons who are employees of a department on the date the department first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days following the department's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 61.515 to 61.705;

(b) All persons who are employees of a department who did not elect to participate within thirty (30) days of the date the department first participated in the system or within thirty (30) days of their return to active service and who subsequently elect to participate the first day of a month after the department's date of participation;

(3) All persons who are employees of any credit union whose membership was initially limited to employees of state government and their families and which subsequently may have been extended to local government employees and their families;

(4) All persons who were professional staff employees of the Council on Postsecondary Education or the Higher Education Assistance Authority and were contributing to the system on~~[or after]~~ the effective date of Executive Order 74-762 or 75-964, respectively, and file a written election of their desire to continue in the system and all administrative and professional staff employees of the Higher Education Assistance Authority who, on or after January 1, 1993, are not participating in another retirement plan sponsored by the Higher Education Assistance Authority;

(5) All persons who were professional staff employees of the Kentucky Authority for Educational Television on and after July 1, 1974;

(6) All persons who are employees of the Teachers' Retirement System except employees who are required to participate under the Teachers' Retirement System under KRS 161.220(4)(d);

(7) Membership in the system shall not include those employees who are simultaneously participating in another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, except for employees who have

ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360; and

(8) Effective January 1, 1998, employees of the Kentucky Community and Technical College System who were previously contributing members and are not required to participate in the Teachers' Retirement System as a member; employees who were previously contributing members transferred from the Cabinet for Workforce Development as provided in KRS 164.5805(1)(a) and who have not exercised the option to participate in the new Kentucky Community and Technical College personnel system as provided in KRS 164.5805(1)(e); and new employees as of July 1, 1997, who are not eligible under the Teachers' Retirement System or who are not contributing to an optional retirement plan established by the board of regents for the Kentucky Community and Technical College System.

Section 12. KRS 61.542 is amended to read as follows:

(1) Prior to the time the first retirement allowance payment is issued by the State Treasurer:

(a) Each member may designate one (1) or more persons as a principal beneficiary or beneficiaries and one (1) or more persons as contingent beneficiary or beneficiaries; or each member may designate his estate as principal or contingent beneficiary; or each member may designate a trust or trustee as principal or contingent beneficiary.

(b) If multiple persons are designated, the member shall indicate the percentage of total benefits each person is to receive.

1. If percentages are not indicated, payments will be disbursed equally to the named beneficiaries.

2. If any of the multiple beneficiaries die prior to the member's death, the remaining beneficiaries shall be entitled to the deceased beneficiary's percentage of the total benefits, and each shall receive a percentage of the deceased's share which is equal to the percentage allotted them by the member.

3. If any or all multiple beneficiaries die after the first retirement allowance has been issued by the State Treasurer, the deceased beneficiary's estate shall receive a lump-sum payment which is the actuarial equivalent of the remaining monthly payments the deceased beneficiary was entitled to receive.

(c) This designation shall remain in full force and effect until changed by the member, except:

1. A final divorce decree terminates an ex-spouse's status as beneficiary, unless the member has on file in the retirement office a beneficiary designation that redesignates the ex-spouse as beneficiary subsequent to the issuance of the divorce decree.

2. If a beneficiary or beneficiaries are convicted of any crime which prohibits that person or persons from receiving the benefits under KRS 381.280, the beneficiary or beneficiaries shall not be eligible for any of the benefits and the remaining beneficiary or beneficiaries or, if none, the member's estate, shall become the beneficiary.

3. When a notification of retirement has been filed at the retirement office, the designation of beneficiary on the notification of retirement, which shall be one

(1) person, his estate, or a trust or trustee, shall supersede the designation of all previous beneficiaries.

4. When a request for refund has been filed at the retirement office, the member's estate shall become the member's beneficiary if the member dies.

(2) If the member dies prior to filing a notification of retirement or a request for refund, any retirement benefits shall be payable to the principal beneficiary, except that:

(a) If the death of the principal beneficiary or beneficiaries precedes the death of the member, or if the principal beneficiary is terminated by a divorce decree, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.

(b) If the principal beneficiary is the one (1) person who is the member's spouse and they are divorced on the date of the member's death, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.

(c) If the member is survived by his principal beneficiary or beneficiaries who subsequently die prior to having on file at the retirement office the necessary forms prescribed under authority of KRS 61.590, the contingent beneficiary shall become the principal beneficiary or beneficiaries.

(d) If the deaths of all the principal beneficiaries and all of the contingent beneficiaries precede the death of the member, the estate of the member becomes the beneficiary.

(3) Prior to the member's retirement, a monthly benefit payable for life shall not be offered if the beneficiary is more than one (1) person, the member's estate, or a trust or trustee.

(4) When a notification of retirement has been filed at the retirement office:

(a) The designation of beneficiary on the notification of retirement shall supersede the designation of all previous beneficiaries.

(b) The beneficiary designated by the member on the member's notification of retirement shall be one (1) person, the member's estate, or a trust or trustee.

(c) If the death of the beneficiary named on the notification of retirement precedes the date the first benefit payment has been issued by the State Treasurer, the member may designate another beneficiary on the member's notification of retirement.

(5) After the first retirement allowance payment is issued by the State Treasurer and subsequent thereto, a member shall not have the right to change his beneficiary, except that:

(a) The estate of the retired member becomes the beneficiary if the date of death of the beneficiary precedes or coincides with the date of death of the retired member.

(b) The estate of the retired member becomes the beneficiary if the retired member had designated a ***person***~~[spouse]~~ as beneficiary ***who was the spouse or who later married the member*** and they were divorced on the date of the retired member's death. An ex-spouse who was the named beneficiary on the member's notification of retirement shall be reinstated as the member's beneficiary for the payment options provided by KRS 61.635(2), (3), (4), and (8)(b) if they are remarried ***to each other*** as of the date of the retired member's death.

(c) The estate of the member shall not receive monthly payments if the member selected one (1) of the payment options provided by KRS 61.635(2), (3), (4), and (8)(b).

Section 13. KRS 61.545 is amended to read as follows:

(1) The board shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months except as provided in KRS 61.546 and in subsection (2) of this section.

(2) (a) Employees participating in one (1) of the state-administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System, a state-operated school under KRS Chapter 167, or a Kentucky institution of higher education which participates in the Kentucky Employees Retirement System, to work less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit except the amount purchased shall not exceed three (3) months. The employee~~[, the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board]~~ may purchase the service credit by paying the retirement system the member and employer contributions calculated on the average monthly rate multiplied by the number of months to be purchased. The payment shall be received by the retirement system by December 31 immediately following the school year in which the fractional year's service occurred. If the additional service credit is not purchased by December 31 following the close of each school year, the member shall pay interest on the cost of purchasing the credit at a rate established by the board of trustees. Members who have service credit prior to July 1, 1992, or their employers, ***the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board*** may purchase service credit ***on behalf of the employee*** for previous years by paying the retirement system the member and employer contributions calculated on the average monthly rate, multiplied by the number of months to be purchased plus interest at the actuarial rate.

(b) The cost of service under this subsection may be paid by both the employer and employee. The employer shall pay the employer contributions plus interest and the employee shall pay the employee contributions plus interest. The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the retirement system.

(3) (a) An employee who is simultaneously eligible for membership in more than one (1) retirement system administered by the Kentucky Retirement Systems may, at his option, choose to participate in only one (1) of those systems. The choice, once made, shall remain in effect so long as the employee is eligible for membership in more than one (1) system.

(b) If the employee participates in more than one (1) of the retirement systems administered by the Kentucky Retirement Systems, the employee's service credit shall be divided between each system determined by dividing the employee's creditable compensation in each system by the employee's total creditable compensation in all systems.

(c) If the employee earns creditable compensation in both a hazardous position, as defined by KRS 61.592, and a nonhazardous position, the employee's service credit shall be divided between the employee's hazardous and nonhazardous positions determined by dividing the employee's creditable compensation in the hazardous and nonhazardous positions by the employee's combined hazardous and nonhazardous creditable compensation.

Section 14. KRS 61.552 is amended to read as follows:

(1) Any employee participating in one (1) of the state-administered retirement systems~~[or an employee of a parted employer]~~ who has been refunded his accumulated contributions under the provisions of KRS 16.645(22), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. If the participating employee dies before regaining lost service credit, the employee's beneficiary, as designated according to the requirements of the employee's retirement system, may regain the credit by paying the amount refunded with interest at a rate determined by the board of the respective retirement system. Thereafter the beneficiary shall be entitled to the benefits that are payable based upon the deceased employee's total service credit. The provisions of KRS 161.470 shall be met in order to regain the credit in the Teachers' Retirement System. KRS 21.460 shall govern with respect to regaining credit in the Judicial Retirement Plan or Legislators' Retirement Plan. The beneficiary shall make the payment within one (1) year of the date of the employee's death. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(2) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(3) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(4) An employee ***participating in one (1) of the state-administered retirement systems*** may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments. Effective August 1, 1988, each employee of the Kentucky Racing Commission who was employed by the racing commission on the date

that agency first participated in the Kentucky Employees Retirement System, whether or not the employee was eligible to participate in the retirement system on that date, shall receive current service credit for all employment with the racing commission from July 1, 1956, to the date the employee first began participating in the retirement system. The cost of the service credit shall be paid at the time of each member's retirement by the racing commission and shall be credited to the retirement allowance account.

(5) ***(a)*** An employee ***participating in one (1) of the state-administered retirement systems***~~[who is or was an employee of a county participating in the County Employees Retirement System which did not participate in the system effective July 1, 1958,]~~ may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer.

(b) An employee participating in the Kentucky Employees Retirement System or the County Employees Retirement System, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates the full cost of the service credit purchased, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.

(6) After August 1, ***2000***~~[1988]~~, service credit obtained under ***the*** subsections~~[(1) to (5), (8) to (12), (14), (15), and (17) to (25)]~~ of this section ***which do not require the employee to have a minimum number of years of service credit to be eligible to make a purchase*** shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member~~[, upon request,]~~ if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems~~[or as an employee of a parted employer]~~. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 61.600 ***or Section 4 of this Act***.

(7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.

(8) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not have the option to be covered at the university by

a defined benefit retirement program, or did not participate in a retirement system which can be consolidated with other accounts pursuant to KRS 61.680(2), may obtain credit in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the County Employees, Kentucky Employees Retirement System, or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.

(9) (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);

(b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);

(c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;

(d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;

(e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.

(10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.

(11) ***Employees***~~[Members]~~ who served as assistants to officers and employees of the General Assembly who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960, if the service purchased when added to

other accumulated service will total at least forty-eight (48) months. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).

(12) ***(a)*** Effective August 1, 1988, any employee participating in one (1) of the state-administered retirement systems may purchase service credit for seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4).

(b) Any noncertified employee of a school board may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 78.610(4).

(13) A retired member, who is contributing to one (1) of the state-administered retirement programs and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:

(a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or

(b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.

(14) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed

contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(15) Any employee participating in one (1) of the state-administered retirement systems may obtain credit for prior or current service for any period of approved maternity leave~~[granted prior to January 1, 1972]~~, or for any period of approved sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by making installment payments in lieu of a lump-sum payment.

(a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. ***Once multiple service purchases have been combined in an installment purchase, the employee may not separate the purchases or pay a portion of one of the purchases.*** The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal.

(b) Twelve (12) consecutive monthly installment payments shall be made for each one thousand dollars ($1,000) or any part thereof of the total cost, except that the total number of installments shall not be less than twelve (12) and shall not exceed sixty (60).

(c) The employee shall pay the installments by payroll deduction each pay period. Upon notification by the retirement system, the employer shall report the installment payments separate from regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.

(d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.

(e) If the employee ***elects to stop the installment payments,*** dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal of the purchase by lump sum. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the

beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.

(f) If the employer does not report installment payments on an employee for sixty (60) days, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased.

(g) If payments have ceased under paragraph(e) or (f) of this subsection and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection. If the original installment purchase was for multiple service purchases, the employee may not separate those purchases under a new installment purchase.

(h) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by transferring funds ***pursuant to the rules in 26 U.S.C. sec. 401(a)(31)*** directly from a retirement plan ***or a deferred compensation arrangement*** maintained by his employer which is a qualified plan pursuant to ***26 U.S.C. sec. 401(a). Service credit may also be purchased***~~[Section 401(a) of the Internal Revenue Code or]~~ by a rollover of funds from ***a qualified retirement***~~[the]~~ plan pursuant to the rules specified in ***26 U.S.C. sec. 402(c).***~~[Section 402(c) of the Internal Revenue Code and]~~ The Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in ***26 U.S.C. secs.***~~[Section]~~ 402(c) and~~[Section]~~ 401(a)(31)~~[of the Internal Revenue Code]~~. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.

(17) After August 1, 1998, any employee participating in one (1) of the state-administered retirement systems who is age sixty-five (65) or older and has forty-eight (48) months' service credit in the Kentucky Employees Retirement System or the County Employees Retirement System or, if younger, who has sixty (60) months' service credit in the Kentucky Employees Retirement System or the County Employees Retirement System may purchase credit in the system in which the employee has the service credit for up to ten (10) years service in a regular full-time position that was credited to a state or local government-administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay the full cost of the service as determined by the system. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.

(18) After August 1, 1998, any employee participating in one (1) of the state-administered retirement systems, who has sixty (60) or more months of service in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement

System or the County Employees Retirement System, may purchase credit in the system in which the employee has the sixty (60) months of service credit for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay the full cost of the service credit as determined by the system. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.

(19) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.

(20) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65), or at least sixty (60) months' service if under age sixty-five (65), and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement system in which he participates the full cost of the service credit purchased, as determined by the system. Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.

(21) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65), who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4).

(22) Any employee participating in one (1) of the state-administered retirement systems on June 30, 2000, may obtain credit for subsequent service with a parted employer from the Commonwealth operating for the purposes of KRS 163.475, by paying to the respective retirement system a delayed contribution payment if the respective retirement system receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall be deposited to the individual member's account. The delayed contribution payment shall not be picked up by the employer as described in KRS 61.560(4).

(23) Any employee participating in the County Employees Retirement System who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may purchase service credit for service with a city, county, or joint city-county planning commission, if that service was not covered by a state-

administered retirement system. Notwithstanding any statute to the contrary, the employee shall be entitled to a full month of service for each month or portion of month that the employee occupied the position whether or not the employee would have qualified, at the time of planning commission service, for the service under KRS 6.525. The employee shall pay to the retirement system the full cost of the service credit purchased, as determined by the board's actuary. The payment shall not be picked up, as described in KRS 78.610(4), by the employer and shall be deposited to the member's account. Payment may be by lump sum or in increments. The employee may obtain credit for service with a city, county, or joint city-county planning commission only if the Kentucky Retirement Systems receives a favorable letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor.

(24) (a) Any member or retired member of one (1) of the retirement systems administered by the Kentucky Retirement Systems who is entitled to service credit for employment which was not reported in accordance with KRS 16.543, 61.543, or KRS 78.615 may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.

(b) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(25) Any employee participating in one (1) of the state-administered retirement systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or KRS 78.610(4), by the employer.

(26) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems on or after August 1, 1998, who has at least two hundred forty (240) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.510 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for based on

the full actuarial cost as determined by the system. The payment shall not be picked up, as described in KRS 16.545(4), KRS 61.560(4), KRS 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments.

(27) An employee participating in one (1) of the state-administered retirement systems, who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), may obtain credit in the County Employees Retirement System for the period of that employee's service with a community action agency created under KRS 273.405 to 273.453 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system the full actuarial cost of the service credit purchased. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.

Section 15. KRS 61.555 is amended to read as follows:

(1) After August 1, 1998, any employee entering the Armed Forces of the United States after he first participates in the system, being on leave of absence from service and not withdrawing his accumulated contributions, shall be entitled to have credited as current service his period of active military duty in the Armed Forces of the United States, not to exceed six (6) years, if his discharge therefrom is honorable and he returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems within two (2) years after ***completion of the period of active military duty***~~[discharge]~~, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge.

(2) After August 1, 1998, any ***employee***~~[member of the system]~~ who, prior to the date he first participated in the system, terminated his employment in order to enter the Armed Forces of the United States and who returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems within two (2) years after ***completion of the period of active military duty***~~[his honorable discharge therefrom]~~, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge, shall be entitled to have credited as prior service his period of active military duty in the Armed Forces, not to exceed six (6) years.

(3) Any National Guard technician involuntarily serving on active military duty during the period between January 26, 1968, and January 1, 1970, who completes his eight (8) years' service while on military duty during this period, shall have that portion of his active military duty, necessary to the completion of eight (8) years' current service, credited to his account, as current service without having to meet the reemployment criteria.

(4) Any employee eligible for retirement as prescribed in KRS 61.559 or any employee upon completion of five (5) years of service shall receive current service credit for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (3) of this section if he pays thirty-five percent (35%) of the cost of the service based on the formula adopted by the board. The payment by the member shall not be picked up by the employer, as described in KRS 61.560(4), and shall be deposited to his individual member's account. The remaining sixty-five percent (65%) shall be paid by the state from funds appropriated specifically for the purpose and these payments shall be

deposited to the respective retirement allowance accounts. If no funds are available in the special appropriation account, the system shall not accept employee payments until funds are available in the account.

(5) ***Any employee participating in one (1) of the state-administered retirement systems***~~[A member]~~ eligible to purchase military service credit under subsection (4) of this section shall receive current service credit for active military duty as provided under subsection (4) of this section without payment of the current employee contribution ratio if the member was taken prisoner by a hostile power at any time during active military service.

(6) ***(a)*** Any ***employee participating in one (1) of the state-administered retirement systems***~~[member]~~ age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or ***if younger***~~[any other member]~~ who has sixty (60) months of service, at least twelve (12) of which are current service~~[(or his beneficiary if the member dies prior to retirement)]~~ shall receive current service for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (4) of this section, by paying the retirement system a delayed contribution payment as defined in KRS 61.510(22). Payment shall be by lump sum, except that members may pay by increments. The delayed contribution payment shall not be picked up, as described KRS 61.560(4), by the employer and shall be deposited to the individual member's account.

(b) After August 1, 2000, an employee who purchased the maximum period of active military duty described in paragraph (a) of this subsection may purchase any qualified active military duty time in excess of the maximum by paying the retirement system the full actuarial cost as determined by the system. Payment may be made by lump sum or in increments. The payment shall not be picked up by the employer as described in KRS 16.545(4), 61.560(4), or 78.610(4) and shall be deposited in the member's individual retirement account.

(7) Effective July 1, 1978, no veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for such pension in the future; but nothing in this section shall prohibit the purchase of credit if the military pension results from service primarily on inactive duty in a reserve component of the Armed Forces, or if the military pension is a disability pension, or is for a veteran sixty-five (65) years of age or older who is considered permanently and totally disabled. Any veteran receiving a military disability pension who retired prior to July 15, 1986, who was unable to purchase military service credit pursuant to subsection (4) or subsection (6) of this section, may make the payment required by subsection (4) or subsection (6), and his retirement benefits shall be recalculated to apply to all retirement allowances and insurance benefits received after the date of the payment. Retiree payments pursuant to subsection (4) of this section shall not be accepted unless matching state funds are available in the special appropriation account.

(8) Any ***employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems***~~[member of the Kentucky Employees Retirement System]~~ age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or ***if younger***~~[any member of the Kentucky Employees Retirement System or the State Police Retirement System]~~ who has sixty (60) months of

service, at least twelve (12) of which are current service, shall receive one (1) month of current service for each six (6) months of service in the National Guard or the military reserves of the United States, by paying the retirement system the full actuarial cost as determined by the system. The service shall be treated as service earned prior to participation in the system and shall not be included in the member's final compensation. Payment may be made by lump sum or in increments. The payment shall not be picked up by the employer, as described in KRS 16.545(4), 61.560(4), or 78.610(4) and shall be deposited in the member's individual retirement account.

Section 16. KRS 61.575 is amended to read as follows:

(1) The members' contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 61.510 to 61.692 shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement. ***Prior to the member's retirement, death, or refund in accordance with Section 21 of this Act, no funds shall be made available from the member contribution account.***

(2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member.

(3) Each member on June 30 of each year shall have his individual account credited with interest at a rate determined by the board but not less than two percent (2%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year and the amounts so credited shall be transferred from the retirement allowance account.

(4) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.

Section 17. KRS 61.592 is amended to read as follows:

(1) "Hazardous position" means any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. Hazardous positions shall include positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.

(2) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section, but a county, narrowly defined as one (1) of Kentucky's one hundred and twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall request hazardous duty coverage for its full-time paid firefighters. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the

employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.

(3) (a) An employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, seven percent (7%) of his creditable compensation. An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation;

(b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565;

(c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost ***of converting***~~[in order that]~~ the nonhazardous service ***to hazardous service from the date of participation to the date the payment is made***~~[be credited as hazardous service]~~, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.

(4) Except for the employee contribution by members of the Kentucky Employees Retirement System, the normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.510 to 16.652. The employee contribution for a member of the Kentucky Employees Retirement System shall be seven percent (7%).

(5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.

(6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.515 to 61.705, or 78.520 to 78.852, or 16.510 to 16.652.

Section 18. KRS 61.590 is amended to read as follows:

(1) A member or beneficiary eligible to receive retirement benefits under any of the provisions of KRS 61.510 to 61.705, KRS 78.510 to 78.852, and KRS 16.510 to 16.652 shall have on file at the retirement office on the form prescribed by the board, notification of retirement, giving his name, address, Social Security number, last day of employment, and other information the system may require. ***The notification of retirement shall not be filed more than six (6) months before the member's effective retirement date.***

(2) Within ten (10) days of the receipt of the notification of retirement form ***submitted within two (2) months of the effective date of retirement***, the system shall cause to be prepared an estimate of the amounts the member or beneficiary may expect to receive under the various plans available to the member or beneficiary. This information shall be recorded on a form entitled "Estimated Retirement Allowance" and forwarded to the member or beneficiary. ***If the member submits a notification of retirement form more than two (2) months prior to the effective retirement date, the system shall provide the estimated retirement allowance within forty-five (45) days of the member's effective retirement date.***

(3) The member or beneficiary shall file at the retirement office the form entitled "Estimated Retirement Allowance" after he has checked the plan of his choice, signed the document and had his signature witnessed. A member or beneficiary may not select a different plan after the first retirement allowance payment has been issued by the State Treasurer.

(4) A member or beneficiary choosing a monthly payment plan shall have on file at the retirement office his birth certificate or other acceptable evidence of date of birth. If a survivorship plan is chosen, proof of dates of birth of the beneficiary and member shall be on file at the retirement office.

(5) The effective date of normal retirement shall be the first month following the month in which employment was terminated from a regular full-time position. The effective date of disability retirement shall be the first month following the month in which the member's last day of paid employment in a regular full-time position occurred. The effective date of early retirement shall be the first month following the month the notification of retirement form is filed at the retirement office, if employment in a regular full-time position has been terminated.

(6) The effective date of a deferred retirement option as provided under KRS 16.576(5) shall be the month following age sixty-five (65), or the month following written notification from the member that he wishes to begin receiving retirement payments. In the event of the death of a member who has deferred his retirement allowance, the effective date of retirement shall be the month following the member's death.

(7) Notwithstanding the provisions of KRS 16.578 or 61.640, the effective date of a beneficiary's retirement allowance under normal, early, or disability retirement shall be as prescribed in subsection (5) or (6) of this section if the member dies before the first retirement allowance has been issued by the State Treasurer and his beneficiary becomes eligible for payments under KRS 16.578 or 61.640.

Section 19. KRS 61.600 is amended to read as follows:

(1) Any person may qualify to retire on disability, subject to the following conditions:

(a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1) or 78.615(1);

(b) The person shall ***not*** be ***eligible for an unreduced retirement allowance***~~[less than normal retirement age]~~;

(c) The person's application shall be on file in the retirement office no later than ***twenty-four (24)***~~[twelve (12)]~~ months after the person's last day of paid employment, as defined in KRS 61.510, in a regular full-time position, as defined in KRS 61.510 or KRS 78.510;

(d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and

(e) ***A***~~[No]~~ ***person's*** disability application based on the same claim of incapacity shall be accepted and ***reconsidered***~~[considered]~~ for disability ***if***~~[for any person who has previously applied for and been denied disability benefits unless it is]~~ accompanied by ***new objective medical*** evidence~~[of a substantial change in the person's condition which shall satisfy subsection (4) of this section]~~. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time position.

(2) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:

(a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered;

(b) The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;

(c) The incapacity is deemed to be permanent; and

(d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent. For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

(3) Paragraph (d) of subsection (2) shall not apply if:

(a) The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or

(b) The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

(4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a regular full-time position.

2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.

(b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.

(c) The person's physical exertion requirements shall be determined based on the following standards:

1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.

2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.

4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.

5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.

~~[(5) Persons who have previously qualified for disability retirement and have had benefits discontinued shall be reevaluated under the criteria of subsection (2) of this section.]~~

Section 20. KRS 61.605 is amended to read as follows:

Upon disability retirement, an employee may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability except that service credit shall be added to the employee's total service beginning with his last date of paid employment and continuing to his sixty-fifth (65th) birthday; however, the maximum service credit added shall not exceed the total service the employee had upon his last day of paid employment, and the maximum combined service credit for calculating his disability retirement allowance, including total service and added service shall not exceed twenty-five (25) years. If, however, an employee has accumulated twenty-five (25) or more years of total service, he shall receive added service necessary to bring his combined service credit, including total and added service, to ***twenty-seven (27)***~~[thirty (30)]~~ years.~~[When the employee has accumulated total service of thirty (30) or more years, his total service shall be used in computing disability benefits. For employees hired on or after July 15, 1998, the total service and added service for determining disability benefits shall not exceed twenty-seven (27) years.]~~

Section 21. KRS 61.625 is amended to read as follows:

(1) A member if living, or if not living, his designated beneficiary, shall have the right to request a refund of his accumulated contributions, including the amount of any employee contributions picked up by the employer pursuant to KRS 61.560(4), reduced by the amount of any retirement allowances previously received if~~[:~~

~~(a)]~~ the member's employment has been terminated and the member is not participating in the same retirement system~~[;~~

~~(b) The member is employed in an employment status as defined in KRS 61.510(21)(a) to (d) that does not require the member to participate in the system; or~~

~~(c) The member has been laid off for ninety (90) days or more]~~.

(2) Payments made under this section shall be in lieu of any other benefits due for the period of service under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852, unless the period of service is regained as provided under KRS 61.552. Payments of taxable distributions made pursuant to this section shall be subject to state and federal tax as appropriate.

(3) Refund of contributions of members whose benefits have been terminated pursuant to KRS 6.696 shall be governed by that section.

Section 22. KRS 61.637 is amended to read as follows:

(1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.515 to 61.705 and 78.520 to 78.852 and who is reemployed as an employee by a participating agency ***prior to August 1, 1998,*** shall have his retirement payments suspended for the duration of reemployment, except as provided in subsection (7) of this section. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the Federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.

(2) Employer and employee contributions shall be made as provided in KRS 61.515 to 61.705 and 78.520 to 78.852 on the compensation paid during reemployment, except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar ($1), and the member shall be credited with additional service credit.

(3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.

(4) (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment;

(b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment;

(c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:

1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;

2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);

3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;

4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691;

5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.

(5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the Federal

Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents ($0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar ($1) for every three dollars ($3) earned if over age sixty-five (65).

(6) (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095; and

(b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.

(7) If a member is retired from a hazardous position, as defined by KRS 61.592, the member shall be permitted to seek and hold an elected city or county office under the provisions of this subsection:

(a) The member may receive the pay for the elected city or county office but shall not contribute to, receive benefits from, or otherwise participate in the office's retirement system; and

(b) The member's pension and benefits received because of retirement from the hazardous position shall not be affected if he holds an elected city or county office.

(8) Effective August 1, 1998, the provisions of subsections (1) to (4) of this section shall no longer apply to a retired member who is reemployed in a position covered by the same retirement system from which the member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.

(9) A retired member or his employer shall notify the retirement system if he has accepted employment with an agency that participates in the retirement system from which the member retired.

(10) If the retired member is under a contract, the member shall submit a copy of that contract to the retirement system, and the retirement system shall determine if the member is an independent contractor for purposes of retirement benefits.

(11) If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of the member's initial retirement date in a position that is required to participate in the same retirement system from which the member retired, the member's retirement shall be voided and the member shall repay to the retirement system all benefits received. The member shall contribute to the member account established for him prior to his voided retirement. The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable compensation.

(12) (a) 1. A retired member of the Kentucky Employees Retirement System or the State Police Retirement System who, after initial retirement, is hired by an agency that participates in the Kentucky Employees Retirement System or the State Police Retirement System shall be considered to have been hired by the same employer.

2. If a member of the Kentucky Employees Retirement System retires from a department which participates in more than one (1) retirement system and is reemployed within one (1) month of his initial retirement date by the same department in a position participating in another retirement system, the retired member's retirement allowance shall be suspended for the first month of his retirement and the member shall repay to the retirement system all benefits received for the month.

(b) A retired member of the County Employees Retirement System who after initial retirement is hired by the county from which the member retired shall be considered to have been hired by the same employer.

(13) (a) If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within six (6) months of the member's initial retirement date by the same employer, the member shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position from which he retired and for the position in which he has been reemployed.

(b) The job descriptions and statements of duties shall be filed with the retirement office.

(14) If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:

(a) The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends six (6) months after the member's initial retirement date.

(b) The retired member shall repay to the retirement system all benefits that the member received after reemployment began.

(c) Upon termination, or subsequent to expiration of the six (6) month period from the date of initial retirement, the retired member's retirement allowance based on his initial retirement account shall no longer be suspended and the member shall receive the amount to which he is entitled, including an increase as provided by KRS 61.691.

(d) Except as provided in subsection (7) of this section, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after the member's date of reemployment shall be credited to the second member account.

(e) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.

(15) (a) If the retirement system determines that the retired member has not been reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.

(b) If the position is a regular full-time position, the member shall contribute to a second member account in the retirement system.

(16) (a) If a retired member is reemployed at least one (1) month after initial retirement in a different position, or at least six (6) months after initial retirement in the same position, and prior to normal retirement age, the retired member shall contribute to a second member account in the retirement system and continue to receive a retirement allowance from the first member account.

(b) Service credit gained after reemployment shall be credited to the second member account. Upon termination, the retired member shall be entitled to benefits payable from the second member account.

(17) A retired member who is reemployed and contributing to a second member account shall not be eligible to purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 which he was eligible to purchase prior to his initial retirement.

Section 23. 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 nine (9) 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) Two (2) 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) Three (3) trustees, appointed by the Governor of the Commonwealth. Of the three (3) trustees appointed by the Governor, one (1) shall be knowledgeable about the impact of pension requirements on local governments.

(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, and other professional services as its statutory purpose may require, notwithstanding the provisions of KRS Chapters 45 and 45A;

(e) To purchase fiduciary liability insurance;

(f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage any such property as its purpose may require, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and

(g) The board shall reimburse any trustee or officer 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 shall not serve more than three (3) consecutive four (4) year terms. An elected trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board~~[;~~

~~(b) The trustee to be elected by the members of the County Employees Retirement System who replaces the Attorney General on the board shall have an initial term expiring on March 31, 1977, and nominations for this position and the election process shall take place within ninety (90) days after March 26, 1974, with the Attorney General serving until the elected member has been duly qualified and administered the oath of office;~~

~~(c) The term of office of the trustee elected by the membership of the Kentucky Employees Retirement System which now expires on December 10, 1975, shall be succeeded by a term expiring on March 31, 1978]~~.

(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***~~[shall]~~ nominate, not less than six (6) months before a term of office of a trustee is due to expire,~~[at least]~~ 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 general manager, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, 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)***~~[three (3)]~~ months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the general manager 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 record his Social Security number, 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 chairman of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.

(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.

(7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of ***eighty***~~[sixty]~~ dollars ***($80)***~~[($60)]~~ 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) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chairman or the general manager. It shall elect a chairman and a vice chairman. 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) The board shall:

(a) Appoint or contract for the services of a general manager and fix his compensation without limitation by the provisions of KRS Chapter 18A and KRS 64.640. The general manager shall be the chief administrative officer of the board;

(b) Authorize the general manager to appoint the employees he deems necessary. Appointees deemed to be in a policy-making position shall be unclassified and their salaries shall be determined by the board. Other appointees shall be subject to the personnel classification system and salaries shall be subject to the secretary of the Personnel Cabinet;

(c) Require the general manager and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62;

(d) Establish a system of accounting; and

(e) Do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852, necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 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 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 conform with federal statute or regulation ***and meet the qualification requirements under 26 U.S.C. sec. 401(a)***. Provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 which conflict with federal statute or regulation ***or qualification under 26 U.S.C. sec. 401(a)*** shall not be available to the member. 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)***.

(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***~~[shall]~~ 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) 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. 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 general manager 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.

(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 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852, may appeal the decision of the board to the Franklin Circuit Court 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 paragraphs (e)1. and (e)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.

(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, the affected member, retired member, or recipient may request a hearing to be held in

accordance with KRS Chapter 13B. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, 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.

Section 24. KRS 61.665 is amended to read as follows:

(1) The board shall employ at least three (3) physicians, ***licensed***~~[practicing]~~ 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, KRS 16.505 to 16.652, and KRS 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, KRS 16.505 to 16.652, and KRS 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 as consultants to assist in making determinations where there is objective medical evidence of mental impairments.***

(2) (a) Each employee requesting disability retirement shall ***file at***~~[furnish]~~ the retirement office~~[with]~~ the names and addresses of ***all, but no fewer than*** two (2)***,***~~[or more]~~ physicians who have the necessary information to report the employee's physical and mental condition. The employee 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 employee 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. ***If an employee fails to file, at the retirement office within six (6) months of the date the employee filed his notification of retirement, any of the information required by this subsection, the employee's application for disability benefits shall be void.***

(b) The employer shall file at the retirement office a complete description of the job and duties for which the employee was last paid and shall submit a detailed description of reasonable accommodations attempted.

(c) The board shall prescribe forms upon which medical evidence shall be recorded. The forms shall be sent to the employee's physicians with the request that the documents be completed and filed at the retirement office.

(d) The cost of a medical examination shall be paid by the employee. The physicians shall be paid a reasonable amount by the retirement system for the filing of the medical report with the retirement office, pursuant to an administrative regulation promulgated by the board.

(e) The system shall select a medical examiner to evaluate the medical evidence submitted by the employee's physician. The examiner shall recommend that disability retirement be approved, or that disability retirement be denied. If the medical examiner recommends denial of disability benefits, the system shall submit the member's application to ***one (1)***~~[two (2)]~~ additional medical ***examiner***~~[examiners]~~. ***If the second medical examiner recommends approval, the application shall be submitted to a third medical examiner.*** Both of the additional medical examiners shall recommend approval of disability benefits to overturn the original recommendation. ***If there is objective medical evidence of mental impairments, the medical examiners may***

request the board's licensed mental health professional to assist in determining the level of the mental impairment. Recommendations by the examiners shall be submitted to the board for approval.

(f) If the medical examiners recommend that the employee be approved for disability retirement, the general manager shall make retirement payments in accordance with the retirement plan selected by the employee.

(g) If the medical examiners recommend that the employee be denied disability retirement, the general manager shall notify the employee of this recommendation. The employee shall have sixty (60) days to file at the retirement office additional medical information or to appeal his denial for disability benefits by filing at the retirement office a request for a formal hearing. An extension of time may be granted by the system for a medical examiner to evaluate additional medical information. The extensions of time shall not be for more than sixty (60) days for any one (1) extension, and no more than three (3) extensions shall be granted. The cumulative extension of time shall not exceed one hundred twenty (120) days. The extension of time shall end upon request of a formal hearing.

(h) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.

(i) Notwithstanding the foregoing provisions of this section, the system may pay for one (1) or more medical examinations requested by the examiners for the purpose of providing medical information deemed necessary by the examiners. The system may direct that a specialist be sought.

(3) Any person aggrieved by a final order or determination of the system may file at the retirement office a request that a hearing be conducted by the system in accordance with KRS Chapter 13B. The right to demand a hearing shall be limited to a period of sixty (60) days after the requester has had notice, as described in subsection (6) of this section, of the system's determination. If any extensions of time are granted by the system, they shall be as provided for in subsection (2)(g) of this section.

(a) Any person whose disability benefits have been reduced, discontinued, or denied pursuant to subsection (2)(g) of this section or KRS 61.615(1) may file at the retirement office a request for an administrative hearing with the system. The right to demand a hearing shall be limited to a period of sixty (60) days after the requester has had notice, as described in subsection (6) of this section, of the system's determination. The request shall be filed with the general manager, at the system's central office in Frankfort. The request for a hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability benefits is being contested. The request shall not operate as a stay of any reduction, discontinuance, or denial of benefits.

(b) Failure of the member to request a formal hearing within the period of time specified shall preclude the member from proceeding any further with his cause of action, except as provided in KRS 61.600(1)(e). This paragraph shall not limit the member's right to appeal to a court.

(c) The system may require the member 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 member 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) A final order of the board which alters or amends the decision recommended pursuant to subsection (2)(g) of this section shall relate back and take effect on the date of the recommendation.

(f) 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 chairman 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 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 25. KRS 61.680 is amended to read as follows:

(1) Prior to August 1, 1982, every employee shall be deemed to consent and agree to any deduction from his compensation required by KRS 6.500 to 6.535, 16.510 to 16.652, 61.510 to 61.692, 78.510 to 78.852, and to all other provisions thereof. Thereafter, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4).

(2) (a) Notwithstanding any other provisions of KRS 6.500 to 6.535, 16.510 to 16.652, 61.510 to 61.692, 78.510 to 78.852 and 161.220 to 161.714, upon death, disability, or service retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and Teachers' Retirement System shall be consolidated for the purpose of determining eligibility and amount of benefits. Vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education and accepted by the Kentucky Employees

Retirement System or the County Employees Retirement System, may be used to determine eligibility for ***twenty-seven (27)***~~[thirty (30)]~~ year retirement but not the amount of benefits. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, but the final compensation shall be determined as if all service were in one (1) system. If the member has prior service in more than one (1) system, he shall obtain at least twelve (12) months' current service in each system in which he has prior service in order to validate the prior service in each system for purposes of determining consolidated benefits under this section. Upon the determination of benefits, each system shall pay the applicable percentage of total benefits.

(b) The provisions of paragraph (a) of this subsection shall be waived if the member notifies the system of his desire to maintain separate retirement accounts in the State Police Retirement System, Kentucky Employees Retirement System, or County Employees Retirement System, or if he is a member of the State Police Retirement System or is working in a hazardous position under the Kentucky Employees Retirement System or County Employees Retirement System and as a result of an act in line of duty, becomes disabled or deceased.

(c) If the member has not contributed at least one (1) year in a system in which he has prior service, his current service in the system shall be valid for purposes of determining eligibility and in computation of benefits on a consolidated basis.

(3) A member with service credit in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System who becomes the holder of an office entitling him to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, but who does not elect within thirty (30) days after taking office in such service to participate in the plan, in accordance with KRS 6.505 or 21.360, shall be deemed to have elected to retain membership in the system in which he is a member, either the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System. In that event, the agency employing the member shall withhold employee contributions, or picked-up employee contributions after August 2, 1982, make employer contributions and remit these contributions to the system in which the member retained his membership. Any person entitled to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, who does not elect within thirty (30) days after taking office to participate in the plan, in accordance with KRS 6.505 or 21.360, and who at the time of taking office is not a contributing member of, or does not have service credit in, any of the retirement systems mentioned in this section, or the Teachers' Retirement System, shall participate in the Kentucky Employees Retirement System. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the system in which the employer of the nonelected position participates. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is not employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the Kentucky Employees Retirement System.

(4) (a) Prior to July 1, 1976, a person entering the service of an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System with service credit in the Teachers' Retirement System and who desires to retain membership in the Teachers' Retirement System, and who is permitted by that system to continue, shall be exempt from participating in the Kentucky Employees Retirement System or the County Employees Retirement System.

(b) Any person who has elected to retain membership in the Teachers' Retirement System as provided in paragraph (a) of this subsection may cancel his election and participate in the system under which his position would normally participate, if he elects to cancel his option prior to January 1, 1977.

(c) Any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System and who does not elect within thirty (30) days after taking office to participate in the Legislators' Retirement Plan, in accordance with KRS 6.505, shall during his term of office participate in the Kentucky Employees Retirement System unless an election to retain membership in the Teachers' Retirement System is filed in writing within ninety (90) days after his term of office begins. No contributions may be made to the Teachers' Retirement System for the same period of service under the Legislators' Retirement Plan or the Kentucky Employees Retirement System as a member of the General Assembly, but contributions made to the Teachers' Retirement System while a member of the General Assembly shall be transferred to the Legislators' Retirement Plan, as provided for in KRS 6.535, when the member elects to join the Legislators' Retirement Plan, and service credit in the Legislators' Retirement Plan shall be granted as provided for in KRS 6.505(3).

(5) Effective July 1, 1974, any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in a position covered by one (1) of these retirement systems and his employee contributions, service credit and employer contributions made on his behalf are being transferred to the other retirement system shall contribute to the system in which his employer participates, or after August 1, 1982, the employer shall pick up the employee contributions, and no further contributions or service credit shall be transferred to the system in which he elected to retain membership, as subsection (2) of this section eliminates the necessity of the transfers.

(6) Any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in more than one (1) position covered by the same retirement system, shall have his wages and contributions consolidated and his retirement account administered as a single account. If part-time positions are involved, an accumulation of all hours worked within the same retirement system shall be used to determine eligibility under KRS 61.510(21).

(7) Notwithstanding the provisions of subsection ***(2)***~~[(3)]~~ of this section, a person who does not have the amount of service required for service retirement in the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System, but who is a member of one (1) of the systems or is a former member of one (1) or more of the systems with valid service credit therein, shall become eligible for service retirement benefits attributable to the amount of his actual service credit in each system in which he has service credit when his combined service credit in all the systems, plus any service credit he has in the Judicial

Retirement Plan, is equal to that required for service retirement in each respective system. The computation of benefits shall be based on the applicable formula in each system and service credit in each system. The final compensation shall be determined by using the creditable compensation reported to the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System and only as much of the compensation earned in the Judicial Retirement Plan as is needed to satisfy the final compensation requirement applicable in the respective retirement systems.

Section 26. KRS 61.690 is amended to read as follows:

(1) All retirement allowances and other benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and the accumulated contributions and cash securities in the funds created under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, are hereby exempt from any state, county, or municipal tax, and shall not be subject to execution, attachment, garnishment, or any other process, and an assignment thereof shall not be enforceable in any court. Except retirement benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(2) A retirement allowance, a disability allowance, a member's accumulated contributions, or any other benefit under the system shall not be classified as marital property ***or as an economic circumstance as provided in***~~[pursuant to]~~ KRS 403.190~~[(1)]~~ in an action for dissolution of marriage~~[if the property of the other party to the action is exempted from a marital property classification pursuant to KRS 161.700(2)]~~.

(3) ~~[Qualified domestic relations and]~~Child support orders for current, owed, or to-be- owed child support, issued by a court or administrative agency shall be honored by the retirement systems if the orders are in compliance with the regulation adopted by the board pursuant to KRS 61.645(9)(e).

Section 27. KRS 61.701 is amended to read as follows:

(1) There is hereby created and established a state fund to be known as "Kentucky Retirement Systems Insurance Fund."

(2) The fund is created for the purpose of providing a fund separate from the retirement funds and is to be used to provide fringe benefits ***as provided in Section 28 of this Act*** to retired recipients and employees of employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and to certain of their dependents or beneficiaries~~[named in KRS 61.702]~~.

(3) The fund shall be administered by the board of trustees of the Kentucky Retirement Systems and the board shall manage the assets of the fund in the same manner in which it administers the retirement funds.

Section 28. KRS 61.702 is amended to read as follows:

(1) ***(a)*** The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky

Employees Retirement System, County Employees Retirement System, and State Police Retirement System. The board shall also arrange to provide health care coverage by health maintenance organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section. The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems~~[, who are under age sixty-five (65),]~~ to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status. ***Notwithstanding the provisions of any other statute, recipients shall be included in the same class as current state employees in determining medical insurance policies and premiums.***

(b) For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (7) of this section.

(2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.

(3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:

1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;

2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance fund;

3. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance fund under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;

4. Partly from subparagraphs 1., 2., or 3., except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance fund or another state-administered retirement system under a

reciprocal agreement shall be paid by the recipient. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance fund shall pay the balance, not to exceed the monthly contribution.

5. In full from the Kentucky Retirement Systems insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, a State Police Retirement System member or a hazardous position employee, as defined in KRS 61.592, who becomes disabled in the line of duty as defined in KRS 16.505(19), shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, a State Police Retirement System member or a hazardous position employee as defined in KRS 61.592, who is killed in the line of duty as defined in KRS 16.505(19), shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service."

(b) For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one of the other state-administered retirement plans.

1. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance fund, according to the criteria established in

paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance fund shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.

2. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.

3. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.

(4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the spouse, dependent, disabled child, or beneficiary hospital and medical insurance is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(b) The other provisions of this section notwithstanding, the insurance fund shall pay a percentage of the monthly contribution for the spouse and dependents of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System, or the beneficiary of the member, if the member designated only one (1) person as beneficiary. The percentage of the monthly contribution paid for the spouse and dependents shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section.

(c) The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for the spouse or dependents or beneficiary of a former member of the County Employees Retirement System, the insurance fund shall continue the same level of coverage for the spouse or dependent or beneficiary after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent or beneficiary is not eligible for Medicare coverage.

(5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial

office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.

(6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

(7) The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly premium determined under subsection (3) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.

Section 29. KRS 61.705 is amended to read as follows:

(1) Upon the death of a retired member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System who had a minimum of forty-eight (48) months of service, a death benefit of five thousand dollars ($5,000) shall be paid. ***If the retired member had more than one (1) account in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System, the system shall pay only one (1) five thousand dollar ($5,000) death benefit.*** Application for the death benefit made to the Kentucky Retirement Systems shall include acceptable evidence of death and of the eligibility of the applicant to act on the deceased retired member's behalf.

(2) The death benefit shall be paid to a beneficiary named by the retired member. Upon retirement or any time thereafter, the retired member may designate on the form prescribed by the board, death benefit designation, an individual, his estate, a trust or trustee as the beneficiary of the death benefit. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1). If the beneficiary designated under this section dies prior to the member ***or if the beneficiary was the spouse and they were divorced on the date of the retired member's death***, the retired member's estate shall become the beneficiary, unless the retired member has filed a subsequent death benefit designation.

SECTION 30. A NEW SECTION OF KRS 61.515 TO 61.705 IS CREATED TO READ AS FOLLOWS:

(1) A recipient who begins receiving a retirement allowance August 1, 2000, or after, from the Kentucky Employees Retirement System, the County Employees Retirement System,

or the State Police Retirement System shall have the retirement allowance paid by electronic fund transfer to a financial institution designated by the recipient.

(2) When an individual becomes eligible to receive a monthly retirement allowance, the retirement system shall provide an Authorization for Deposit of Retirement Payment form to the recipient to have the monthly retirement allowance deposited to an account in a financial institution.

(3) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.

(4) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Authorization for Deposit of Retirement Payment form and filing the form at the retirement office in Frankfort. The last Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(5) (a) A recipient may request to be paid by check issued by the State Treasurer instead of by electronic transfer by completing and filing at the retirement office a Request for Payment by Check form.

(b) The request shall be approved if:

1. The recipient certifies that he does not currently have an account with a financial institution;

2. The recipient's bank certifies that it does not participate in the electronic funds transfer program; or

3. The recipient shows that the requirement would create an undue hardship.

(c) The retirement office shall, every five (5) years, require the recipient to certify that the original conditions under which he requested payment by check continue. If the original conditions do not exist, the recipient shall complete an Authorization for Direct Deposit of Retirement Payment form and file it with the retirement office.

SECTION 31. A NEW SECTION OF KRS 61.515 TO 61.705 IS CREATED TO READ AS FOLLOWS:

There is created and established:

(1) An excess benefit plan to be known as the Kentucky Employees Retirement System Excess Benefit Plan. The plan is created for the purpose of providing the retirement allowances payable from the retirement system under KRS 61.515 to 61.705 that would otherwise be limited by 26 U.S.C. sec. 415.

(2) A state fund to be known as the Kentucky Employees Retirement System Excess Benefit Fund which shall consist of all the assets of the plan.

(3) The administration and assets of the plan shall be as set forth in Section 32 of this Act.

SECTION 32. A NEW SECTION OF KRS 61.515 TO 61.705 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Employees Excess Benefit Plan established in Section 31 of this Act, the County Employees Excess Benefit Plan established in Section 39 of this Act, and the State Police Excess Benefit Plan established in Section 8 of this Act shall be administered

by the board of trustees of the Kentucky Retirement Systems. The board shall have the same authority in its administration as it has in the administration of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

(2) The plans shall constitute qualified governmental excess benefit plans as provided in 26 U.S.C. sec. 415(m).

(3) All retired members and beneficiaries of the three (3) retirement systems administered by the Kentucky Retirement Systems whose effective retirement dates are July 1, 1998, or after, and whose retirement allowances have been limited by 26 U.S.C. sec. 415 shall be participants in the plans. Each member's participation in the plans shall be determined each fiscal year and will cease for any year in which the retirement allowance is not limited by 26 U.S.C. sec. 415.

(4) A participant shall receive a benefit equal to the difference between the retirement allowance otherwise payable from the system prior to any reduction or limitation required by 26 U.S.C. sec. 415 and the actual retirement allowance payable as limited by 26 U.S.C. sec. 415. The benefit shall be subject to withholding for applicable state and federal taxes. The benefit shall be paid in accordance with the retirement payment option selected by the member or beneficiary for the retirement allowance.

(5) (a) The board, in accordance with the recommendation of the actuary, shall determine the required contribution for each of the three (3) plans to pay benefits each fiscal year. The required contribution for each of the three (3) plans in each fiscal year shall be the total amount of benefits payable under this section to all participants plus the amount required to pay the administrative expenses of the plan and the employer's share of any employment taxes on the benefits paid from the plan.

(b) The required contribution shall be paid by the participating employers.

(c) The required contribution for each plan shall be deposited into the separate fund. The plan is intended to be exempt from federal income tax under 26 U.S.C. sec. 115 and 26 U.S.C. sec. 415(m)(1).

(d) The benefit liability of each plan shall be determined on a fiscal year basis, and contributions shall not be accumulated to pay benefits in future fiscal years. Any assets of the plans not used to pay benefits in the current fiscal year shall be used for payment of the administrative expenses of the plan for the current or future fiscal years or shall be paid to the appropriate retirement system as an additional employer contribution.

(6) The benefits payable from the plans shall be treated in accordance with Section 26 of this Act.

(7) The board shall promulgate administrative regulations to modify the benefits payable under the plans as necessary for the plans to be qualified under 26 U.S.C. sec. 415(m).

(8) The provisions of this section, and any administrative regulations promulgated as a result of this section, shall be applied retroactively to retired members, and beneficiaries, whose effective retirement dates are between July 1, 1998, and the effective date of this Act.

Section 33. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

(1) "System" means the County Employees Retirement System;

(2) "Board" means the board of trustees of the system as provided in KRS 78.780;

(3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(5) "Examiner" means the medical examiners as provided in KRS 61.665;

(6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;

(7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;

(8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;

(9) "Service" means the total of current service and prior service as defined in this section;

(10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided~~[in KRS 61.552(7), 61.555, and 78.530]~~;

(11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;

(12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;

(13) "Creditable compensation" means all salary, wages, and fees***, including payments for compensatory time,*** paid to the employee as a result of services performed for the employer ***or for time during which the member is on paid leave,*** which are includable on the member's federal form W-2 wage and tax statement ***under the heading "wages, tips, other compensation"***, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). ***A lump sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the employer.*** If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. ***Living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, sick leave except as provided in subsection (5) of Section 36 of this Act, and other items determined by the board shall be excluded.*** Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(14) "Final compensation" means:

(a) For a member who is employed in a nonhazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

(b) For a member who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-eight (28), one (1) or more additional fiscal years shall be used;

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2080) hours for eight (8) hour workdays, nineteen hundred fifty (1950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10)

years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth (65th) birthday of a member unless otherwise provided in KRS 78.520 to 78.852;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;

(21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:

(a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;

(b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;

(c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or

(d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;

(22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);

(23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;

(24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of

the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;

(26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(27) "Person" means a natural person;

(28) "School term or year" means the twelve (12) months from July 1 through the following June 30;

(29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;~~[and]~~

(31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615***; and***

(32) "Month" means a calendar month.

Section 34. KRS 78.540 is amended to read as follows:

Membership in the system shall consist of the following:

(1) All persons who become employees of a participating county after the date the county first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3), and except that mayors and members of city legislative bodies may decline prior to their participation in the system and city managers or other appointed local government executives who participate in a retirement system, other than Social Security, which operates in more than one (1) state, may decline prior to their participation in the system;

(2) ***(a)*** All persons who are employees of a county on the date the county first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days next following the county's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 78.520 to 78.852;

(b) All persons who are employees of a county who did not elect to participate within thirty (30) days of the date the county first participated in the system or within thirty (30) days of their return to active service and who subsequently elect to participate the first day of a month after the county's date of participation; and

(3) All persons electing coverage in the system under KRS 78.530(3)(d).

(4) The provisions of subsections (1) and (2) of this section notwithstanding, cities which participate in the CERS and close existing local pension systems to new, or all members pursuant to the provisions of KRS 78.530, 95.520, 95.621 or 95.852 shall not be required to provide membership in the County Employees Retirement System to employees in any employee category not covered by a city pension system at the date of participation.

(5) Membership in the system shall not include those employees who are simultaneously participating in another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360.

Section 35. KRS 78.545 is amended to read as follows:

The following matters shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

(1) Cessation of membership, conditions, as provided for by KRS 61.535;

(2) Statement of member and employer, as provided for by KRS 61.540;

(3) Beneficiary to be designated by member, change, rights, as provided for by KRS 61.542;

(4) Service credit determination, as provided for by KRS 61.545;

(5) Cessation of membership, loss of benefits, as provided for by KRS 61.550;

(6) Service credit, Armed Forces, as provided for by KRS 61.555;

(7) Normal and early retirement eligibility requirements, as provided for by KRS 61.559;

(8) Retirement allowance increases as provided for by KRS 61.691;

(9) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;

(10) Disability retirement, conditions, as provided for by KRS 61.600;

(11) Disability retirement, allowance, as provided for by KRS 61.605;

(12) Medical examination after disability retirement, as provided for by KRS 61.610;

(13) Disability retirement allowance, reduction, as provided for by KRS 61.615;

(14) Determination of retirement allowance, as provided for by KRS 61.595;

(15) Refund of contributions, conditions, as provided for by KRS 61.625;

(16) Refund of contributions, death after retirement, as provided for by KRS 61.630;

(17) Optional retirement plans, as provided for by KRS 61.635;

(18) Suspension of retirement payments on reemployment, reinstatement, as provided for by KRS 61.637;

(19) Death before retirement, beneficiary's options, as provided for by KRS 61.640;

(20) Board of trustees, conflict of interest, as provided for by KRS 61.655;

(21) Custodian of funds, payments made, when, as provided for by KRS 61.660;

(22) Medical examiners and hearing procedures, as provided for by KRS 61.665;

(23) Actuarial bases, as provided for by KRS 61.670;

(24) Employer's administrative duties, as provided for by KRS 61.675;

(25) Correction of errors in records, as provided for by KRS 61.685;

(26) Exemptions of retirement allowances, as provided for by KRS 61.690;

(27) Credit for service prior to membership date, as provided for by KRS 61.526;

(28) Creditable compensation of fee officers, as provided for by KRS 61.541;

(29) Transfer of dormant accounts, as provided for by KRS 61.626;

(30) Members' account, confidential, as provided for by KRS 61.661;

(31) Retirement plan for employees determined to be in a hazardous position, as provided for by KRS 61.592;

(32) Maximum disability benefit, as provided for by KRS 61.607;

(33) Consent of employees to deductions and reciprocal arrangement between systems, as provided for by KRS 61.680;

(34) Employer contributions, as provided for by KRS 61.565;

(35) Recontribution and delayed contribution payments, purchase of service credit, interest, and installment payments, as provided for by KRS 61.552;

(36) Hospital and medical insurance plan, as provided by KRS 61.702;

(37) Death benefit, as provided by KRS 61.705;

(38) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;

(39) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;~~[and]~~

(40) Disability procedure for members in hazardous positions as provided for in KRS 16.582***; and***

(41) Direct deposit of recipient's retirement allowance as provided for in Section 30 of this Act.

Section 36. KRS 78.616 is amended to read as follows:

(1) Any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees may purchase service credit with the retirement system for up to six (6) months of unused sick leave for each retiring employee.

(2) Participation under this section shall be at the option of each participating employer. The election to participate shall be made by the governing authority of the participating employer and shall be certified in writing to the system on forms prescribed by the board. The certification shall provide for equal treatment of all employees participating under this section.

(3) (a) Upon the member's notification of retirement as prescribed in KRS 61.590, the employer shall certify the retiring employee's unused, accumulated sick-leave balance to the system. The member's sick-leave balance, expressed in days, shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. A maximum of six (6) months of the member's sick-

leave balance, expressed in months, shall be added to his service credit for the purpose of determining his annual retirement allowance under KRS 78.510 to 78.852 and for the purpose of determining whether the member is eligible to receive a retirement allowance under KRS 78.510 to 78.852. Accumulated sick-leave in excess of six (6) months shall be added to the member's service credit if the member or employer pays to the retirement system the value of the additional service credit based on the formula adopted by the board.

(b) The employer may elect to pay fifty percent (50%) of the cost of the sick leave in excess of six (6) months on behalf of its employees. The employee shall pay the remaining fifty percent (50%). The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payments are received by the retirement system.

(c) Once the employer elects to pay all or fifty percent (50%) of the cost on behalf of its employees, it shall continue to pay the same portion of the cost.

(4) The system shall compute the cost of the sick-leave credit of each retiring employee and bill ***each***~~[the]~~ employer ***with whom the employee accrued sick leave*** accordingly. The employer shall remit payment within thirty (30) days from receipt of the bill.

(5) As an alternative to subsections (1), (3), (4), and (6) of this section, any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees, or administered to a majority of eligible employees in accordance with subsection (6) of this section, shall, at the time of termination, compensate the employee for unused sick-leave days the employee has accumulated which it is the uniform policy of the agency to allow. The rate of compensation for each unused sick-leave day shall be based on the daily salary rate calculated from the employee's current rate of pay. Payment for unused sick-leave days shall be incorporated into the employee's final compensation if the employee and employer make the regular employee and employer contributions, respectively, on the sick-leave payment. The number of sick-leave days for which the employee is compensated shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. This number of months shall be added to the employee's total service credit and to the number of months used to determine creditable compensation, pursuant to KRS 78.510, but no more than sixty (60) months shall be used to determine final compensation.

(6) Any city of the first class that has two (2) or more sick-leave programs for its employees may purchase service credit with the retirement system for up to six (6) months of unused sick leave for each retiring employee who participates in the sick-leave program administered to a majority of the eligible employees of the city. An employee participating in a sick-leave program administered to a minority of the eligible employees shall become eligible for the purchase of service credit under this subsection when the employee commences participating in the sick-leave program that is administered to a majority of the eligible employees of the city.

Section 37. KRS 78.640 is amended to read as follows:

(1) The members' contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 78.510 to 78.852 shall be credited. From this account shall

be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement. ***Prior to the member's retirement, death, or refund in accordance with Section 21 of this Act, no funds shall be made available from the member contribution account.***

(2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member.

(3) Each member on June 30 of each year shall have his individual account credited with interest at a rate determined by the board but not less than two percent (2%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year and the amounts so credited shall be transferred from the retirement allowance account.

(4) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.

Section 38. KRS 78.780 is amended to read as follows:

(1) The government and control of the system is vested in the board of trustees of the Kentucky Retirement Systems. The board shall carry out the provisions of KRS 78.510 to 78.852 in the same manner in which it administers the Kentucky Employees Retirement System. In all matters concerning the administration of KRS 78.510 to 78.852, the same rights, duties, and obligations shall apply to the board as apply under the provisions of KRS 61.510 to 61.705, except that members of the board, when acting for the County Employees Retirement System, shall be paid a per diem of ***eighty***~~[sixty]~~ dollars ***($80)***~~[($60)]~~, plus actual expenses.

(2) 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, including investment related expenditures, 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. Nothing herein shall be construed as limiting appropriations which may be made to the system from other sources.

SECTION 39. A NEW SECTION OF KRS 78.520 TO 78.852 IS CREATED TO READ AS FOLLOWS:

There is created and established:

(1) An excess benefit plan to be known as the County Employees Retirement System Excess Benefit Plan. The plan is created for the purpose of providing the retirement allowances payable from the retirement systems under KRS 78.520 to 78.852 that would otherwise be limited by 26 U.S.C. sec. 415.

(2) A state fund to be known as the County Employees Retirement System Excess Benefit Fund which shall consist of all the assets of the plan.

(3) The administration and assets of the plan shall be as set forth in Section 32 of this Act.

SECTION 40. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

Any other statute to the contrary notwithstanding, the Executive Department of government shall accept from the unified prosecutorial system all accrued annual and sick leave balances and service credits of employees leaving the unified prosecutorial system and accepting appointments to the Executive Department. These leave balances shall be attested to by the former employer of the employee and shall not exceed those limits established by statute or administrative regulation for employees of the Executive Department. This provision shall apply to Executive Department employees who were contributing to the Kentucky Employees Retirement System or the State Police Retirement System on or after July 1, 2000.

Section 41. KRS 161.507 is amended to read as follows:

(1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and to administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.

(2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.

(4) (a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall contribute to the retirement system an amount equal to thirty-five percent (35%) of the actuarial cost for each year of service for which the member is receiving credit. Two percent (2%) of the thirty-five percent (35%) required payment shall be allocated to the medical insurance fund. These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of

trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.

(b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid.

(5) An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. ***Notwithstanding any other statute, regulation, or policy to the contrary, the system shall provide a member, upon request, the estimated actuarial cost of the National Guard or military reserves service purchase based upon the information available at the time of the request. The member shall be entitled to enter into a contract with the system at the time of the request to purchase the National Guard or military reserve service by paying to the system the estimated actuarial cost, either by installments or in lump sum***[~~The member shall pay the full actuarial cost of the service in the military reserves or the National Guard~~]. Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).

Section 42. The following KRS sections are repealed:

61.554 Persons employed by Legislative Research Commission for six legislative bienniums may purchase credit in Kentucky Employees Retirement System.

61.596 Service credit bonus for early retirement -- Payments by agencies -- Forfeiture upon reemployment.

Approved April 7, 2000

CHAPTER 386

(HB 561)

AN ACT relating to public protection.

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

Section 1. KRS 95A.040 is amended to read as follows:

(1) The commission shall[~~ have authority to~~] make full and complete studies, recommendations and reports to the Governor***, the Kentucky Community and Technical College System,*** and the Legislature for the purpose of ***establishing***:

(a) ~~[Suggesting]~~Minimum standards and education of fire protection personnel appointed to positions in municipal fire departments, who are to be engaged in fire protection to include fire suppression, fire prevention, arson investigation and other allied fields;

(b) ~~[Suggesting]~~Basic minimum courses of training for fire protection personnel;

(c) ~~[Suggesting]~~Procedure for the certification of fire protection personnel and the certification of fire protection instructors.

(2) The commission shall have the authority to:

(a) Certify fire protection training and education programs as having attained the minimum required standards suggested by such commission;

(b) Certify instructors as having qualified as fire protection instructors under such conditions as the commission may prescribe;

(c) Direct research in the field of fire protection and accept gifts and grants for such purposes;

(d) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.

(3) The commission shall have authority to receive and to the extent required by federal law to disburse all grants and funds from the federal government for the purpose of fire protection personnel training and education. Except as otherwise provided by law, the ***commission***~~[Department of Insurance]~~ shall administer all state programs and all state and federally funded grant programs related to fire protection personnel training and education.

Section 2. KRS 198B.664 is amended to read as follows:

(1) Every master heating, ventilation, and air conditioning contractor's license and journeyman heating, ventilation, and air conditioning mechanic's license issued by the board~~[shall expire on June 30 of each year and]~~ may be renewed ***annually,*** upon payment of a renewal fee~~[prior to July 1 of each year]~~. Failure to renew shall cause the license to expire.

(2) Applications for restoration may be made within ninety (90) days of expiration of a license upon payment of the renewal fee, payment of a restoration fee, and if applicable proof of insurance as required by KRS 198B.668.

(3) Those persons previously licensed by the board as a master heating, ventilation, and air conditioning contractor and not engaged in the practice of heating, ventilating, and air conditioning contracting in the Commonwealth may apply and be granted inactive status by the board in accordance with administrative regulations promulgated by the board. Licensees granted inactive status shall not retain the right to statewide practice of heating, ventilation, and air conditioning contracting. An inactive license shall not be a valid license. A licensee on inactive status may petition the board for restoration of a license to practice actively. The petitioner shall pay a reactivation fee, provide proof of the satisfaction of all other requirements as determined by the board, and obtain the insurance as required by KRS 198B.668.

Section 3. KRS 198B.686 is amended to read as follows:

(1) Effective July 1, 1995, any person for whom licensure or certification is required who is not licensed or certified by the board and practices heating, ventilation, and air conditioning

contracting services shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.

(2) Any person who advertises or otherwise holds himself out as being a licensed master or journeyman heating, ventilation, or air conditioning contractor and is not so licensed shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.

Section 4. The following KRS sections are repealed:

17.260 Expenditure of allotted funds.

17.270 List of approved expenditures.

Approved April 7, 2000

CHAPTER 387

(HB 588)

AN ACT relating to small business.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Commission on Small Business Advocacy. The commission shall be a separate administrative body of state government within the meaning of KRS 12.010(8).

(2) It shall be the purpose of the Commission on Small Business Advocacy to:

(a) Address matters of small business as it relates to government affairs;

(b) Promote a cooperative and constructive relationship between state agencies and the small business community to ensure coordination and implementation of statewide strategies that benefit small business in the Commonwealth;

(c) Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community;

(d) Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;

(e) Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and

(f) Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.

(3) The Commission on Small Business Advocacy shall consist of twenty-seven (27) members:

(a) The Governor, or the Governor's designee;

(b) The secretaries of the following cabinets, or their designees:

1. Economic Development;

2. Natural Resources and Environmental Protection;

3. Revenue; and

4. Transportation;

(c) The state director of the Small Business Development Centers in Kentucky;

(d) One (1) representative of each of the following organizations, appointed by the Governor from a list of three (3) nominees submitted by the governing bodies of each organization:

1. Associated Industries of Kentucky;

2. National Federation of Independent Business;

3. Kentucky Chamber of Commerce;

4. Kentucky Federation of Business and Professional Women's Club, Inc.

5. Kentucky Retail Federation;

6. Professional Women's Forum;

7. Kentuckiana Minority Supplier Development Council;

8. Greater Lexington Chamber of Commerce

9. Lexington chapter of the National Association of Women Business Owners;

10. Greater Louisville, Inc.;

11. Louisville chapter of the National Association of Women Business Owners;

12. Northern Kentucky Chamber of Commerce, Inc.;

13. Northern Kentucky - Greater Cincinnati chapter of the National Association of Women Business Owners; and

14. Bowling Green chapter of the National Association of Women Business Owners;

15. Henderson - Henderson County Chamber of Commerce;

(e) One (1) representative from small business from each of the following areas, appointed by the Governor:

1. A city of the second class;

2. A city of the third class;

3. A city of the fourth class; and

4. A city of the fifth class; and

(f) One (1) representative who is a small business owner served by each of the following organizations, appointed by the Governor:

1. The Center for Rural Development; and

2. Community Ventures Corporation.

(4) The terms of all members appointed by the Governor shall be for four (4) years, except that the original appointments shall be staggered so that seven (7) appointments shall expire at two (2) years, seven (7) appointments shall expire at three (3) years, and seven (7) appointments shall expire at four (4) years from the dates of initial appointment.

(5) The Governor shall appoint the chair and vice chair of the commission from the list of appointed members.

(6) The commission shall meet quarterly and at other times upon call of the chair or a majority of the commission.

(7) A quorum shall be a majority of the membership of the commission.

(8) Members of the commission shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.

(9) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the commission and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.

(10) The Commission on Small Business Advocacy shall be an independent agency attached to the Office of the Governor.

SECTION 2. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

(1) The duties of the Commission on Small Business Advocacy shall include, but not be limited to:

(a) Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;

(b) Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;

(c) Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector; and

(d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community.

(2) By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on Economic Development and Tourism detailing its work in the prior fiscal year, including, but not limited to the following:

(a) Activities and achievements of the commission in accomplishing its purposes and duties;

(b) Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including

specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and

(c) Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.

Section 3. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.
5. Department of the Treasury.
   (a) Treasurer.
6. Department of Agriculture.
   (a) Commissioner of Agriculture.
   (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
   (a) Department of State Police.
   (b) Department of Criminal Justice Training.
   (c) Department of Corrections.

(d) Department of Juvenile Justice.

(e) Office of the Secretary.

(f) Offices of the Deputy Secretaries.

(g) Office of General Counsel.

(h) Division of Kentucky State Medical Examiners Office.

(i) Parole Board.

(j) Kentucky State Corrections Commission.

(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of General Counsel.

(g) Office of Public Affairs.

(h) Office of Personnel Management.

(i) Office of Minority Affairs.

(j) Office of Environmental Affairs.

(k) Office of Policy and Budget.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) Kentucky Racing Commission.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

(l) Backside Improvement Commission.

(m) Office of Petroleum Storage Tank Environmental Assurance Fund.

7. Cabinet for Families and Children:
   (a) Department for Social Insurance.
   (b) Department for Social Services.
   (c) Public Assistance Appeals Board.
   (d) Office of the Secretary.
   (e) Office of the General Counsel.
   (f) Office of Program Support.
   (g) Office of Family Resource and Youth Services Centers.
   (h) Office of Technology Services.
   (i) Office of the Ombudsman.
   (j) Office of Aging Services.
8. Cabinet for Health Services.
   (a) Department for Public Health.
   (b) Department for Medicaid Services.
   (c) Department for Mental Health and Mental Retardation Services.
   (d) Kentucky Commission on Children with Special Health Care Needs.
   (e) Office of Certificate of Need.
   (f) Office of the Secretary.
   (g) Office of the General Counsel.
   (h) Office of Program Support.
   (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
   (a) Office of Legal and Legislative Services.
   (b) Office of Management and Budget.
   (c) Office of Financial Management and Economic Analysis.
   (d) Office of the Controller.
   (e) Department for Administration.
   (f) Department of Facilities Management.
   (g) Department of Information Systems.
   (h) State Property and Buildings Commission.
   (i) Kentucky Pollution Abatement Authority.
   (j) Kentucky Savings Bond Authority.
   (k) Deferred Compensation Systems.

(l) Office of Equal Employment Opportunity Contract Compliance.

(m) Office of Capital Plaza Operations.

(n) County Officials Compensation Board.

(o) Kentucky Employees Retirement Systems.

(p) Commonwealth Credit Union.

(q) State Investment Commission.

(r) Kentucky Housing Corporation.

(s) Governmental Services Center.

(t) Kentucky Local Correctional Facilities Construction Authority.

(u) Kentucky Turnpike Authority.

(v) Historic Properties Advisory Commission.

(w) Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor-Management Relations and Mediation.

(m) Office of General Counsel.

(n) Workers' Compensation Funding Commission.

(o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) State Board for Adult and Technical Education.

(g) Governor's Council on Vocational Education.

(h) The State Board for Proprietary Education.

(i) The Foundation for Adult Education.

(j) The Kentucky Job Training Coordinating Council.

(k) Office of General Counsel.

(l) Office of Communication Services.

(m) Office of Development and Industry Relations.

(n) Office of Workforce Analysis and Research.

(o) Office for Administrative Services.

(p) Office for Policy and Budget.

(q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

(a) Kentucky Commission on Community Volunteerism and Service.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. Office of the Chief Information Officer.

9. Commission on Small Business Advocacy.

Section 4. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

(1) Council on Postsecondary Education;

(2) Department of Military Affairs;

(3) Department for Local Government;

(4) Kentucky Commission on Human Rights;

(5) Kentucky Commission on Women;

(6) Kentucky Commission on Military Affairs;

(7) Coal Marketing and Export Council;

(8) Governor's Office of Child Abuse and Domestic Violence Services;

(9) Office of the Chief Information Officer;~~[and]~~

(10) Office of Coal Marketing and Export***; and***

(11) Commission on Small Business Advocacy.

Approved April 7, 2000

CHAPTER 388

(HB 634)

AN ACT relating to investments.

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

SECTION 1. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in this subtitle:

(1) "Acceptable collateral" means:

(a) As to securities lending transactions, and for the purpose of calculating counterparty exposure amount, cash, cash equivalents, letter of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, and as to lending foreign securities, sovereign debt rated 1 by the SVO;

(b) As to repurchase transactions, cash, cash equivalents, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation; and

(c) As to reverse repurchase transactions, cash and cash equivalents.

(2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses to an eighty percent (80%) loan-to-value ratio.

(3) "Accident and health insurance" means protection that provides payment of benefits for covered sickness or accidental injury, excluding credit insurance, disability insurance, accidental death and dismemberment insurance, and long-term care insurance.

(4) "Accident and health insurer" means a licensed life or health insurer or health service corporation whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively.

(5) "Admitted assets" means assets permitted to be reported as admitted assets in accordance with Subtitle 6 of KRS Chapter 304 on the statutory financial statement of the insurer most recently required to be filed with the commissioner, but excluding assets of separate accounts.

(6) "Affiliate" means, as to any person, another person that, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the person.

(7) "Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in, or the right to receive payments from, or payable from distributions on, an asset, a pool of assets, or specifically divisible cash flows that are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:

(a) The trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the trust, or other business entity; and

(b) The assets of the trust or other business entity consist solely of interest bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancement, such as letters of credit or guarantees, or support features such as swap agreements, shall not cause a security or other instrument to be ineligible as an asset-backed security.

(8) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not-for-profit.

(9) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price, level, or the performance or value of one (1) or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

(10) "Capital and surplus" means the sum of the capital and surplus of the insurer required to be shown on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(11) "Cash equivalents" means short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents include government money market mutual funds and class one money market mutual funds. For purposes of this definition:

(a) "Short-term" means investments with a remaining term to maturity of ninety (90) days or less; and

(b) "Highly rated" means an investment rated P-1 by Moody's Investors Service, Inc., or A-1 by Standard and Poor's division of The McGraw-Hill Companies, Inc. or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.

(12) "Class one bond mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.

(13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.

(14) "Code" means KRS Chapter 304 and all administrative regulations promulgated as authorized.

(15) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payment as the seller of a different option, cap, or floor.

(16) "Commercial mortgage loan" means a loan secured by a mortgage, other than a residential mortgage loan.

(17) "Construction loan" means a loan of less than three (3) years in term, made for financing the cost of construction of a building or other improvement to real estate, that is secured by the real estate.

(18) "Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(19) "Counterparty exposure amount" means:

(a) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse ("over-the-counter derivative instrument"). The amount of credit risk equals:

1. The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

2. Zero (0) if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(b) If over-the-counter derivative instruments are entered into under a written master agreement that provides for netting of payments owed by the respective parties, and the domicilary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office as eligible for netting, the net amount of credit risk shall be the greater of zero (0) or the net sum of:

1. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

2. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(c) For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one (1) or both parties.

(20) "Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap, or floor it has written, or has set aside under a custodial or escrow agreement, cash, or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction.

(21) "Credit tenant loan" means a mortgage loan that is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.

(22) (a) "Derivative instrument" means an agreement, option, instrument, a series, or combination thereof:

1. To make or take delivery of, or assume or relinquish, a specified amount of one (1) or more underlying interests, or to make a cash settlement in lieu thereof; or

2. That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one (1) or more underlying interests.

(b) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, any other agreements, options, or instruments substantially similar thereto, or any series or combination thereof, and any agreements, options, or instruments permitted under administrative regulations promulgated under Section 6 of this Act. Derivative instruments shall not include an investment authorized by Sections 9 to 15, 17, and 23 to 28 of this Act.

(23) "Derivative transaction" means a transaction involving the use of one (1) or more derivative instruments.

(24) "Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.

(25) "Dollar roll transaction" means two (2) simultaneous transactions with different settlement dates no more than ninety-six (96) days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:

(a) Asset-backed securities issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or their respective successors; and

(b) Other asset-back securities referred to in Section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. sec. 77r-1), as amended.

(26) "Domestic jurisdiction" means the United States, Canada, any state, any province of Canada, or any political subdivision of any of the foregoing.

(27) "Equity interest" means any of the following that are not rated credit instruments:

(a) Common stock;

(b) Preferred stock;

(c) Trust certificate;

(d) Equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;

(e) Investment in a common trust fund of a bank regulated by a federal or state agency;

(f) An ownership interest in mineral, oil, or gas, the rights to which have been separated from the underlying fee interest in the real estate where the mineral, oil, or gas are located;

(g) Instruments that are mandatorily, or at the option of the issuer, convertible to equity;

(h) Limited partnership interests and those general partnership interests authorized under subsection (4) of Section 4 of this Act;

(i) Member interests in limited liability companies;

(j) Warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or

(k) Instruments that would be rated credit instruments except for the provisions of subsection (70)(b) of this section.

(28) "Equivalent securities" means:

(a) In a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security shall be exchanged for a loaned security by recapitalization, merger, consolidation, or other corporate action, the different security shall be deemed to be the loaned security;

(b) In a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or

(c) In a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.

(29) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one (1) or more underlying interests.

(30) "Foreign currency" means a currency other than that of a domestic jurisdiction.

(31) (a) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under this subtitle, other than Sections 15 and 28 of this Act. An investment shall not be deemed to be foreign if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:

1. The issuing person is a shell business entity; and

2. The investment is not assumed, accepted, guaranteed, insured, or otherwise backed by a domestic jurisdiction or a person that is not a shell business entity, domiciled in a domestic jurisdiction.

(b) For purposes of this definition:

1. "Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction;

2. "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a a domestic jurisdiction; and

3. "Qualified primary credit source" means the credit source to which an insurer looks for payment as in an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(32) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(33) "Forward" means an agreement other than a future, to make, take delivery of, or effect a cash settlement based on the actuarial or expected price, level, performance, or value of one (1) or more underlying interests.

(34) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make, take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of one (1) or more underlying interest.

(35) "Government money market mutual fund" means a money market mutual fund that at all times:

(a) Invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(b) Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(36) "Government sponsored enterprise" means a :

(a) Governmental agency; or

(b) Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.

(37) "Guaranteed or insured", when used in connection with an obligation acquired under this subtitle, means that the guarantor or insurer has agreed to:

(a) Perform or insure the obligation of the obligor or purchase the obligation; or

(b) Be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.

(38) "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce:

(a) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or

(b) The currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.

(39) "High grade investment" means a rated credit instrument rated 1 or 2 by the SVO.

(40) "Income" means, as to a security, interest, accrual of discount, dividends, or other distributions, such as rights, tax or assessment, or assessment credits, warrants, and distributions in kind.

(41) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return.

(42) "Initial margin" means that amount of cash, securities, or other consideration initially required to be deposited to establish a futures position.

(43) "Insurance future" means a future relating to an index or pool that is based on insurance-related items.

(44) "Insurance futures option" means an option on an insurance future.

(45) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended, and a person described in Section 3(c) of that Act.

(46) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(47) "Investment practices" means transactions of the types described in Sections 14, 16, 27, and 29 of this Act.

(48) "Investment subsidiary" means a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investment for the insurer if each subsidiary agrees to limit its investment in any asset so that its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations or avoid any other provisions of this subtitle applicable to the insurer. As used in this subsection, the total investment of the insurer shall include:

(a) Direct investment by the insurer in an asset; and

(b) The insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer, that shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary.

(49) "Investment strategy" means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing.

(50) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the Purposes and Procedures of the Securities Valuation Office or any successor publication. To constitute acceptable collateral for the purposes of Sections 14 and 27 of this Act, a letter of credit shall have an expiration date beyond the term of the subject transaction.

(51) "Limited liability company" means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state thereof that limits the personal liability of investors to the equity investment of the investor in the business entity.

(52) "Lower grade investment" means a rated credit instrument rated 4, 5, or 6 by the SVO.

(53) "Market value" means:

(a) As to cash and letters of credit, the amounts thereof; and

(b) As to security as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income thereon to the extent not included in the price as of that date.

(54) "Medium grade investment" means a rated credit instrument rated 3 by the SVO.

(55) "Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations Par. 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or renumbered.

(56) "Mortgage loan" means an obligation secured by a mortgage, deed of trust, trust deed, or other consensual lien on real estate.

(57) "Multilateral development bank" means an international development organization of which the United States is a member.

(58) "Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series, that, in either case, is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.

(59) "NAIC" means the National Association of Insurance Commissioners.

(60) "Obligation" means a bond, note, debenture, or a trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases, and other evidence of indebtedness for the payment of money or participations, certificates, or other evidences of an interest in any of the foregoing, whether constituting a general obligation

of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

(61) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, terminate, or effect a cash settlement based on the actual or expected price level, performance or value of one (1) or more underlying interests.

(62) "Person" means an individual, a business entity, a multilateral development bank, or a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise.

(63) "Potential exposure" means the amount determined in accordance with the NAIC Annual Statement Instructions.

(64) "Preferred stock" means preferred, preference, or guaranteed stock of a business entity authorized to issue the stock, that has a preference in liquidation over the common stock of the business entity.

(65) "Qualified bank" means:

(a) A national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by standards adopted by the United States banking regulators and that is either regulated by state banking laws, or is a member of the Federal Reserve Bank of New York; or

(b) A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency thereof and that at all times is no less than adequately capitalized as determined by the standards adopted by international banking authorities.

(66) "Qualified business entity" means a business entity that is:

(a) An issuer of obligations or preferred stock that are rated 1 or 2 by SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

(b) A primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

(67) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, that provides clearing service, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risks as to each other.

(68) "Qualified exchange" means:

(a) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. sec. 78 et seq.), as amended;

(b) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor thereof;

(c) Private Offerings, Resales, and Trading through Automated Linkages (PORTAL);

(d) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or

(e) A qualified foreign exchange.

(69) "Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States, its territories, or possessions:

(a) That has received regulatory comparability relief under Commodity Futures Trading Commission (CFTC) Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30;

(b) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30, as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or

(c) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this subsection shall only be a qualified foreign exchange as to foreign stock index futures contracts that are the subject of no-action relief.

(70) (a) "Rated credit instrument" means a contractual right to receive cash or another rated credit instrument from another entity that:

1. Is rated or required to be rated by the SVO;

2. In the case of an instrument with a maturity of three hundred ninety-seven (397) days or less, is issued, guaranteed, or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;

3. In the case of an instrument with a maturity of ninety (90) days or less is issued by a qualified bank;

4. Is a share of a class one bond mutual fund; or

5. Is a share of a money market mutual fund.

(b) However, "rated credit instrument" does not mean:

1. An instrument that is mandatorily, or at the option of the issuer, convertible to an equity interest; or

2. A security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency, or an index of equities, commodities, foreign currencies, or combinations thereof.

(71) "Real estate" means:

(a) 1. Real property;

2. Interests in real property, such as leaseholds, minerals, oil, and gas that have not been separated from the underlying fee interest;

3. Improvements and fixtures located on or in real property; and

4. The seller's equity in a contract providing for a deed of real estate.

(b) As to a mortgage on a leasehold estate, real estate shall include the leasehold estate only if it has an unexpired term, including renewal options exercisable at the option of the lessee, extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to at least twenty percent (20%) of the original term of the obligation or ten (10) years, whichever is greater.

(72) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one (1) or more assets that an insurer is authorized to acquire under this subtitle. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.

(73) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

(74) "Required liabilities" means total liabilities required to be reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(75) "Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a one (1) to four (4) family residence.

(76) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(77) "Secured location" means the contiguous real estate owned by one (1) person.

(78) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.

(79) "Series company" means an investment company that is organized as a series company, as defined in Rule 18f-2(a) adopted under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.

(80) "Sinking fund stock" means preferred stock that:

(a) Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than forty (40) years from the date of acquisition; and

(b) Provides for mandatory sinking fund installments or open market purchases commencing not more than ten and one-half (10 1/2) years from the date of issue,

with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing ten (10) years from the date of issue, of at least two and one-half percent (2.5%) per year of the original number of shares of that issue of preferred stock.

(81) "Special rated credit instrument" means a rated credit instrument that is:

(a) An instrument that is structured so that, if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative due to reasons other than the credit risk associated with the issuer of the instrument; however, a rated credit instrument shall not be a special rated credit instrument under this subsection if it is:

1. A share in a class one bond mutual fund;

2. An instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing, or callable but in any event payable only at par or greater, and interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;

3. An instrument, other than an asset-backed security, that has a par value and is purchased at a price not greater than one hundred ten percent (110%) of par;

4. An instrument, including an asset-backed security, whose rate of return would become negative only as a result of a prepayment due to casualty, condemnation, or economic obsolescence of collateral or change of law;

5. An asset-backed security that relies on collateral that meets the requirements of subparagraph 2. of this paragraph, the par value of which collateral:

a. Is not permitted to be paid sooner than one-half (1/2) of the remaining term to maturity from the date of acquisition;

b. Is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or

c. Is permitted to be paid prior to maturity at a premium at least equal to the yield of a Treasury issue of comparable remaining life; or

6. An asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not otherwise governed by subparagraph 5. of this paragraph, if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than one hundred five percent (105%) of the par amount.

(b) An asset-backed security that:

1. Relies on cash flows from assets that are prepayable at par at any time;

2. Does not make payments of par that are fixed as to amount and timing; and

3. Has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:

a. Two (2) times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation shall be, at the insurer's election, the prepayment expectation for pass-through securities of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or

b. Another prepayment threshold assumption specified by the commissioner by administrative regulation promulgated under Section 6 of this Act.

(c) For purposes of paragraph (b) of this subsection, if the asset-backed security is purchased in combination with one (1) or more other asset-backed securities that are supported by identical underlying collateral, the insurer may calculate the rate of return for these specific combined asset-backed securities in combination. The insurer shall maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.

(82) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(83) "Substantially similar securities" means securities that meet all criteria for substantially similar securities specified in the NAIC Accounting Practices and Procedures manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the Public Securities Administration.

(84) "SVO" means the Securities Valuation Office of the NAIC or any successor office established by the NAIC.

(85) "Swap" means an agreement to exchange or to net payments at one (1) or more times based on the actual or expected price, level, performance, or value of one (1) or more underlying interests.

(86) "Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one (1) or more securities, currencies, rates, indices, commodities, or derivative instruments.

(87) "Unrestricted surplus" means the amount by which total admitted assets exceed one hundred twenty-five percent (125%) of the insurer's required liabilities.

(88) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection

with the sale of other securities, for example, as part of a merger, recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

SECTION 2. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) Insurers may acquire, hold, or invest investments or engage in investment practices as set forth in this subtitle. Investments not conforming to this subtitle or otherwise expressly allowed in this chapter shall not be admitted assets.

(b) This subtitle shall apply to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. This subtitle shall not apply to separate accounts of an insurer except to the extent that the provisions of Section 31 of this Act so provide.

(2) Subject to subsection (3) of this section, an insurer shall not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:

(a) Eligible for the payment or accrual of interest or discount, whether in cash or other securities, eligible to receive dividends or other distributions, or is otherwise income producing; or

(b) Acquired under Section 13(3), 14, 16, 18, 26(3), 27, 29, or 30 of this Act, or under the authority of sections of the code other than in this subtitle.

(3) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify under this subtitle if the insurer has not acquired them for the purpose of circumventing any limitations contained in this subtitle, if the insurer acquires the investments in the following circumstances and the insurer complies with the provisions of Section 4 of this Act as to the investments:

(a) As payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the insurer's interest in that investment;

(b) As realization on collateral for an obligation;

(c) In connection with an otherwise qualified investment or investment practice, as interest on a dividend, other distribution related to the investment, investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;

(d) Under a lawful and bona fide agreement of recapitalization, voluntary, or involuntary reorganization in connection with an investment held by the insurer; or

(e) Under a bulk reinsurance, merger, or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged, or consolidated companies.

(4) A foreign insurer that becomes a domestic insurer in accordance with KRS 304.24-500 may hold as admitted assets investments that do not otherwise qualify under this subtitle if the investments were qualified as admitted assets in the insurer's former state of domicile immediately prior to the insurer's becoming a Kentucky domestic insurer, if the insurer has not acquired the investments for the purpose of circumventing any limitations contained in this subtitle and if the insurer complies with the provisions of Section 4 of this Act as to the investments.

(5) An investment or portion of an investment acquired by an insurer under subsections (3) or (4) of this section shall become a nonadmitted asset three (3) years, or five (5) years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under this subtitle other than subsections (3) or (4) of this section, but an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if so provided in the plan for reinsurance, merger, or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under subsections (3) or (4) of this section would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.

(6) Except as provided in subsections (7) and (9) of this section, an investment shall qualify under this subtitle if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this subtitle. For the purposes of determining limitations contained in this subtitle, an insurer shall give appropriate recognition to any commitments to acquire investments.

(7) (a) An investment held as an admitted asset by an insurer on the effective date of this Act that qualified under this subtitle shall remain qualified as an admitted asset under this subtitle.

(b) Each specific transaction constituting an investment practice of the type described in this subtitle that was lawfully entered into by an insurer and was in effect on the effective date of this Act shall continue to be permitted under this subtitle until its expiration or termination under its terms.

(8) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus shall relate to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:

(a) The return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;

(b) Cash received in a dollar roll transaction; and

(c) The amount reported as borrowed money in the most recently filed financial statement to the extent not included in paragraphs (a) and (b) of this subsection.

(9) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section of this subtitle, if the relevant conditions contained in the other section of this subtitle are satisfied at the time of qualification or requalification.

(10) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this subtitle, and specifying the section of this subtitle under which they were acquired.

(11) An insurer shall not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer, or

otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.

(12) Notwithstanding the provisions of this subtitle, the commissioner, for good cause, may order under the state's administrative regulations, an insurer to nonadmit, limit, dispose of, withdraw from or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.

(13) Insurance futures and insurance futures options are not considered investments or investment practices for the purposes of this subtitle.

SECTION 3. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer's board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, diversification of investments, and other specifications including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus. The board shall review and assess the insurer's technical investment and administrative capabilities and expertise before adopting a written plan concerning an investment strategy or investment practice.

(2) Investments acquired and held under this subtitle shall be acquired and held under the supervision and direction of the board of directors of the insurer. The board of directors shall evidence by formal resolution, at least annually, that it has determined whether all investments have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) On no less than a quarterly basis, and more often if deemed appropriate, an insurer's board of directors or committee of the board of directors shall:

(a) Receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) Review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors shall require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) of this section shall be made available on a regular basis to the board of directors.

(5) In discharging their duties under this section, the directors of an insurer shall perform their duties in good faith and with that degree of care that ordinarily prudent individuals in like positions would use under similar circumstances.

(6) If an insurer does not have a board of directors, all references to the board of directors in this subtitle shall be deemed to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

SECTION 4. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer shall not, directly or indirectly:

(1) Invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in Section 5 of this Act;

(2) Invest in an obligation or security, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which ten percent (10%) or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one (1) or more officers or directors of the insurer, except as authorized in KRS 304.37-110, or provided in Section 5 of this Act;

(3) Engage on its own behalf or through one (1) or more affiliates in a transaction or series of transactions designed to evade the prohibitions of this subtitle;

(4) (a) Invest in a partnership as a general partner, except that an insurer may make an investment as a general partner;

1. If all other partners in the partnership are subsidiaries of the insurer;

2. For the purpose of :

a. Meeting cash calls committed to prior to the effective date of this Act;

b. Completing those specific projects or activities of the partnership in which the insurer was a general partner as of the effective date of this Act that had been undertaken as of that date; or

c. Making capital improvements to property owned by the partnership on the effective date of this Act if the insurer was a general partner as of that date; or

3. In accordance with subsection (3) of Section 2 of this Act;

(b) This subsection shall not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner; or

(5) Invest in or lend its funds upon the security of shares of its own stock, except that an insurer may acquire shares of its own stock for the following purposes, but the shares shall not be admitted assets of the insurer;

(a) Conversion of a stock insurer into a mutual or reciprocal insurer or a mutual or reciprocal insurer into a stock insurer;

(b) Issuance to the insurer's officers, employees, or agents in connection with a plan approved by the commissioner for converting a publicly held insurer into a privately held insurer or in connection with other stock option and employee benefit plans; or

(c) In accordance with any other plan approved by the commissioner.

SECTION 5. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) Except as provided in subsection (2) of this section, an insurer shall not, without the prior written approval of the commissioner, directly or indirectly:

1. Make a loan to or invest in an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest;

2. Make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest; or

3. Enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.

(b) For purposes of this section, an officer or director shall not be deemed to have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than two percent (2%) of all outstanding equity interests issued by a person that is a party to the transaction, or solely by reason of that individual's position as a director or officer of a person that is a party to the transaction.

(c) This subsection does not permit an investment that is prohibited by Section 4 of this Act.

(d) This subsection does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with Subtitle 37 of KRS Chapter 304, other than a transaction between an insurer and its officer or director.

(2) An insurer may make, without the prior written approval of the commissioner;

(a) Policy loans in accordance with the terms of the policy or contract and Section 17 of this Act;

(b) Advances to officers or directors for expenses reasonably expected to be incurred in the ordinary course of the insurer's business or guarantees associated with credit or charge cards issued or credit extended for the purpose of financing these expenses;

(c) Loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans comply with the requirements of Section 13 or 26 of this Act, and the terms and conditions otherwise are the same as those generally available from unaffiliated third parties;

(d) Secured loans to an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans:

1. Do not have a term exceeding two (2) years;

2. Are required to finance mortgage loans outstanding at the same time on the prior and new residences of the officer;

3. Do not exceed an amount equal to the equity of the officer in the prior residence; and

4. Are required to be fully repaid upon the earlier of the end of the two (2) year period or the sale of the prior residence; and

(e) Loans and advances to officers or directors made in compliance with state or federal law specifically related to the loans and advances by a regulated noninsurance

subsidiary or affiliate of the insurer in the ordinary course of business and on terms no more favorable than available to other customers of the entity.

SECTION 6. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner may promulgate administrative regulations implementing the provisions of this subtitle.

SECTION 7. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Sections 7 to 18 of this Act shall apply to the investments and investment practices of domestic life and health insurers, and of United States branches of alien life and health insurers entered through this state.

SECTION 8. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) Except as otherwise specified in this subtitle, an insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under this subtitle if, as a result of and after giving effect to the investment, the insurer would hold more than three percent (3%) of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(b) This three percent (3%) limitation shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities shall not be subject to the limitations of paragraph (a) of this subsection, however an insurer shall not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed three percent (3%) of its admitted assets.

(2) (a) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Sections 9, 12, and 15 of this Act, or counterparty exposure under subsection (4) of Section 16 of this Act, if, as a a result of and after giving effect to the investment:

1. The aggregate amount of medium and lower grade investments then held by the insurer would exceed twenty percent (20%) of its admitted assets;

2. The aggregate amount of lower grade investments then held by the insurer would exceed ten percent (10%) of its admitted assets;

3. The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed three percent (3%) of its admitted assets;

4. The aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed one percent (1%) of its admitted assets; or

5. The aggregate amount of medium and lower grade investments then held by the insurer that receive as cash income less than the equivalent yield for

Treasury issues with a comparative average life, would exceed one percent (1%) of its admitted assets.

(b) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Sections 9, 12, and 15 of this Act, or counterparty exposure under subsection (4) of Section 16 of this Act, if, as a result of and after giving effect to the investment:

1. The aggregate amount of medium and lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one percent (1%) of its admitted assets; or

2. The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one-half of one percent (0.5%) of its admitted assets.

(c) If an insurer attains or exceeds the limit of any one (1) rating category referred to in this subsection, the insurer shall not thereby be precluded from acquiring investments in other rating categories subject to the specific multicategory limits applicable to those investments.

(3) (a) An insurer shall not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this subtitle, if as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed forty percent (40%) of its admitted assets, or if the aggregate amount of Canadian investments not acquired under subsection (2) of Section 9 of this Act then held by the insurer would exceed twenty-five percent (25%) of its admitted assets.

(b) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of paragraph (a) of this subsection shall be increased by the greater of:

1. The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

2. One hundred fifteen percent (115%) of the amount of its reserves and other obligations under contracts on lives or risks resident or located in Canada.

SECTION 9. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Subject to the limitations of subsection (6) of this section, an insurer may acquire rated credit instruments:

(1) Subject to the limitations of subsection (2) of Section 8 of this Act, but not the limitations of subsection (1) of Section 8 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(a) The United States; or

(b) A government sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States, or are otherwise backed or supported by the full faith and credit of the United States.

(2) (a) Subject to the limitations of subsection (2) of Section 8 of this Act, but not to the limitations of subsection (1) of Section 8 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

1. Canada; or

2. A government sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada;

(b) However, an insurer shall not acquire an instrument under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection would exceed forty percent (40%) of its admitted assets.

(3) (a) Subject to the limitations of subsection (2) of Section 8 of this Act, but not to the limitations of subsection (1) of Section 8 of this Act, an insurer may acquire rated credit instruments, excluding asset-backed securities:

1. Issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;

2. Issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (1) of this section;

3. Issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or

4. Issued by a multilateral development bank;

(b) However, an insurer shall not acquire an instrument of any one (1) fund, any one (1) enterprise or entity, or any one (1) state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one (1) fund, enterprise, entity, or state under this subsection would exceed ten percent (10%) of its admitted assets.

(4) Subject to the limitations of Section 8 of this Act, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment;

(a) The aggregate amount of preferred stocks then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and

(b) The aggregate amount of preferred stocks then held by the insurer under this subsection which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent (10%) of its admitted assets.

(5) Subject to the limitations of Section 8 of this Act, in addition to those investments eligible under subsections (1) to (4) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(6) An insurer shall not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent (5%) of its admitted assets.

SECTION 10. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer may acquire investments in investment pools that :

(a) Invest only in:

1. Obligations that are rated 1 or 2 by SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:

a. A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or

b. A remaining maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR), or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

2. Government money market mutual funds or class one money market mutual funds; or

3. Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of Section 14 of this Act, except the quantitative limitations subsection (4) of Section 14 of this Act; or

(b) Invest only in investments that an insurer may acquire under this subtitle, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this subtitle.

(2) For an investment in an investment pool to be qualified under this subtitle, the investment pool shall not:

(a) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;

(b) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of Section 14 of this Act, except the quantitative limitations of subsection (4) of Section 14 of this Act; or

(c) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one (1) business entity under this section to exceed ten percent (10%) of the total assets of the investment pool.

(3) The limitations of subsection (1) of Section 8 of this Act shall not apply to an insurer's investment in an investment pool, however an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investment then held by the insurer under this section:

(a) In any one (1) investment pool would exceed ten percent (10%) of its admitted assets;

(b) In all investment pools investing in investments permitted under paragraph (b) of subsection (1) of this section would exceed twenty-five (25%) of its admitted assets; or

(c) In all investment pools would exceed thirty-five percent (35%) of its admitted assets.

(4) For an investment in an investment pool to be qualified under this subtitle, the manager of the investment pool shall:

(a) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(b) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(c) Compile and maintain detailed accounting records setting forth:

1. The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

2. A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date if any, and other appropriate designations; and

3. Other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(d) Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

1. State and recognize the claims and rights of each participant;

2. Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

3. Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.

(5) The pooling agreement for each investment pool shall be in writing and shall provide that:

(a) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall at all times, hold one hundred percent (100%) of the interest in the investment pool;

(b) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;

(c) In proportion to the aggregate amount of each pool participant's interest in the investment pool:

1. Each participant owns an undivided interest in the underlying assets of the investment pool; and

2. The underlying assets of the investment pool are held solely for the benefit of each participant;

(d) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(e) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

1. In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

2. In kind, a pro rata share of each underlying asset; or

3. In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and

(f) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

SECTION 11. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Subject to the limitations of Section 8 of this Act, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(2) An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investment then held by the

insurer under this section would exceed twenty percent (20%) of its admitted assets, or the amount of equity interests then held by the insurer that are not listed on a qualified exchange would exceed five percent (5%) of its admitted assets. An accident and health insurer shall not be subject to this section but shall be subject to the same aggregate limitation on equity interests as a property and casualty insurer under Section 24 of this Act and also to the provisions of Section 20 of this Act.

(3) An insurer shall not acquire under this section any investment that the insurer may acquire under Section 13 of this Act.

(4) An insurer shall not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within six (6) months of the short sale.

SECTION 12. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) Subject to the limitations of Section 8 of this Act, an insurer may acquire tangible personal property or equity interests therein located or used wholly or in part within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments.

(b) Investments acquired under paragraph (a) of this subsection shall be eligible only if:

1. The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under Section 9 of this Act; and

2. The lease or other agreement provides the insurer the right to receive rental, purchase, or other fixed payments for the use or purchase of the property, and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, shall be adequate to return the cost of the insurer's investment in the property, plus a return deemed adequate by the insurer.

(2) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(3) An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed;

(a) Two percent (2%) of its admitted assets; or

(b) One-half of one percent (0.5%) of its admitted assets as to any single item of tangible personal property.

(4) For purposes of determining compliance with the limitations of Section 8 of this Act, investments acquired by an insurer under this section shall be aggregated with those acquired under Section 9 of this Act, and each lessee of the property under a lease referred to in this section shall be the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (2) of this section.

(5) Nothing in this section is applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost sharing arrangement or agreement permitted under KRS 304.37-030.

SECTION 13. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) Subject to the limitations of Section 8 of this Act, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:

1. Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;

2. Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall be no greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or

3. Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of subparagraph 1. or 2. of this paragraph.

(b) For purposes of paragraph (a) of this subsection, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.

(c) A mortgage loan that is held by an insurer under subsection (7) of Section 2 of this Act or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.

(d) Subject to the limitations of Section 8 of this Act, credit lease transactions that do not qualify for investment under Section 9 of this Act with the following characteristics shall be exempt from the provisions of paragraph (a) of this subsection :

1. The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

2. The lease payments cover or exceed the total debt service over the life of the loan;

3. A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

4. The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

5. The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

6. There is a perfected assignment of the rents due in accordance with the lease to or for the benefit of the insurer.

(2) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program in which case the real estate shall be deemed to be income producing.

(b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with paragraphs (b) and (c) of subsection (4) of this section.

(3) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations:

1. Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) of this section and is so qualified by the insurer;

2. The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with paragraph (d) of subsection (4) of this section; and

3. For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an accident and health insurer or its insured. An insurer may acquire real estate used for these purposes under subsection (2) of this section.

(4) (a) An insurer shall not acquire an investment under subsection (1) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) of this section would exceed;

1. One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;

2. One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or

3. Two percent (2%) of its admitted assets in construction loans in the aggregate.

(b) An insurer shall not acquire an investment under subsection (2) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (2) of this section plus the guarantees then outstanding would exceed:

1. One percent (1%) of its admitted assets in one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or

2. Fifteen percent (15%) of its admitted assets in the aggregate, but not more than five percent (5%) of its admitted assets as to properties that are to be improved or developed.

(c) An insurer shall not acquire an investment under subsection (1) or (2) of this section if, as a result of and after giving effect to the investment and any guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) and (2) of this section plus the guarantees then outstanding would exceed forty-five percent (45%) of its

admitted assets. However, an insurer may exceed this limitation by no more than thirty percent (30%) of its admitted assets if:

1. This increased amount is invested only in residential mortgage loans;

2. The insurer has no more than ten percent (10%) of its admitted assets invested in mortgage loans other than residential mortgage loans;

3. The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent (60%) at the time the mortgage loan is qualified under this increased authority, and the fair market value is supported by an appraisal no more than two (2) years old, prepared by an independent appraiser;

4. A single mortgage loan qualified under this increased authority shall not exceed one-half of one percent (0.5%) of its admitted assets;

5. The insurer files with the commissioner, and receives approval from the commissioner for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and

6. The insurer agrees to file annually with the commissioner records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.

(d) The limitations of Section 8 of this Act shall not apply to an insurer's acquisition of real estate under subsection (3) of this section. An insurer shall not acquire real estate under subsection (3) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under subsection (3) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (3) of this section.

SECTION 14. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the following requirements:

(1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in Section 3 of this Act that specifies guidelines and objectives to be followed, such as:

(a) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(b) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transactions; and

(c) The extent to which the insurer may engage in these transactions.

(2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier

demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

(a) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(b) Prohibits securities lending transactions under the agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or its custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner:

(a) Possession of the acceptable collateral;

(b) A perfected security interest in the acceptable collateral; or

(c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(4) The limitations of Sections 8 and 15 of this Act shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(a) The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(b) The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets.

(5) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.

(6) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the

insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.

(7) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(8) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral. the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

SECTION 15. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Subject to the limitations of Section 8 of this Act, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this subtitle, other than of the type permitted under Section 10 of this Act, if, as a result of and after giving effect to the investment:

(a) The aggregate amount of foreign investments then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and

(b) The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or three percent (3%) of its admitted assets as to any other foreign jurisdiction.

(2) Subject to the limitations of Section 8 of this Act, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:

(a) The aggregate amount of investments then held by the insurer under this subsection denominated in foreign currencies does not exceed ten percent (10%) of its admitted assets; and

(b) The aggregate amount of investments then held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets as to a foreign jurisdiction that has a

sovereign debt rating of SVO 1 or three percent (3%) of its admitted assets as to any other foreign jurisdiction;

(c) However, an investment shall not be considered denominated in a foreign currency if the acquiring insurer enters into one (1) or more contracts in transactions permitted under Section 16 of this Act and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is authorized to do business in a foreign jurisdiction, and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investment respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction, subject to the limitations of Section 8 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 10 of this Act if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed the greater of:

(a) The amount the insurer is required by the law of the foreign jurisdiction to invest in the foreign jurisdiction; or

(b) One hundred fifteen percent (115%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(4) In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is not authorized to do business in a foreign jurisdiction, but that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of Section 8 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 8 of this Act if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed one hundred five percent (105%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(5) Investments acquired under this section shall be aggregated with investments of the same types made in accordance with this subtitle, and in a similar manner, for purposes of determining compliance with the limitations, if any, contained in this subtitle. Investments in obligations of foreign governments, their political subdivisions, and government sponsored enterprises of these persons, except for those exempted under subsections (3) and (4) of this section, shall be subject to the limitations of Section 8 of this Act.

SECTION 16. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in regulations promulgated by the commissioner; and

(b) An insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.

(3) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:

(a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(b) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call options sold;

(c) Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(d) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of Section 8 of this Act.

(5) In accordance with administrative regulations promulgated under Section 6 of this Act, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the commissioner, but replication transactions shall not be permitted for other than risk management purposes.

SECTION 17. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A life insurer may lend to a policyholder on the security of the cash surrender value of the policyholder's policy a sum not exceeding the legal reserve that the insurer is required to maintain on the policy.

SECTION 18. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Solely for the purpose of acquiring investments that exceed the quantitative limitations of Sections 8 to 15 of this Act, an insurer may acquire under this subsection an investment, or engage in investment practices described in Section 14 of this Act, but an insurer shall not acquire an investment, or engage in investment practices described in Section 14 of this Act, under this subsection if, as a result of and after giving effect to the transaction:

(a) The aggregate amount of investments then held by an insurer under this subsection would exceed three percent (3%) of its admitted assets; or

(b) The aggregate amount of investments as to one (1) limitation in Sections 8 to 15 of this Act then held by the insurer under this subsection would exceed one percent (1%) of its admitted assets.

(2) (a) In addition to the authority provided under subsection (1) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in Section 14 of this Act, that are not specifically prohibited by this subtitle, without regard to the categories, conditions, standards, or other limitations of Sections 8 to 15 of this Act if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection would not exceed the lesser of:

1. Ten percent (10%) of its admitted assets; or

2. Seventy-five percent (75%) of its capital and surplus.

(b) However, an insurer shall not acquire any investment or engage in any investment practice under this subsection if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one (1) person then held by the insurer under this subsection would exceed three percent (3%) of its admitted assets.

(3) In addition to the investments acquired under subsections (1) and (2) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in Section 14 of this Act, that are not specifically prohibited by this subtitle without regard to any limitations of Sections 8 to 15 of this Act if:

(a) The commissioner grants prior approval;

(b) The insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

(c) As a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection does not exceed the greater of:

1. Twenty-five percent (25%) of its capital and surplus; or

2. One hundred percent (100%) of capital and surplus less ten percent (10%) of its admitted assets.

(4) An investment prohibited under Section 4 of this Act, not permitted under Section 16 of this Act, or additional derivative instruments acquired under Section 16 of this Act shall not be acquired under this section.

SECTION 19. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Sections 19 to 30 of this Act shall apply to the investments and investment practices of domestic property and casualty, title, financial guaranty, and mortgage guaranty insurers, of domestic insurers and United States branches of alien property and casualty, financial guaranty, and mortgage guaranty insurers entered through this state.

SECTION 20. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Subject to all other limitations and requirements of this subtitle, a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall maintain an amount at least equal to one hundred percent (100%) of adjusted loss reserves and loss adjustment expense reserves, one hundred percent (100%) of adjusted unearned premium reserves, and one hundred percent (100%) of statutorily required policy and contract reserves in :

(a) Cash and cash equivalents;

(b) High and medium grade investments that qualify under Section 22 or 23 of this Act;

(c) Equity interests that qualify under Section 24 of this Act and that are traded on a qualified exchange;

(d) Investments of the type set forth in Section 28 of this Act, if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;

(e) Qualifying investments of the type set forth in paragraph (b), (c), or (d) of this subsection that are acquired under Section 30 of this Act;

(f) Interest and dividends receivable on qualifying investments of the type set forth in paragraphs (a) to (e) of this subsection; or

(g) Reinsurance recoverable on paid losses.

(2) Determination of the reserve requirement amount shall be as follows:

(a) For purposes of determining the amount of assets to be maintained under this subsection, the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves, and statutorily required policy and contract reserves shall be based on the amounts reported as of the most recent annual or quarterly statement date;

(b) Adjusted loss reserves and loss adjustment expense reserves shall be equal to the sum of the amounts derived from the following calculations:

1. The result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied by

2. The discount factor that is applicable to the line of business and accident year published by the Internal Revenue Service under Internal Revenue Code Section 846 (26 U.S.C. sec. 846), as amended, for the calendar year that corresponds to the most recent annual statement of the insurer; minus

3. Accrued retrospective premiums discounted by an average discount factor. The discount factor shall be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subparagraphs 1. and 2. of this paragraph) by loss and loss adjustment expense reserves before discounting subparagraph 1. of this paragraph; and

4. For purposes of these calculations, the losses and loss adjustment expenses unpaid shall be determined net of anticipated salvage and subrogation, and gross of any discount for the time value of money or tabular discount.

(c) Adjusted unearned premium reserves shall be equal to the result of the following calculation:

1. The amount reported by the insurer as unearned premium reserves; minus

2. The admitted asset amounts reported by the insurer as:

a. Premiums in and agents' balances in the course of collection, accident and health premiums due and unpaid, and uncollected premiums for accident and health premiums;

b. Premiums, agents' balances, and installments booked but deferred and not yet due; and

c. Bills receivable, taken for premium.

(d) Statutorily required policy and contract reserves also shall include, in the case of a title insurer, the amounts required by KRS 304.6-080 and, in the case of a mortgage guaranty insurer, the amounts required by KRS 304.6-090 and, in the case of an accident and health insurer, the amounts required by KRS 304.6-070.

(3) A property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required in subsection (1) of this section. A reconciliation and summary showing that an insurer's assets as required in subsection (1) of this section are greater than or equal to its undiscounted reserves referred to in subsection (1) of this section shall be sufficient to satisfy this requirement. Upon prior

notification, the commissioner may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.

(4) If a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer's assets and reserves do not comply with subsection (1) of this section, the insurer shall notify the commissioner immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists, and within thirty (30) days of the date of the notice propose a plan of action to remedy the deficiency.

(5) If the commissioner determines that an insurer is not in compliance with subsection (1) of this section, the commissioner shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the commissioner's requirement is mailed or delivered to the insurer.

(6) If an insurer fails to comply with the commissioner's requirement under subsection (5) of this section, the insurer is deemed to be in hazardous financial condition, and the commissioner shall take one (1) or more of the actions authorized by Subtitle 33 of KRS Chapter 304, and KRS 304.3-200.

SECTION 21. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise specified in this subtitle, an insurer shall not acquire directly or indirectly through an investment subsidiary an investment under this subtitle if, as a result of and after giving effect to the investment, the insurer would hold more than five percent (5%) of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(2) This five percent (5%) limitation shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(3) Asset-backed securities shall not be subject to the limitations of subsection (1) of this section. However, an insurer shall not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed five percent (5%) of its admitted assets.

(4) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Section 22, 25, or 28 of this Act, or counterparty exposure under subsection (4) of Section 29 of this Act if, as a result of and after giving effect to the investment:

(a) The aggregate amount of all medium and lower grade investments then held by the insurer would exceed twenty percent (20%) of its admitted assets;

(b) The aggregate amount of lower grade investments then held by the insurer would exceed ten percent (10%) of its admitted assets;

(c) The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed five percent (5%) of its admitted assets;

(d) The aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed one percent (1%) of its admitted assets; or

(e) The aggregate amount of medium and lower grade investments then held by the insurer that receive as cash income less than the equivalent yield for Treasury issues with a comparative average life, would exceed one percent (1%) of its admitted assets.

(5) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Section 22, 25, or 28 of this Act, or counterparty exposure under subsection (4) of Section 29 of this Act if, as a result of and after giving effect to the investment:

(a) The aggregate amount of medium and lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one percent (1%) of its admitted assets; or

(b) The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one-half of one percent (0.5%) of its admitted assets.

(6) If an insurer attains or exceeds the limit of any one (1) rating category referred to in subsections (4) to (6) of this section, the insurer shall not thereby be precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(7) An insurer shall not acquire, directly or indirectly through an investment subsidiary, any Canadian investments authorized by this subtitle, if as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed forty percent (40%) of its admitted assets, or if the aggregate amount of Canadian investments not acquired under subsection (2) of Section 22 of this Act then held by the insurer would exceed twenty-five percent (25%) of its admitted assets.

(8) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (7) of this section shall be increased by the greater of:

(a) The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(b) One hundred twenty-five percent (125%) of the amount of its reserves and other obligations under contracts on risks resident or located in Canada.

SECTION 22. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Subject to the limitations of subsections (4) to (6) of Section 21 of this Act, but not to the limitations of subsections (1) to (3) of Section 21 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(a) The United States; or

(b) ***A government sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.***

(2) ***(a)*** ***Subject to the limitations of subsections (4) to (6) of Section 21 of this Act, but not to the limitations of subsections (1) to (3) of Section 21 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:***

1. ***Canada; or***

2. ***A government sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada;***

(b) ***However, an insurer shall not acquire an instrument under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection would exceed forty percent (40%) of its admitted assets.***

(3) ***(a)*** ***Subject to the limitations of subsections (4) to (6) of Section 21 of this Act, but not to the limitations of subsections (1) to (3) of Section 21 of this Act, an insurer may acquire rated credit instruments, excluding asset-backed securities:***

1. ***Issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;***

2. ***Issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (1) of this section;***

3. ***Issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or***

4. ***Issued by a multilateral development bank;***

(b) ***However, an insurer shall not acquire an instrument of any one (1) fund, any one (1) enterprise or entity, or any one (1) state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one (1) fund enterprise or entity, or state under this subsection would exceed ten percent (10%) of its admitted assets.***

(4) ***Subject to the limitations of Section 21 of this Act, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:***

(a) ***The aggregate amount of preferred stocks then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and***

(b) ***The aggregate amount of preferred stocks then held by the insurer under this subsection that are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent (10%) of its admitted assets.***

(5) Subject to the limitations of Section 21 of this Act, in addition to those investments eligible under subsections (1) to (4) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(6) An insurer shall not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent (5%) of its admitted assets.

SECTION 23. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer may acquire investments in investment pools that:

(a) Invest only in:

1. Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:

a. A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or

b. A remaining maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills. London InterBank Offered Rate (LIBOR), or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

2. Government money market mutual funds or class one money market mutual funds; or

3. Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of Section 27 of this Act, except the quantitative limitations of subsection (4) of Section 27 of this Act; or

(b) Invest only in investments that an insurer may acquire under this subtitle, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this subtitle.

(2) For an investment in an investment pool to be qualified under this subtitle, the investment pool shall not:

(a) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;

(b) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of Section 27 of this Act, except the quantitative limitations of subsection (4) of Section 27 of this Act; or

(c) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one (1) business entity under this section to exceed ten percent (10%) of the total assets of the investment pool.

(3) The limitations of subsections (1) to (3) of Section 21 of this Act shall not apply to an insurer's investment in an investment pool, however an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(a) In any one (1) investment pool would exceed ten percent (10%) of its admitted assets;

(b) In all investment pools investing in investments permitted under paragraph (b) of subsection (1) of this section would exceed twenty-five percent (25%) of its admitted assets; or

(c) In all investment pools would exceed forty percent (40%) of its admitted assets.

(4) For an investment in an investment pool to be qualified under this subtitle, the manager of the investment pool shall:

(a) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(b) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(c) Compile and maintain detailed accounting records setting forth:

1. The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

2. A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date if any, and other appropriate designations; and

3. Other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(d) Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

1. State and recognize the claims and rights of each participant;

2. Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investment in the investment pool; and

3. Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.

(5) The pooling agreement for each investment pool shall be in writing and shall provide that:

(a) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent (100%) of the interests in the investment pool;

(b) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;

(c) In proportion to the aggregate amount of each pool participant's interest in the investment pool:

1. Each participant owns an undivided interest in the underlying assets of the investment pool; and

2. The underlying assets of the investment pool are held solely for the benefit of each participant;

(d) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(e) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

1. In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

2. In kind, a pro rata share of each underlying asset; or

3. In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and

(f) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

SECTION 24. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Subject to the limitations of Section 21 of this Act, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(2) An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the

insurer under this section would exceed the greater of twenty-five percent (25%) of its admitted assets or one hundred percent (100%) of its surplus as regards policyholders.

(3) An insurer shall not acquire under this section any investments that the insurer may acquire under Section 26 of this Act.

(4) An insurer shall not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within six (6) months of the short sale.

SECTION 25. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) Subject to the limitations of Section 21 of this Act, an insurer may acquire tangible personal property or equity interests therein located or used wholly or in part within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments.

(b) Investments acquired under paragraph (a) of this subsection shall be eligible only if:

1. The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under Section 22 of this Act; and

2. The lease or other agreement provides the insurer the right to receive rental, purchase, or other fixed payments for the use or purchase of the property, and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, shall be adequate to return the cost of the insurer's investment in the property, plus a return deemed adequate by the insurer.

(2) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(3) An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed;

(a) Two percent (2%) of its admitted assets; or

(b) One-half of one percent (0.5%) of its admitted assets as to any single item of tangible personal property.

(4) For purposes of determining compliance with the limitations of Section 21 of this Act, investments acquired by an insurer under this section shall be aggregated with those acquired under Section 22 of this Act, and each lessee of the property under a lease referred to in this section shall be deemed the issuer of an obligation in the amount of the

investment of the insurer in the property determined as provided in subsection (2) of this section.

(5) Nothing in this section is applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost-sharing arrangement or agreement permitted under KRS 304.37-030.

SECTION 26. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Subject to the limitations of Section 21 of this Act, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:

(a) Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;

(b) Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payments in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall not be greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or

(c) Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of paragraph (a) or (b) of this subsection.

(2) For purposes of subsection (1) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.

(3) A mortgage loan that is held by an insurer under subsection (7) of Section 2 of this Act or acquired under this section and is restructured in a manner that meets the requirement of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.

(4) Subject to the limitations of Section 21 of this Act, credit lease transactions that do not qualify for investment under Section 22 of this Act with the following characteristics shall be exempt from the provisions of subsection (1) of this section:

(a) The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(b) The lease payments cover or exceed the total debt service over the life of the loan;

(c) A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(d) The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(e) The expenses of the real estate are passed through to the tenant excluding exterior, structural, parking, and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(f) There is a perfected assignment of the rents due under the lease to or for the benefit of the insurer.

(5) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate shall be deemed to be income producing.

(6) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (9) and (10) of this section.

(7) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations.

(a) Real estate acquired under this subsection may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsections (5) and (6) of this section and is so qualified by the insurer;

(b) The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the

insurer in the real estate for purposes of determining compliance with subsection (11) of this section; and

(c) For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsections (5) and (6) of this section.

(8) An insurer shall not acquire an investment under subsections (1) to (4) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (4) of this section would exceed:

(a) One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;

(b) One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or

(c) One percent (1%) of its admitted assets in construction loans in the aggregate.

(9) An insurer shall not acquire an investment under subsections (5) and (6) of this section if, a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (5) and (6) of this section plus the guarantees then outstanding would exceed:

(a) One percent (1%) of its admitted assets in any one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or

(b) The lesser of ten percent (10%) of its admitted assets or forty percent (40%) of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, this limitation shall be increased to fifteen percent (15%) of its admitted assets in the aggregate.

(10) An insurer shall not acquire an investment under subsections (1) to (6) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (6) of this section plus the guarantees then outstanding would exceed twenty-five percent (25%) of its admitted assets.

(11) The limitations of Section 21 of this Act shall not apply to an insurer's acquisition of real estate under subsection (7) of this section. An insurer shall not acquire real estate under

subsection (7) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under subsection (7) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (7) of this section.

SECTION 27. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer may enter into securities lending, repurchase, reverse repurchase and dollar roll transactions with business entities, subject to the following requirements:

(1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in subsection (1) of Section 3 of this Act that specifies guidelines and objectives to be followed, such as:

(a) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(b) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(c) The extent to which the insurer may engage in these transactions.

(2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

(a) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(b) Prohibits securities lending transactions under the agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner:

(a) Possession of the acceptable collateral;

(b) A perfected security interest in the acceptable collateral; or

(c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(4) The limitations of Sections 21 and 28 of this Act shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(a) The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(b) The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets, but the limitation of this subsection shall not apply to reverse repurchase transactions for so long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and subject to a plan approved by the commissioner.

(5) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.

(6) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.

(7) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(8) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the purchase price. Securities acquired by an insurer in a

repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

SECTION 28. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Subject to the limitations of Section 21 of this Act, an insurer may acquire foreign investments, or engage in investment practices, with persons of or in foreign jurisdictions of substantially the same types as those that an insurer is permitted to acquire under this subtitle, other than of the type permitted under Section 23 of this Act, if, as a result of and after giving effect to the investment:

(a) The aggregate amount of foreign investments then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and

(b) The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or five percent (5%) of its admitted assets as to any other foreign jurisdiction.

(2) Subject to the limitations of Section 21 of this Act, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:

(a) The aggregate amount of investments then held by the insurer under this subsection denominated in foreign currencies does not exceed fifteen percent (15%) of its admitted assets; and

(b) The aggregate amount of investments then held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or five percent (5%) of its admitted assets as to any other foreign jurisdiction;

(c) However, an investment shall not be considered denominated in a foreign currency if the acquiring insurer enters into one (1) or more contracts in transactions permitted under Section 29 of this Act and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in Section 21 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 21 of this Act if

those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed the greater of:

(a) The amount the insurer is required by law to invest in the foreign jurisdiction; or

(b) One hundred twenty-five percent (125%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts.

(4) In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is not authorized to do business in a foreign jurisdiction but that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in Section 21 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 21 of this Act if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed one hundred five percent (105%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts on risks resident or located in the foreign jurisdiction.

(5) Investments acquired under this section shall be aggregated with investments of the same types made under this subtitle, and in a similar manner, for purposes of determining compliance with the limitations of this subtitle, if any. Investments in obligations of foreign governments, their political subdivisions, and government sponsored enterprises of these persons, except for those exempted under subsections (3) and (4) of this section, shall be subject to the limitations of Section 21 of this Act.

SECTION 29. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in administrative regulations promulgated by the commissioner.

(b) An insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.

(3) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:

(a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(b) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold; or

(c) Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold.

(4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of Section 21 of this Act.

(5) In accordance with administrative regulations promulgated under Section 6 of this Act, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the commissioner, but replication transactions shall not be permitted for other than risk management purposes.

SECTION 30. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this subtitle, or engage in investment practices, without regard to any limitation in Sections 21 to 28 of this Act, but an insurer shall not acquire an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the greater of:

(a) Its unrestricted surplus; or

(b) The lesser of:

1. Ten percent (10%) of its admitted assets; or

2. Fifty percent (50%) of its surplus as regards policyholders.

(2) An insurer shall not acquire any investment or engage in any investment practice under paragraph (b) of subsection (1) of this section if, as a result of and after giving effect to

the transaction, the aggregate amount of all investments in any one (1) person then held by the insurer under that subsection would exceed five percent (5%) of its admitted assets.

Section 31. KRS 304.7-240 is amended to read as follows:

(1) The amounts allocated to each separate account established by the insurer in connection with a pension, retirement or profit-sharing plan, life insurance or an annuity pursuant to KRS 304.15-390 together with accumulations thereon, may be invested and reinvested in any class of investments which may be authorized in the written contract or agreement without regard to any requirements or limitations prescribed by this subtitle; except, that to the extent that the insurer's reserve liability with regards to:

(a)[~~(1)~~] Benefits guaranteed as to amount and duration; and

(b)[~~(2)~~] Funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of this subtitle.

The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer.

(2) On application by an insurer, the commissioner may approve different investment limitations and restrictions for specified separate accounts of the insurer. The commissioner shall only approve the insurer's proposed limitations and restrictions if he finds that the requested investment limitations and restrictions adequately protect the interests of the insured protected by the separate account and the solvency of the insurer.

Section 32. KRS 304.7-320 is amended to read as follows:

(1) An insurer may enter into an agreement for the purpose of protecting its interests in securities lawfully held by it, or for the purpose of reorganization of the corporation which issued or is obligated on account of ***the***[~~such~~] securities, and may deposit ***the***[~~such~~] securities with a committee appointed under[~~ such~~] an agreement.

(2) An insurer may accept corporate stocks, bonds or other securities distributed ***in accordance with the***[~~pursuant to any such~~] agreement or reorganization. Any securities so received which are otherwise ineligible as investments of the insurer shall be disposed of as provided in ***Section 2 of this Act***[~~KRS 304.7-300~~].

Section 33. KRS 304.7-340 is amended to read as follows:

An insurer shall not invest in any note or other evidence of indebtedness of any director or officer of the insurer, except as to policy loans authorized under ***Section 5 of this Act***[~~KRS 304.7-180~~] and obligations subject to ***Section 13 of this Act***[~~the provisions of KRS 304.7-200~~] secured by first mortgages or deeds of trust upon improved real property to be occupied as a personal residence by such director or officer of the insurer.

Section 34. KRS 304.7-350 is amended to read as follows:

(1) All obligations having a fixed term, rate, and face value held by an insurer authorized to do business in this state may, if amply secured and not in default either as to principal or interest, be valued as follows: if acquired at face value, at the face value; if acquired above or below face value, on the basis of the purchase price adjusted annually to bring the value to face value at maturity and so as to yield in each year the effective rate of interest at which the purchase was made. The amortization provided for in this subsection may be calculated

with reasonable approximations. The commissioner shall have the power to determine by rule the eligibility of investments for valuation under this subsection.

(2) (a) Securities, other than those referred to in subsection (1) of this section, held by an insurer shall be valued, in the discretion of the commissioner, at their fair market value, at their appraised value, or at prices determined by the commissioner as representing their fair market value.

(b) Preferred or guaranteed stock or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with the method of computation he approves.

(c) Securities qualifying under KRS 304.7-120***, Section 18 of this Act, or Section 30 of this Act***[~~and 304.7-270~~] shall be valued at their fair value or net equity value, except that securities of a subsidiary insurance corporation as provided for in KRS 304.7-120 shall be valued either at cost or on a net equity basis, whichever is greater.

(3) (a) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of acquisition, together with any taxes and expenses paid or incurred in connection with acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(b) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal deemed by the commissioner to be reliable. If valuation is based on an appraisal more than three (3) years old, the commissioner may, at his discretion, call for and require a new appraisal in order to determine fair value.

(c) Personal property acquired pursuant to chattel mortgages or security agreements[~~ made in accordance with subsection (10) of KRS 304.7-200~~] shall not be valued at an amount greater than the unpaid principal of the defaulted loan at the date of acquisition, together with any taxes and expenses paid or incurred in connection with acquisition, or the fair value of the property, whichever amount is the lesser.

(4) However, in all cases securities shall be valued in accordance with the standards promulgated by[~~ the securities valuation office of~~] the National Association of Insurance Commissioners ***including the Purposes and Procedures of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the Annual Statement Instructions, or any successor valuation procedures officially adopted by the NAIC***[~~and other assets shall be valued in accordance with standards promulgated by the National Association of Insurance Commissioners Financial Condition Subcommittee~~].

Section 35. The following KRS sections are repealed:

304.7-020 Eligible investments.

304.7-030 General qualifications.

304.7-040 Authorization.

304.7-050 Diversification.
304.7-060 Public obligations.
304.7-070 Obligations and stock of certain federal and international agencies.
304.7-080 Corporate obligations.
304.7-085 Unconditional obligations.
304.7-090 Definitions of "obligations" and "institution."
304.7-100 Preferred or guaranteed stocks.
304.7-110 Common stocks.
304.7-120 Stock of subsidiaries -- Investment in foreign companies.
304.7-130 Equipment securities.
304.7-140 Acceptances, bills of exchange.
304.7-145 Limitation on investments -- Quality ratings for securities.
304.7-150 Savings institutions.
304.7-160 Common trust funds, mutual funds.
304.7-170 Hydrocarbon production payments.
304.7-180 Policy loans.
304.7-190 Collateral loans.
304.7-200 Mortgage loans.
304.7-205 Mortgage pass-through securities.
304.7-210 Real estate.
304.7-220 Housing developments.
304.7-230 Leased property.
304.7-260 Investments in foreign countries.
304.7-265 Bona fide hedging transactions.
304.7-270 Miscellaneous investments.
304.7-290 Time limit for disposal of real estate.
304.7-300 Time limit for disposal of other property and securities.
304.7-310 Failure to dispose of real estate, personal property or securities.
304.7-340 Prohibited investments.

Approved April 7, 2000

CHAPTER 389

(HB 668)

AN ACT relating to school finance.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) The local district superintendent shall appoint a finance officer who shall be responsible for the cash, investment, and financial management of the school district.

(2) The school finance officer shall be required to complete forty-two (42) hours of continuing education every two (2) years from a provider approved by the Department of Education.

Section 2. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

(1) "Average daily attendance" means the aggregate days attended by pupils in a public school, adjusted for weather-related low attendance days if applicable, divided by the actual number of days the school is in session, after the five (5) days with the lowest attendance have been deducted.

(a) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was suspended during a school year, the number of days the pupil was suspended, not to exceed ten (10) days in total for the school year; and

(b) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was expelled for behavioral problems, the number of days the pupil was expelled up to a total of one hundred seventy-five (175) days. This total may extend into the next school year and shall be counted in the average daily attendance for the next year;

(2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;

(3) "Board" means the board of education of any county or independent school district;

(4) "District" means any school district as defined by law;

(5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;

(6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;

(7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in

session after the five (5) days with the lowest attendance have been deducted. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;

(8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;

(9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the ***commissioner of education***~~[chief state school officer]~~. The ***commissioner of education***~~[chief state school officer]~~ shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;

(10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year;

(11)~~["Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;~~

~~(12)]~~ "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

(12)~~[(13)]~~ "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

(13)~~[(14)]~~ "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;

(14)[~~(15)~~] "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year;

(15)[~~(16)~~] "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board; and

(16)[~~(17)~~] "Weather-related low attendance day" means a school day on which the district's attendance falls below the[~~ percentage of~~] average daily attendance for the prior year due to inclement weather. The district shall submit a request to substitute the prior year's average daily attendance for its attendance on up to ten (10) designated days, along with documentation that the low attendance was due to inclement weather, for approval by the ***commissioner of education***[~~Kentucky Board of Education~~] in accordance with ***Kentucky Board of Education***[~~its~~] administrative regulations.

Section 3. KRS 157.360 is amended to read as follows:

(1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.

(2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:

(a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay a hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;

(b) The number and types of exceptional children in the district as defined by KRS 157.200.[~~ No later than October 1, 1993,~~] Specific weights for each category of exceptionality[~~ shall be developed by the Department of Education and~~] shall be used in the calculation of the add-on factor for exceptional children[~~. Prior to the development of the necessary weights, the General Assembly shall determine the costs associated with the education of exceptional children based on the count of pupils with different exceptionalities, an appropriate pupil-teacher ratio, and total per-pupil costs~~]; and

(c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370.[~~ No later than October 1, 1991, the Office of Education Accountability's Division of School Finance shall examine the components of the current system for allocating transportation funds, and recommend any needed changes to the General Assembly, the Governor, and the State Board for Elementary and Secondary Education.~~] Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.

(3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.~~[No district shall receive an annual increase in state funds of less than eight percent (8%) for 1990-91 and five percent (5%) in 1991-92 or more than twenty-five percent (25%) in either year.]~~

(4) (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:

1. Twenty-four (24) in primary grades (kindergarten through third grade);

2. Twenty-eight (28) in grade four (4);

3. Twenty-nine (29) in grades five (5) and six (6);

4. Thirty-one (31) in grades seven (7) to twelve (12);

(b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.

(c) The chief state school officer, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).

(d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.

(5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.

(6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count

as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.

(7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.

(8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

(9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.

(10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).

(11) (a) Instructional salaries for vocational agriculture classes shall be~~[allotted]~~ for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Secondary Vocational Education in the Department of Education.~~[Salary allotments for vocational agriculture teachers shall be computed by proportionately increasing the salary schedule allocation based on the regular one hundred eighty-five (185) day school year for teachers with comparable qualifications and experience.]~~ During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.

(b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task.

Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.

~~[(c) For the 1990-91 and the 1991-92 school years, an add-on appropriation shall be made to local school districts which are operating secondary vocational education programs. The amount provided in the budget shall be allocated on a per pupil basis and shall be used to meet the higher per student cost of operating vocational education programs.]~~

(12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and

(b) Pursuant to administrative regulations of the ***Kentucky Board***~~[Department]~~ of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported ***annually***~~[monthly]~~ on forms provided by the Department of Education.

(13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

Section 4. KRS 157.390 is amended to read as follows:

(1) (a) The chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers in rank as follows:

Rank I. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education and who have earned thirty (30) semester hours of approved graduate work or equivalent continuing education; those teachers who, as of September 1, 1962, were included in Rank I, having earned twenty-four (24) semester hours of additional approved graduate work; and those teachers who have met the requirements for Rank II and hold current certification of the National Board for Professional Teaching Standards.

Rank II. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education.

Rank III. Those holding regular certificates and who have an approved four (4) year college degree or the equivalent.

Rank IV. Those holding certificates and who have ninety-six (96) to one hundred twenty-eight (128) semester hours of approved college training or the equivalent.

Rank V. Those holding certificates and who have sixty-four (64) to ninety-five (95) semester hours of approved college training or the equivalent.

(b) In determining ranks, the chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers who hold valid certificates in the respective ranks according to approved college semester hours of credit or equivalent continuing education. The chief state school officer, in defining preparation for certain types of vocational teachers as equivalent to college training, shall give consideration to apprenticeship training and industrial experience.

(c) Nothing in this subsection shall allow the Kentucky Board of Education by regulation to reclassify downward any teachers currently in Ranks I or II.

(2) The chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers in each rank by their years of experience for purposes of the state teacher salary schedule as follows:

1. Zero (0) to three (3) years;
2. Four (4) to nine (9) years;
3. Ten (10) to fourteen (14) years;
4. Fifteen (15) to nineteen (19) years; and
5. Twenty (20) or more years.

(3) ~~[(a)~~]The rank and experience of the teacher shall be determined on September 15.

~~[(b) The amount to be included in each school year in the base funding level of a district for teachers' salaries shall be based on the categories of experience in subsection (2) of this section.]~~

(4) The amount to be included in the base funding level for capital outlay shall be determined by multiplying the average daily attendance by the amounts set forth in the biennial budget.

(5) The amount to be included in the public school fund of each district for transportation shall be determined in accordance with the provisions of KRS 157.370.

(6) The total amount of money distributable to each district from the public school fund shall ***include the base funding per pupil in average daily attendance, an amount for at-risk students, an amount for the types and numbers of students with disabilities, an amount for students served in home and hospital settings, and***~~[be the sum of]~~ the allotments in subsections~~[(3),]~~ (4), and (5) of this section, less the amount of local tax revenues generated

for school purposes, up to a maximum equivalent local rate of thirty cents ($0.30) as defined by KRS 157.615(6).

(7) The Kentucky Board of Education shall create a Kentucky professional compensation plan. The plan shall be designed to compensate all teachers at adequate and competitive salary levels throughout their teaching careers. The plan shall establish progressive salary levels with advancement opportunities based upon the professional skills of the teacher and include education, rank, years of teaching service, related duties, specialized training, nonteaching experience, length of work year, performance, and any other professionally-recognized factors which the board considers relevant. The plan shall be developed during the 1992-94 biennium. Development work shall be conducted by Department of Education staff with support from recognized compensation experts, and staff from the Legislative Research Commission, the Office of Education Accountability, and the Governor's Office of Policy and Management. Upon approval by the Kentucky Board of Education, the new plan and its fiscal impact shall be submitted to the General Assembly.

Section 5. KRS 157.410 is amended to read as follows:

For each school year the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw warrants on the State Treasurer for the amount of the public school fund due each district. Checks shall be issued by the State Treasurer and transmitted to the Department of Education ***or electronically transferred*** for distribution to the proper officials of the school districts when the districts have fully complied with the school laws and administrative regulations of the Kentucky Board of Education. The chief state school officer shall determine on or before August 15 of each year the tentative allotment of school funds to which each district is entitled under the provisions of KRS 157.310 to 157.440. On July 1, August 1, and September 1, of each fiscal year, one-twelfth (1/12) of the prior year's allotment minus the capital outlay shall be paid each school district. On the first of each month thereafter until the final calculation is completed, one-twelfth (1/12) of each district's share of the tentative calculation ***minus capital outlay***~~[for instructional salaries, current expenses, and transportation of the public school fund]~~ shall be distributed. On or before May 1 of each year the chief state school officer shall determine the exact amount of the public common school fund to which each district is entitled and the remainder of the amount due each district for the year shall be distributed in equal installments beginning the first month after completion of final calculation and for each successive month thereafter.~~[Capital outlay shall be made in two (2) payments. The first, on or before October 1, shall be one-half (1/2) of the amount calculated on the tentative allocation for capital outlay. The balance due shall be paid on or before May 1.]~~

Section 6. KRS 160.470 is amended to read as follows:

(1)~~[Each district board of education shall prepare a general school budget in formats prescribed and furnished by the Kentucky Board of Education, showing the amount of money needed for current expenses, debt service, capital outlay, and other necessary expenses of the schools during the succeeding fiscal year, the estimated total amount that will be received from the common school fund and other sources, the assessed valuation of property subject to local taxation in the school district furnished as provided in subsection (3) of KRS 160.460, an estimate made by the Revenue Cabinet of public service company assessments and assessments of other property in the school district not furnished under the provisions of subsection (3) of KRS 160.460, and the amount that will be needed to be raised by local taxation, including the rate of levy necessary to raise such an amount.~~

~~(2)~~] (a) Notwithstanding any statutory provisions to the contrary,[~~ no district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate for 1979-80 which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the maximum general tax rate, voted general tax rate, or voted building tax rate, respectively, that could have been levied in 1978-79, to the 1978-79 assessment, except as provided in subsection (12) of this section and KRS 157.440. In succeeding years,~~] no district board of education shall levy a general tax rate[~~, a voted general tax rate, or a voted building tax rate~~] which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate[~~, maximum voted general tax rate, or maximum voted building tax rate, respectively,~~] that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsection ***(9)***[~~(12)~~] of this section and KRS 157.440.

(b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the ". . .general tax rate[~~, maximum voted general tax rate, or maximum voted building tax rate, respectively,~~] that could have been levied in the preceding year. . .," referred to in subsection ***(1)***[~~(2)~~](a) of this section, for purposes of computing the general tax rate[~~, voted general tax rate, or voted building tax rate~~] for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

(2)[~~(3)~~] No district board of education shall levy a general tax rate[~~, voted general tax rate, or voted building tax rate~~] within the limits imposed in subsection ***(1)***[~~(2)~~] of this section which respectively exceeds the compensating tax rate defined in KRS 132.010, except as provided in subsection ***(9)***[~~(12)~~] of this section, KRS 157.440, and KRS 157.621, until the district board of education has complied with the provisions of subsection ***(7)***[~~(10)~~] of this section.

(3)[~~(4)~~] ***Upon receipt of property assessments from the Revenue Cabinet, the commissioner of education***[~~The chief state school officer~~] shall certify the following to each district board of education[~~, by June 30 of each year~~]:

(a) The general tax rate[~~, voted general tax rate, or voted building tax rate~~] that a district board of education could levy under the provisions of subsection ***(1)***[~~(2)~~] of this section, and the amount of revenue expected to be produced[~~ by each~~];

(b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate[~~, voted general tax rate, or voted building tax rate, and~~] the amount of revenue expected to be produced[~~ by each~~];

(c) The general tax rate[~~, voted general tax rate, or voted building tax rate~~] which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced[~~ by each~~].

(4)[~~(5)~~] Upon completion of action on property assessment data, the Revenue Cabinet shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.

(5)[~~(6)~~] Within thirty (30) days after the district board of education has received its assessment data, ***the rates levied***[~~three (3) copies of the budget~~] shall be forwarded to the Kentucky Board of Education for its approval or disapproval. The failure of the district board of education to furnish the ***rates***[~~budget~~] within the time prescribed shall not invalidate any levy made thereafter.

(6)[~~(7) The budget shall be disapproved by the Kentucky Board of Education if it is financially unsound or fails to provide for:~~

~~(a) Payment of maturing principal and interest on any outstanding voted school improvement bonds of the school district, authorized and issued pursuant to KRS 162.080 and 162.090 with the written approval of the Kentucky Board of Education; or~~

~~(b) Payment of rentals in connection with any outstanding school building revenue bonds issued for the benefit of a school district by the appropriate city or county as authorized and provided under the provisions of KRS 162.120 to 162.300 and KRS 58.010 to 58.140, with the written approval of the Kentucky Board of Education; or~~

~~(c) Fails to comply with the law.~~

~~The Kentucky Board of Education shall state the reason for disapproval and the district board of education shall amend its budget, within the limitations of this section, to obviate the reasons for disapproval and resubmit the budget to the Kentucky Board of Education for final approval.~~

~~(8) If the budget as amended specifies a tax levy different from that levied under the disapproved budget, the tax levying authority shall amend its levy so that the levy as amended shall comply with the provisions of subsection (1) of KRS 160.460. No general school budget shall become effective and no ad valorem levy shall be made until approved by the Kentucky Board of Education.~~

~~(9)~~] (a) Each district board of education shall, on or before January 31 of each calendar year, formally and publicly examine detailed line item estimated revenues and proposed expenditures for the subsequent fiscal year. On or before May 30 of each calendar year, each district board of education shall adopt a tentative working budget which shall include a minimum reserve of two percent (2%) of the total budget.

(b) Each district board of education shall submit to the Kentucky Board of Education no later than September 30, a close estimate or working budget which shall conform to the administrative regulations prescribed by the Kentucky Board of Education[~~, and which shall be consistent in its major divisions with the general school budget previously prepared~~].

(7)[~~(10)~~] (a) Except as provided in subsection ***(9)***[~~(12)~~] of this section and KRS 157.440, a district board of education proposing to levy a general tax rate[~~, voted general tax rate, or voted building tax rate~~] within the limits of subsection ***(1)***[~~(2)~~] of this section which exceed the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district has

no office, or the office is not suitable for such a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The district board of education shall advertise the hearing by causing the following to be published at least twice for two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The general tax rate~~[, voted general tax rate, and voted building tax rate]~~ levied in the preceding year, and the revenue produced by ***that rate***~~[those rates]~~;

2. The general tax rate~~[, voted general tax rate, and voted building tax rate proposed]~~ for the current year, and the revenue expected to be produced by ***that rate***~~[those rates]~~;

3. The compensating general~~[, voted general, and voted building]~~ tax ***rate***~~[rates]~~, and the revenue expected from ***it***~~[them]~~;

4. The revenue expected from new property and personal property;

5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;

6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published;

7. The purpose of the hearing; and

8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained herein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The district board of education may set reasonable time limits for testimony.

(8)~~[(11)]~~ (a) That portion of a general tax rate,~~[a voted general tax rate, or a voted building tax rate,]~~ except as provided in subsection ***(9)***~~[(12)]~~ of this section, KRS 157.440, and KRS 157.621, levied by an action of a district board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the district board of education as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

(b) The district board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate,~~[voted general tax rate, or voted building tax rate,]~~ except as provided in subsection ***(9)***~~[(12)]~~ of this section and KRS 157.440, which will produce revenue from real property, exclusive of

revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The fact that the district board of education has adopted such a rate;

2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and

3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

(9)[~~(12)~~] (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents ($0.30) for general school purposes. Equivalent tax rate is defined as the rate which results when the income collected during the prior year from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.

(b) If a board fails to comply with ***paragraph (a) of this*** subsection[~~ (12)(a) of this section~~], its members shall be subject to removal from office for willful neglect of duty pursuant to KRS 156.132.

Section 7. KRS 160.560 is amended to read as follows:

(1) Each board of education shall elect a treasurer for the board. The board may elect its secretary to serve as treasurer. The board may remove the treasurer from office at any time for cause by a vote of a majority of the members of the board.

(2) The treasurer shall execute an official bond for the faithful performance of the duties of his office, to be approved by the local board and the ***commissioner of education***[~~Kentucky Board of Education~~]. The bond shall be guaranteed by a surety company authorized to do business in this state, and shall be in an amount determined by the board of education in accordance with the ***administrative***[~~rules and~~] regulations ***promulgated by***[~~of~~] the Kentucky Board of Education. The premium on the bond shall be paid by the board of education. A copy of the bond shall be filed with the board of education and with the ***commissioner of education***[~~Kentucky Board of Education. All treasurer's bond forms shall be prepared by the chief state school officer and approved by the Kentucky Board of Education~~].

(3) The treasurer shall receive all moneys to which the board is entitled by the Constitution or by the statutes, except as otherwise provided by law, or which may in any way come into its possession, and deposit such funds in the properly designated depository. He shall withdraw such funds from the depository only upon proper order of the board. He shall keep a full and complete account of all funds in such manner and make such reports concerning them as is

required by the board of education or by the Kentucky Board of Education. He shall preserve all records relating to the transactions and duties of the office and turn them over to his successor along with all public funds in his hands and all accounts and records after due and proper audit is made by a competent outside agent when he is required to do so by the board of education.

(4) The treasurer shall issue his check on the depository for payment of all legal claims which have been authorized for payment in accordance with policies previously adopted by the local board of education and approved by the ***commissioner of education***~~[Kentucky Board of Education]~~.

Section 8. KRS 160.570 is amended to read as follows:

(1) Each board of education shall appoint a bank, trust company, or savings and loan association to serve as its depository, and if its annual receipts from all sources exceed one hundred thousand dollars ($100,000), it may designate three (3) depositories, except boards of education of school districts in counties containing cities of the first class may designate up to five (5) depositories. The depository may be designated for a period not to exceed two (2) years, and before entering upon its duties shall agree with the board as to the rate of interest to be paid on average daily or monthly balances.

(2) The depository selected shall, before entering upon its duties, execute bond for the faithful performance of its duties, to be approved by the local board of education ***in accordance with Kentucky Board of Education administrative regulations, and to be approved by the commissioner of education***~~[and the Kentucky Board of Education]~~. The bond shall be guaranteed by at least five (5) solvent personal sureties whose solvency must exceed the amount of the bond, or by a surety company authorized to do business in this state, or through the execution of a collateral bond consistent with the general banking laws of the state and the bonding laws applying to the safeguarding of state funds. The penal sum of the depository bond shall be determined by the board of education in accordance with the ***administrative***~~[rules and]~~ regulations ***promulgated by***~~[of]~~ the Kentucky Board of Education. A board of education may enter into an agreement with its depository whereby the premium on a bond guaranteed by a surety company may be paid either by the board or by the depository. If the board pays the premium, the depository shall allow the board not less than two percent (2%) interest on its average daily or average monthly balances. All depository bond forms shall be prepared by the chief state school officer and approved by the Kentucky Board of Education.

(3) The depository shall hold for the board all funds deposited by the treasurer of the board or its tax collector or duly authorized agent, subject to withdrawal by the board at any time, and shall pay all funds so deposited to such person and in such manner as the board directs. The depository shall keep full and complete accounts of all of the board's funds, and make reports to the board or its authorized agents upon request. The depository shall keep all records relating to the transactions and duties of the office and turn them over to the successor of its office along with all school funds in hand. The board of education may at any time require a due and proper audit of the depository's records of the funds of the board by a competent outside agent.

(4) A board of education may designate as its depository the authorized and bonded depository of the governing authority of the territory which the school district embraces. In such cases,

the bond of the depository shall be made to cover specifically the safekeeping of the school board's funds, and all conditions set out in this section shall be carried out.

Section 9. KRS 157.440 is amended to read as follows:

(1) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after July 1, 1990, the board of education of each school district may levy an equivalent tax rate as defined in subsection ***(9)***[~~(12)~~](a) of KRS 160.470 which will produce up to fifteen percent (15%) of those revenues guaranteed by the program to support education excellence in Kentucky. The levy for the 1990-91 school year shall be made no later than October 1, 1989, and no later than October 1, 1990, for the 1991-92 school year, and by October 1 of each odd-numbered year thereafter. Effective with the 1990-91 school year, revenue generated by this levy shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment.

(b) To participate in the Facilities Support Program of Kentucky, the board of education of each school district shall commit at least an equivalent tax rate of five cents ($0.05) to debt service, new facilities, or major renovations of existing school facilities. The five cents ($0.05) shall be in addition to the thirty cents ($0.30) required by KRS 160.470***(9)***[~~(12)~~] and any levy pursuant to paragraph (a) of this subsection. The levy shall be made no later than October 1 of each odd-numbered year. Eligibility for equalization funds for the biennium shall be based on the district funds committed to debt service on that date. The five cents ($0.05) shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment. The equalization funds shall be committed to debt service to the greatest extent possible, but any excess equalization funds not needed for debt service shall be deposited to a restricted building fund account. The funds may be escrowed for future debt service or used to address categorical priorities listed in the approved facilities plan pursuant to KRS 157.420.

(c) The board of education of each school district may contribute the levy equivalent tax rate of five cents ($0.05) and equalization funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, as provided under KRS 45A.353, 56.774, and 58.600 shall be based on the following guidelines:

1. Energy conservation measures shall include facility alteration;

2. Energy conservation measures shall be identified in the district's approved facility plan pursuant to KRS 157.420;

3. The current facility systems are consuming excess maintenance and operating costs;

4. The savings generated by the energy conservation measures are guaranteed;

5. The levy equivalent tax rate of five cents ($0.05) and equalization funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and

6. The equipment that is replaced has exceeded its useful life as determined by a life cycle cost analysis.

(d) The rate levied by a district board of education under the provisions of this subsection shall not be subject to the public hearing provisions of KRS 160.470***(7)***~~[(10)]~~ or to the recall provisions of KRS 160.470***(8)***~~[(11)]~~.

(e) A school district which is at or above the equivalent tax rates permitted under the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year.

(2) (a) A district may exceed the maximum provided by subsection ***(1)***~~[(2)]~~ of KRS 160.470 provided that, upon request of the board of education of the district, the county board of elections shall submit to the qualified voters of the district, in the manner of submitting and voting as prescribed in paragraph (b) of this subsection, the question whether a rate which would produce revenues in excess of the maximum provided by subsection ***(1)***~~[(2)]~~ of KRS 160.470 shall be levied. The rate that may be levied under this section may produce revenue up to no more than thirty percent (30%) of the revenue guaranteed by the program to support education excellence in Kentucky plus the revenue produced by the tax authorized by this section. Revenue produced by this levy shall not be equalized with state funds. If a majority of those voting on the question favor the increased rate, the tax levying authority shall, when the next tax rate for the district is fixed, levy a rate not to exceed the rate authorized by the voters.

(b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.

(3) For the 1966 tax year and for all subsequent years for levies which were approved prior to December 8, 1965, no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section and except that a rate which has been approved by the voters under this section but which was not levied by the district board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.

(4) Notwithstanding the limitations contained in subsection (3) of this section, no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapter 162.

(5) The chief state school officer shall certify the compensating tax rate to the levying authorities.

Section 10. KRS 157.621 is amended to read as follows:

(1) Local school districts that have experienced student population growth during a five (5) year period may levy a five cents ($0.05) tax for debt service and new facilities in addition to the five cents ($0.05) levied under the school construction funding program provided in KRS 157.620. The tax rate levied by the district under this provision shall not be subject to a recall vote as provided in KRS 160.470***(8)***[~~(11)~~] and shall not be equalized by state funding.

(2) A local school district shall meet the following criteria in order to levy the tax provided in subsection (1) of this section:

(a) Growth of at least one hundred fifty (150) students in average daily attendance and three percent (3%) overall growth for the five (5) preceding years;

(b) Bonded debt to the maximum capability of at least eighty percent (80%) of capital outlay from the Support Education Excellence in Kentucky funding program, all revenue from the local facility tax, and all receipts from state equalization on the local facility tax;

(c) Current student enrollment in excess of available classroom space; and

(d) A local school facility plan that has been approved by the Kentucky Board of Education and certified to the School Facilities Construction Commission.

(3) When the state appropriations amount to the total cost of equalizing the five cents ($0.05) at the rate prescribed in KRS 157.620, as evidenced in the biennial budget and the budget memorandum, the provisions of this section shall expire.

Section 11. KRS 160.473 is amended to read as follows:

(1) In the event that a general tax rate[~~, voted general tax rate, or voted building tax rate~~] applicable to real property levied by a district board of education will produce a percentage increase in revenue from personal property less than the percentage increase in revenue from real property, the district board of education may levy a general tax rate[~~, voted general tax rate, or voted building tax rate~~] applicable to personal property which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property; however, in no event shall the general tax rate[~~, voted general tax rate, or voted building tax rate~~] levied by the district board of education applicable to personal property exceed the prior year general tax rate[~~, voted general tax rate, or voted building tax rate~~] applicable to personal property levied by the respective district board of education.

(2) The general tax rate[~~, voted general tax rate, or voted building tax rate~~] applicable to personal property levied by a district board of education under the provisions of subsection (1) of this section shall not be subject to the public hearing provisions of KRS 160.470***(7)***[~~(10)~~] and to the recall provisions of KRS 160.470***(8)***[~~(11)~~].

Section 12. KRS 160.475 is amended to read as follows:

(1) Except as otherwise provided in KRS 157.440, 160.470***(1)***[~~(2)~~], and 160.476(4), the ad valorem tax levy for school purposes, other than sinking fund purposes, in each school district, shall be not more than one dollar and fifty cents ($1.50) annually on each one hundred dollars ($100) of property subject to local taxation.

(2) All existing subdistrict school tax levies, except those required to retire voted bonds, are hereby abolished.

Section 13. The following KRS section is repealed:

160.474 Cumulative increase for 1982-83 only -- Limit -- Public hearing and recall not applicable.

Approved April 7, 2000

CHAPTER 390

(HB 675)

AN ACT relating to retirement.

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

Section 1. KRS 161.155 is amended to read as follows:

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, grandchildren, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.

(2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.

(3) Days of sick leave not taken by ***an employee or*** a teacher during any school year shall accumulate without limitation and be credited to that ***employee or*** teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow ***employees or*** teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to ***an employee or*** a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district~~[after June 30, 1985]~~.

(4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

(5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(7) (a) A district board of education shall establish a sick leave donation program to permit teachers to voluntarily contribute sick leave to teachers in the same school district who are in need of an extended absence from school. A teacher who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher who is authorized to receive the sick leave donated. A teacher may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

(b) A teacher may receive donations of sick leave if:

1. The teacher or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher to be absent for at least ten (10) days;

2. The teacher's need for the absence and use of leave are certified by a licensed physician;

3. The teacher has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and

4. The teacher has complied with the school district's policies governing the use of sick leave.

(c) While an employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.

(d) Any sick leave that remains unused, is not needed by a teacher, and will not be needed in the future shall be returned to the teacher donating the sick leave.

(e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.

(8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(9) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

Approved April 7, 2000

CHAPTER 391

(HB 676)

AN ACT relating to nursing.

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

SECTION 1. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

The board may require a criminal background investigation of an applicant for endorsement by means of a fingerprint check by the State Police and the Federal Bureau of Investigation.

SECTION 2. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

(1) The board may, on petition by an interested party, issue a declaratory ruling relating to the applicability to any person, property, or state of facts of a statute, administrative regulation, decision, order, or other written statement of law or policy within the jurisdiction of the board.

(2) A declaratory ruling shall be binding on the board and all parties to the proceedings on the statement of facts alleged.

(3) The board may not retroactively change a declaratory ruling, but nothing in this section shall prevent the board from prospectively changing a declaratory ruling.

(4) The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A on procedures for submission, consideration, and disposition of a petition for a declaratory ruling.

(5) A declaratory ruling of the board may be appealed to the Circuit Court of the county in which the board's offices are located within thirty (30) days of the date of the final ruling by the board.

SECTION 3. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

Any person licensed by the board shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address. As a condition of holding a license from the board, a licensee is deemed to have consented to service of notices or orders of the board at the mailing address on file with the board, and any notice or order of the board mailed or delivered to the mailing address on file with the board constitutes valid service of the notice or order.

SECTION 4. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

Any person licensed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the Commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, suspended, or revoked, or if renewal of continuance is denied.

SECTION 5. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

Any person licensed by the board shall, within thirty (30) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony criminal conviction in this or any other jurisdiction. Upon learning of any failure to notify the board under this section, the board may initiate an action for immediate temporary suspension under KRS 314.089 until the person submits the required notification.

Section 6. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

(1) "Board" ***means***~~[shall mean]~~ Kentucky Board of Nursing.

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.

(3) "Nurse" ***means***~~[shall mean]~~ a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

(a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

(b) Planning, implementation, and evaluation based on nationally-accepted standards of nursing practice.

(5) "Registered nurse" ***means***~~[shall mean]~~ one who is licensed under the provisions of this chapter to engage in registered nursing practice.

(6) "Registered nursing practice" ***means***~~[shall mean]~~ the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of

psychological, biological, physical, and social sciences in the application of the nursing process in:

(a) The care, counsel, and health teaching of the ill, injured, or infirm.

(b) The maintenance of health or prevention of illness of others.

(c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses. Components of medication administration include, but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency;

2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;

3. Intervening when emergency care is required as a result of drug therapy;

4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;

5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and

6. Instructing an individual regarding medications.

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses.

(7) "Advanced registered nurse practitioner" ***means***~~[shall mean]~~ one who is registered and designated to engage in advanced registered nursing practice including~~[, but not limited to,]~~ the nurse anesthetist, nurse midwife, ***clinical nurse specialist,*** and nurse practitioner pursuant to KRS 314.042.

(8) "Advanced registered nursing practice" ***means***~~[shall mean]~~ the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally-established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include, but not be limited to, prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for ***and dispense*** nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia

care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.

(9) "Licensed practical nurse" ***means***~~[shall mean]~~ one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.

(10) "Licensed practical nursing practice" ***means***~~[shall mean]~~ the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

(c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(d) Teaching, supervising, and delegating except as limited by the board.

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(11) "School of nursing" ***means***~~[shall mean]~~ a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.

(12) "Continuing education" ***means***~~[shall mean]~~ offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

(13) "Nursing assistance" ***means***~~[shall mean]~~ the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.

(14) "Sexual assault nurse examiner" ***means***~~[shall mean]~~ a registered nurse who has completed the required education and clinical experience and been credentialed by the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(2).

(15) "Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare.

(16) "Credential" means a current license, registration, or certificate that is issued by the board and that permits the practice of nursing.

(17) "Dispense" means to receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party.

Section 7. KRS 314.025 is amended to read as follows:

(1) There is hereby created the Kentucky nursing incentive scholarship fund.

(2) It is the intent of the General Assembly of the Commonwealth of Kentucky to address the nursing workforce needs throughout the Commonwealth; further it is the intent of the General Assembly to give preference for these scholarships to financially needy residents, registered nurses pursuing graduate nursing education, and licensed practical nurses of the Commonwealth. ***The fund also may issue grants for nursing workforce competency development.***

(3) It further is the intent of the General Assembly that an applicant who has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property may not be eligible for a Kentucky nursing incentive scholarship.

Section 8. KRS 314.031 is amended to read as follows:

(1) It shall be unlawful for any person to call or hold herself or himself out as or use the title of nurse or to practice or offer to practice as a nurse unless licensed under the provisions of this chapter.

(2) It shall be unlawful for any person to operate or to offer to operate or to represent or advertise the operation of a school of nursing unless the school of nursing has been approved under the provisions of this chapter.

(3) It shall be unlawful for any person knowingly to employ a nurse unless the nurse is licensed under the provisions of this chapter.

(4) It shall be unlawful for any nurse, employer of nurses, or any person having knowledge of facts to refrain from reporting to the board a nurse who:

(a) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing; or

(b) Is suspected of fraud or deceit in procuring or attempting to procure a license to practice nursing***;*** or

(c) Is suspected of negligently or willfully acting in a manner inconsistent with the practice of nursing; or

(d) Is suspected of being unfit or incompetent to practice nursing by reason of negligence or other causes including, but not limited to, being unable to practice nursing with reasonable skill or safety***;*** or

(e) Is suspected of~~[willfully or repeatedly]~~ violating any provisions of this chapter; or

(f)~~[(c)]~~ Has a license to practice as a nurse denied, limited, suspended, probated, ~~[or]~~revoked***, or otherwise disciplined*** in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated,~~[or]~~ revoked***, or otherwise disciplined*** in this Commonwealth; or

(g)~~[(d)]~~ Is practicing nursing without a current active license or valid temporary work permit issued by the board***; or***

(h) Is suspected of abusing, misusing, or misappropriating any drugs placed in the custody of the nurse for administration, or for use of others; or

(i) Is suspected of falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records.

Section 9. KRS 314.041 is amended to read as follows:

(1) An applicant for a license to practice as a registered nurse shall file with the board a written application for a license and submit evidence, verified by oath***:***~~[,]~~

(a) That the applicant~~[has completed at least an approved four (4) year high school course of study or the equivalent thereof;]~~ has completed the basic curriculum for preparing registered nurses in an approved school of nursing and ***has completed requirements for graduation***~~[holds a diploma]~~ therefrom;

(b) Has fulfilled the requirements of KRS 214.615(1); and

(c) Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) An applicant shall be required to pass an examination in any subjects as the board may ***determine***~~[prescribe. Each written examination may be supplemented by an oral or practical examination]~~. Application for licensure by examination shall be received by the board at such time as ***determined***~~[prescribed]~~ by regulation by the board.

(3) Upon successfully completing all requirements for licensure, the board ***may***~~[shall]~~ issue to the applicant a license to practice nursing as a registered nurse***, if in the determination of the board the applicant is qualified to practice as a registered nurse in this state***.

(4) The board may issue a license to practice nursing as a registered nurse to any applicant who has passed the examination prescribed by the board or its equivalent and been licensed as a registered nurse under the laws of another state, territory, or foreign country, if in the opinion of the board the applicant is qualified to practice ***as a registered nurse***~~[professional nursing]~~ in this state.

(5) The applicant for licensure to practice as a registered nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board promulgated pursuant to the provisions of KRS Chapter 13A.

(6) Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a registered nurse. No person shall practice as a registered nurse unless licensed under this section.

(7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "R.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed ***in accordance with regulations promulgated by the board in accordance with KRS Chapter 13A***~~[at least biennially]~~ and those persons granted inactive status shall not be governed by the continuing ***competency***~~[education]~~ provisions contained in this chapter. A registered nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in KRS Chapter 314 and by regulation of the board.

(8) Any person heretofore licensed as a registered nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(9) A license to practice registered nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 10. KRS 314.042 is amended to read as follows:

(1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally-established organization or agency recognized by the board to certify registered nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner, or ***clinical nurse specialist***[~~any other designation as determined by the board~~].

(3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.

(4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.

(5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.

(6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A.

(7) The board may authorize a person to practice as an advanced registered nurse practitioner temporarily and pursuant to applicable regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A if the person is awaiting the results of the national certifying examination for the first time or is awaiting licensure by endorsement. A person awaiting the results of the national certifying examination shall use the title "ARNP Applicant" or "ARNP App."

(8) Before an advanced registered nurse practitioner engages in the prescribing ***or dispensing*** of nonscheduled legend drugs as authorized by KRS 314.011(8), the advanced registered nurse practitioner shall enter into a written collaborative practice agreement with a physician that defines the scope of the prescriptive authority.

(9) Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to enter into a collaborative practice agreement with a physician, pursuant to this chapter or any other provision of law, in order to deliver anesthesia care.

Section 11. KRS 314.051 is amended to read as follows:

(1) An applicant for a license to practice as a licensed practical nurse shall file with the board a written application for a license verified by oath, that the applicant:

(a)~~[Has completed at least an approved four (4) year high school course of study or its equivalent;~~

~~(b)]~~ Has fulfilled the requirements of KRS 214.615(1);

(b)~~[(c)]~~ Has completed the required educational program in practical nursing at an approved school of nursing and ***has completed requirements for graduation***~~[holds a diploma or certificate]~~ therefrom; and

(c)~~[(d)]~~ Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The applicant for licensure to practice as a licensed practical nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board.

(3) An applicant shall be required to pass an examination in any subjects the board may determine.~~[Each written examination may be supplemented by an oral or practical examination.]~~ Application for licensure by examination shall be received by the board at the time as ***determined***~~[prescribed]~~ by regulation by the board.

(4) Upon successfully completing all requirements for licensure, the board ***may***~~[shall]~~ issue to the applicant a license to practice as a licensed practical nurse ***if, in the determination of the board, the applicant is qualified to practice as a licensed practical nurse in this state***.

(5) The board may issue a license to practice as a licensed practical nurse to any applicant who has passed the examination prescribed by the board or its equivalent, and has been licensed or registered as a licensed practical nurse or a person licensed to perform similar services under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board, the applicant meets the requirements for a licensed practical nurse in this state.

(6) Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a licensed practical nurse. No person shall practice as a licensed practical nurse unless licensed under this chapter.

(7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "L.P.N." may apply and be granted inactive status by the board in accordance with regulations

promulgated by the board. Inactive status shall be renewed ***in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A,***~~[at least biennially]~~ and those persons granted inactive status shall not be governed by the continuing ***competency***~~[education]~~ provisions contained in this chapter. A licensed practical nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in this chapter and by regulation of the board.

(8) Any person heretofore licensed as a practical nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(9) A license to practice practical nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 12. KRS 314.061 is amended to read as follows:

(1) Every ***credential***~~[license]~~ issued by the board shall have the seal of the board affixed. A ***holder of a credential***~~[licensee]~~ shall~~[sign his license,]~~ retain it in his possession, and be prepared to exhibit ***it***~~[his license or board certification of licensure]~~ upon demand by an employer or anyone to whom the ***holder of the credential***~~[licensee]~~ offers nursing services, or any board or staff member of the Kentucky Board of Nursing.

(2) Failure or refusal to produce a license or certification thereof upon demand shall be prima facie evidence that no such license exists.

Section 13. KRS 314.073 is amended to read as follows:

(1) Except for the first licensure renewal following the issuance of an original license by the board, as a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document~~[the completion of]~~ continuing ***competency during the immediate past***~~[education requirements not to exceed thirty (30) contact hours in a given]~~ licensure period as prescribed in regulations promulgated by the board.~~[A "contact hour" is defined as fifty (50) minutes of an approved, organized learning experience.]~~

(2) ~~[Contact hours required to satisfy]~~The continuing ***competency***~~[education]~~ requirement shall be ***documented***~~[completed]~~ and reported ***as***~~[in accordance with board requirements]~~ set forth by ***the board in administrative regulations promulgated in accordance with KRS Chapter 13A***~~[regulation]~~.

(3) The board shall approve providers of continuing education. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for these approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.

(4) The board shall work cooperatively with professional nursing organizations, approved nursing schools, and other potential sources of continuing education programs to assure that adequate continuing education offerings are available statewide. The board may enter into contractual agreements to implement the provisions of this section.

(5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing ***competency***~~[education]~~ requirements.

(6) The continuing ***competency requirements***~~[education]~~ shall include the completion of the course described in KRS 214.610(1).

(7) In order to offset administrative costs incurred in the implementation of the mandatory continuing ***competency***~~[education]~~ requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.

(8) The continuing ***competency***~~[education]~~ requirements shall include at least five (5) contact hours in pharmacology ***continuing education*** for any person registered as an advanced registered nurse practitioner.

Section 14. KRS 314.085 is amended to read as follows:

(1) If the board has reasonable cause to believe that any licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a mental or physical examination by a physician or psychologist it designated. Upon the failure of the person to submit to a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 ***or deny the application*** until the person submits to the required examination.

(2) Every licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining physician's or psychologist's testimony or examination reports on the ground of privileged communication.

(3) The licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall bear the cost of any mental or physical examination ordered by the board.

Section 15. KRS 314.091 is amended to read as follows:

(1) The board shall have power to ***reprimand,*** deny, limit, revoke, probate, or suspend any license ***or credential*** to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, ***credential holder, or applicant,*** or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(b) Has been convicted of a misdemeanor or felony which involved ***fraud, deceit, a breach of trust, or physical harm or endangerment to others,*** acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing;

(c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;

(e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

(f) Abuses use of controlled substances***, prescription medications, or alcohol;***~~[or]~~

(g) Has misused or misappropriated any drugs placed in the custody of the nurse for ***administration***~~[medication]~~, or ***for*** use of others;

(h)~~[(g)]~~ Has falsified or in a~~[repeatedly]~~ negligent manner made incorrect entries or failed to make essential entries on essential records;

(i)~~[(h)]~~ Has a license ***or credential*** to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth;~~[or]~~

(j)~~[(i)]~~ Has~~[willfully or repeatedly]~~ violated any of the provisions of this chapter***;***~~[or]~~

(k) ***Has*** violated any lawful order or directive previously entered by the board***;***~~[, or]~~

(l) ***Has violated*** any administrative regulation promulgated by the board***; or***

(m) ***Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property***.

(2) All hearings~~[for denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse]~~ shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license ***or credential*** may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.

(3) The executive director 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 the Circuit Court as 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.

(4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.

(5) A final order of the board shall be by majority vote thereof.

(6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.

(7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license ***or credential*** may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 16. KRS 314.101 is amended to read as follows:

(1) This chapter does not prohibit: the furnishing of nursing assistance in an emergency; the practice of nursing which is incidental to the program of study by individuals enrolled in nursing education programs and refresher courses approved by the board or in graduate programs in nursing; the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties; or the practice of any currently licensed nurse of another state whose responsibilities include transporting patients into, out of, or through this state.

(2) Nothing in this chapter shall be construed as prohibiting care of the sick with or without compensation or personal profit when done in connection with the practice of the religious tenets of any recognized or established church by adherents thereof as long as they do not engage in the practice of nursing as defined in this chapter.

(3) Nothing in this chapter shall limit, preclude, or otherwise restrict the practices of other licensed personnel in carrying out their duties under the terms of their licenses.

(4) A temporary work permit may be issued by the board to persons who have completed the requirements for, applied for, and paid the fee for licensure by examination or endorsement. Temporary work permits shall be issued only for the length of time required to process applications for endorsement or, in the case of applications for licensure by examination, for no longer than six (6) months from the first day of the month following completion of the program of nursing requirements, and shall not be renewed. No temporary work permit shall be issued to an applicant who has failed the licensure examination.

(5) The board may summarily withdraw a temporary work permit upon determination that the person does not meet the requirements for licensure or has disciplinary action pending against the person's license in this or another jurisdiction.

(6) A new graduate who holds a temporary work permit shall have the right to use the title "registered nurse applicant" and the abbreviation "RN App" or "licensed practical nurse applicant" and the abbreviation "LPN App" according to the type of permit issued.

(7) Any nurse educated outside the United States who has passed the state board test pool examination or its equivalent as determined by the board~~[or who has passed the commission on graduates of foreign nursing schools examination]~~ may be issued a temporary work permit.

Section 17. KRS 314.111 is amended to read as follows:

(1) An institution desiring to conduct a school of nursing shall apply to the board and submit evidence that it is prepared to carry out the minimum approved basic curriculum in nursing and that it is prepared to fulfill other requirements of standards which are established by KRS 314.011 to 314.161 and KRS 314.991 and the administrative regulations promulgated by the board. No person shall operate a nursing education program or school of nursing without complying with the provisions of this section.

(2) A survey of the institution and its proposed education program shall be made by the executive director or an authorized employee of the board who shall submit a written report of the survey to the board. If in the opinion of the board the requirements for an approved nursing education program or school of nursing are met it shall approve the school.

(3) ~~[Periodic surveys of all schools of nursing shall be made under the supervision of the board. Written reports of such surveys shall be submitted to the board.]~~If the board determines that any approved school of nursing is not maintaining the standards required by the statutes and the administrative regulations of the board, notice thereof in writing specifying their deficiencies shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be discontinued after an administrative hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 18. KRS 314.121 is amended to read as follows:

(1) The Governor shall appoint a Board of Nursing consisting of ***sixteen (16)***~~[fifteen (15)]~~ members;

(a) ***Nine (9)***~~[Eight (8)]~~ members shall be registered nurses licensed to practice in the Commonwealth;

(b) Three (3) members shall be practical nurses licensed to practice in the Commonwealth;

(c) One (1) member shall be a nurse service administrator who is a registered nurse licensed to practice in the Commonwealth;

(d) One (1) member shall be engaged in practical nurse education who is a registered nurse licensed to practice in the Commonwealth; and

(e) Two (2) members shall be citizens at large, who are not associated with or financially interested in the practice or business regulated.

(2) Each appointment shall be for a term of four (4) years expiring on June 30 of the fourth year. The cycle for appointments and expiration of terms shall be as follows:

(a) The first year of the four (4) year cycle, the terms for ***three (3)***~~[two (2)]~~ registered nurses and one (1) licensed practical nurse shall expire;

(b) The second year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) citizen at large shall expire;

(c) The third year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and the one (1) member engaged in practical nurse education who is a registered nurse shall expire; and

(d) The fourth year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and one (1) citizen at large shall expire.

(3) (a) By March 1, the Kentucky Nurses Association shall submit to the Governor a list of members qualified for appointment as R.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments necessary by July 1.

(b) By March 1, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor a list of names qualified for appointment as L.P.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments as necessary by July 1.

(c) By March 1 of the year in which the nurse service administrator's term shall expire, the Kentucky Organization of Nurse Executives, an affiliate of the Kentucky Hospital Association, shall submit to the Governor two (2) names of qualified individuals for appointment as the nurse service administrator from which list the Governor shall make an appointment as necessary by July 1.

(d) By March 1, the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc., shall submit to the Governor two (2) names of qualified individuals for appointments as its R.N. representative to the board, from which the Governor shall make an appointment by July 1.

(e) By March 1 of the year in which the Kentucky Association of Health Care Facilities representative's term shall expire, the Kentucky Association of Health Care Facilities shall submit to the Governor two (2) names of qualified individuals for appointment as its R.N. representative to the board, from which list the Governor shall make an appointment as necessary by July 1.

(f) Initially, the Governor shall appoint one (1) member to serve as the registered nurse who is engaged in practical nurse education to serve the term remaining according to the cycle specified in subsection (2) of this section. By August 1, 1996, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by September 1, 1996. Thereafter, by March 1 of the year in which the practical nurse educator's term expires, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by July 1.

(g) The Governor shall appoint two (2) members who shall be citizens at large, who are not associated with or financially interested in the practice or business regulated. The Governor shall make the appointments by July 1 of the year in which the citizen members' terms expire.

(4) A vacancy on the board shall be filled by the Governor as provided for under subsection (1) of this section.

(5) The Governor may remove any member from the board for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) Each R.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of nursing, and a registered nurse in this state. All shall have had at least five (5) years of experience in nursing, three (3) of which shall immediately precede such appointment. Five (5) members shall be engaged in nursing practice; three (3) shall be engaged in nursing education; ***one (1) shall be engaged in advanced registered nursing practice;*** and one (1) shall be in nursing administration.

(7) Each L.P.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of practical nursing or its equivalent, licensed as a licensed practical nurse in this state,~~[and]~~ have at least five (5) years of experience in nursing, three (3) of which shall immediately precede this appointment***, and be currently engaged in nursing practice***.

Section 19. KRS 314.131 is amended to read as follows:

(1) The board shall meet at least annually and shall elect from its members a president ***and any other officers that it deems necessary***[~~,a president-elect, and a secretary~~]. ***Nine members***[~~A majority~~] of the board including one (1) officer shall constitute a quorum at any meeting. The board is authorized to promulgate administrative regulations not inconsistent with the law and subject to the provisions of KRS Chapter 13A, as may be necessary to enable it to carry into effect the provisions of this chapter.

(2) The board shall approve ***programs***[~~curricula and standards for schools~~] of nursing [~~and courses preparing persons for licensure~~] and shall monitor ***compliance with*** standards for nurse competency under this chapter. It shall[~~ provide for surveys of schools and courses at any time as may be necessary, approve schools and courses meeting the requirements of this chapter and of the board, evaluate and approve courses for affiliation, and~~] examine, license, and renew the license of duly-qualified applicants; determine notice of place and time of licensure examinations; approve providers of continuing education; administer continuing education requirements; issue advisory opinions ***or declaratory rulings*** dealing with the practice of nursing; register and designate those persons qualified to engage in advanced nursing practice; and it shall conduct administrative hearings in accordance with KRS Chapter 13B upon charges calling for discipline of a licensee and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor.

(3) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a nurse licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a nurse is falsely accused.

(4) The board and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

(5) The board shall employ a qualified person to serve as executive director to the board, and shall fix the compensation and define the duties of the executive director. It may employ other persons as may be necessary to carry on the work of the board.

(6) The executive director shall have at least the qualifications for board members, and a master's degree in nursing or equivalent and shall have had at least two (2) years of experience in nursing administration immediately preceding the time of appointment.

(7) Each member of the board shall receive, in addition to traveling, hotel, and other necessary expenses, one hundred ***fifty*** dollars ***($150)***[~~($100)~~] for each day the member is actually engaged in the discharge of official duties.

(8) The board may, in its discretion, purchase liability insurance for board and staff members against acts performed in good faith discharge of duties.

(9) The board may, by administrative regulation issued pursuant to the provisions of KRS Chapter 13A, determine which disciplinary action records may be expunged. Any records which are expunged shall be exempt from disclosure under the Kentucky Open Records

Law, KRS 61.870 to 61.884. The board shall not report its disciplinary actions for any purpose other than statistical.

(10) The board may reimburse any person appointed by direction of the board to any committee, subcommittee, or task force created by the board for his or her travel and subsistence expenses as established through the promulgation of administrative regulations in accordance with KRS Chapter 13A.

Section 20. KRS 314.181 is amended to read as follows:

(1) ***A registered nurse who is employed by an ambulance service shall complete training in determination of death and preservation of evidence as required by the board through the promulgation of administrative regulations in accordance with KRS Chapter 13A.***

(2) A registered nurse who is employed by an ambulance service shall determine whether or not a patient served by the ambulance service is dead. The registered nurse shall utilize the protocol specified by the board by administrative regulations. The registered nurse shall, when responding to a patient, first attempt resuscitation, unless the protocol indicates that the patient is not capable of being resuscitated[~~When it appears that a person whom a registered nurse who has successfully completed training in determination of death has been called to attend is dead, the registered nurse shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the registered nurse or a paramedic or an emergency medical technician who has responded with or after the registered nurse, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the nurse may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead~~].

(3) If it is determined that death has occurred in accordance with the procedures of KRS 446.400 with regard to patients who have not been resuscitated, the registered nurse ***who is employed by an ambulance service*** may make the actual determination and pronouncement of death. This section shall not apply to patients who are in a hospital when apparent death occurs.

(4)[~~(2)~~] In the event that a registered nurse ***who is employed by an ambulance service*** determines that a person is dead, the registered nurse shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.

(5)[~~(3) Any registered nursing course taught in pre-licensure programs after July 15, 1998, shall include a course of instruction on the determination of death and preservation of evidence as required by the Board of Nursing by administrative regulation.~~

~~(4) Any registered nurse within the two (2) years following July 15, 1998, shall successfully complete in-service training required by the Board of Nursing by administrative regulation relating to determination of death and preservation of evidence.~~

~~(5) Any registered nurse from another jurisdiction desiring to become a registered nurse in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection (4) of this section.~~

~~(6)~~] The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person***,*** prior to the arrival of the registered nurse ***who is employed by***

an ambulance service, by any person~~[, for the purposes of this section and KRS 446.400,]~~ shall not be considered as artificial maintenance of respiration and circulation ***for the purposes of this section and KRS 446.400***. The administration of advanced cardiac life support procedures by any person, other than a paramedic rendering care pursuant to KRS 311.660, prior to the arrival of the registered nurse shall preclude the determination of death by the registered nurse, and the provisions of KRS 446.400 shall apply.~~[However,]~~ Nothing in this section shall preclude the supervising physician from directing the registered nurse ***who is employed by an ambulance service*** to cease resuscitative efforts under approved agency medical protocols.

(6)~~[(7)]~~ The resuscitative efforts of a nurse under protocols authorized by this section shall not invoke the provisions of KRS 446.400.

SECTION 21. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

Jurisdiction, both as to person and subject matter, under KRS 314.011 to 314.161 vests with the board upon application for licensure and shall continue during periods of licensure and lapse of licensure. The jurisdiction of the board shall be continuous over the individual applicant or licensee and shall not be divested by voluntary surrender of a license or withdrawal of an application.

Section 22. KRS 315.040 is amended to read as follows:

(1) Nothing in this chapter shall be construed to prevent, restrict, or otherwise interfere with the sale of nonprescription drugs in their original packages by any retailer. No rule or regulation shall be adopted by the Board of Pharmacy under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist.

(2) Nothing in this chapter shall interfere with the professional activities of any licensed practicing physician, or prevent the physician from keeping any drug or medicine that he or she may need in his or her practice, from compounding the physician's own medications, or from dispensing or supplying to patients any article that seems proper to the physician.

(3) Nothing in this chapter shall be construed to interfere with the activities of a midlevel health care practitioner as provided in KRS 216.925.

(4) Nothing in this chapter pertaining to the use of collaborative care agreements shall apply in any hospital or other health facility operated by a hospital without the express written permission of the hospital's governing body. Collaborative care agreements may be restricted by the policies and procedures of the facility.

(5) Nothing in this chapter shall interfere with the activities of a physician assistant as authorized in KRS Chapter 311.

(6) Nothing in this chapter shall interfere with the activities of an advanced registered nurse practitioner as authorized in KRS Chapter 314.

Section 23. The following KRS section is repealed:

314.074 In-service training for nurses on child sexual abuse.

Section 24. To provide for the initial appointment of the advanced registered nurse practitioner member to the Board of Nursing under Section 18 of this Act, the Kentucky Nurses Association shall submit two (2) names to the Governor by August 1, 2000, and the Governor shall make the appointment no later than August 15, 2000. The initial term of this member shall be for a period of four (4) years.

Approved April 7, 2000

CHAPTER 392

(HB 824)

AN ACT relating to property valuation administrators.

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

Section 1. KRS 132.370 is amended to read as follows:

(1) There shall be a property valuation administrator in each county in lieu of a county assessor. Property valuation administrators shall be state officials and all deputies and assistants of their offices shall be unclassified state employees.

(2) Property valuation administrators shall be elected in the year in which county elections are held and shall enter upon the discharge of the duties of their office on the first Monday in December after their election and continue in office for a period of four (4) years, and until the election and qualification of their successors. Property valuation administrators shall possess the qualifications required by Section 100 of the Constitution and by KRS 132.380 and shall be eligible for reelection.

(3) The property valuation administrators and all deputies and assistants of their offices who qualify as full-time employees shall be eligible for participation in the provisions of KRS 18A.205, 18A.230 to 18A.355, and 61.510 to 61.705.

(4) A property valuation administrator may be removed from office by the Circuit Court of his county, upon petition of any taxpayer, or by the secretary of revenue for any of the following grounds: willful disobedience of any just or legal order of the cabinet, or for misfeasance or malfeasance in office or willful neglect in the discharge of his official duties, including but not limited to intentional underassessment or overassessment of properties and chronic underassessment of properties. For purposes of this section and KRS 134.385, "chronic underassessment" shall mean a widespread pattern and practice of assessing properties at levels substantially below fair market value which persists for a period of two (2) or more years as disclosed by randomly selected sample appraisals conducted under the provisions of KRS 133.250, special audits conducted pursuant to KRS 134.385, or other means.

(5) If the secretary determines that a property valuation administrator should be removed from office, the property valuation administrator shall be notified in writing, and the notice of intent to remove shall state the specific reasons for removal. The notice shall also advise the property valuation administrator of his right to a preremoval conference and an administrative hearing.

(6) A property valuation administrator may request a preremoval conference to appear with or without counsel before the secretary or his designee to answer the charges against him. The preremoval conference shall be requested in writing within six (6) working days of the date

on which the notice of intent to remove is received, and a preremoval conference shall be scheduled within seven (7) working days of the date on which the request is received. The secretary or his designee shall render a decision within five (5) working days of the conclusion of the preremoval conference. Failure of a property valuation administrator to request a preremoval hearing shall not waive his right to contest his removal through an administrative hearing.

(7) If an action to remove a property valuation administrator is initiated by the secretary of revenue, the property valuation administrator shall have the right to appeal and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. Appeal of the final order of the secretary of revenue may be filed in a Circuit Court of an adjacent judicial circuit in accordance with KRS Chapter 13B, notwithstanding the provisions of KRS Chapter 18A.

(8) If a property valuation administrator is removed from office as provided in subsections (4) to (7) of this section, he shall be ineligible to serve in the office at any future date and shall forfeit any and all certification from the Revenue Cabinet pertaining to the office.

(9) Notwithstanding the provisions of KRS 18A.110(5)(c), the cabinet shall promulgate administrative regulations allowing property valuation administrators and their deputies to receive lump-sum payments for accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death.

Approved April 7, 2000

CHAPTER 393

(HB 875)

AN ACT relating to insurance.

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

Section 1. KRS 304.9-020 is amended to read as follows:

As used in this subtitle:

(1) "Agent" means an individual or business entity required to be licensed and appointed under the laws of this state to sell, solicit, or negotiate insurance or annuity contracts.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, employer group, professional employer organization, or other legal entity.

(3) "Home state" means the District of Columbia and any state or territory of the United States in which a licensee maintains his or her principal place of residence or principal place of business and is licensed by that state.

(4) A "general lines" agent is an agent who transacts any one (1) or more of the following kinds of insurance:

(a) Property insurance;

(b) Casualty insurance;

(c) Surety insurance;

(d) Marine and transportation insurance;

(e) Health insurance, when transacted for an insurer also represented by the same agent as to property or causality insurance; and

(f) Mortgage guaranty insurance.

(5) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(6) "Limited line credit insurance agent " means an individual or business entity who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(7) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract.

(8) "Sell" means to exchange a contract of insurance by any means, for money or other valuable consideration, on behalf of an insurer.

(9) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(10) "Terminate" means the cancellation of the relationship between an agent and the insurer or the termination of an agent's authority to transact insurance.

(11) "Uniform business entity application" means the current version of the National Association of Insurance Commissioners Uniform Business Entity Application for resident and nonresident business entities.

(12) "Uniform application" means the current version of the National Association of Insurance Commissioners Uniform Application for resident and nonresident agent licensing.

~~[An "agent" is an individual, firm, partnership, limited partnership, corporation, or limited liability company appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate insurance or annuity contracts on its behalf, and if authorized to do so by the insurer, to effectuate and countersign insurance contracts.]~~

Section 2. KRS 304.9-030 is amended to read as follows:

(1) ***Unless denied a license under this subtitle, applicants who have met the requirements for the license in accordance with this subtitle, shall be issued the applicable license***~~[A "general lines" agent is an agent who transacts any one (1) or more of the following kinds of insurance:~~

~~(a) Property insurance;~~

~~(b) Casualty insurance;~~

~~(c) Surety insurance;~~

~~(d) Marine and transportation insurance;~~

~~(e) Health insurance, when transacted for an insurer also represented by the same agent as to property or casualty insurance; and~~

~~(f) Mortgage guaranty insurance~~].

(2) ***An insurance agent may receive qualification for a license in one (1) or more of the following lines of authority:***

(a) Life--insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) Health--insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(c) Property--insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) Casualty--insurance coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property;

(e) Variable life and variable annuity products--insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) Limited line insurance as identified in KRS 304.9-230;

(g) Marine and transportation insurance as defined in KRS 304.5-080;

(h) Mortgage guaranty insurance as defined in KRS 304.5-100; and

(i) Any other line of insurance authorized by Kentucky law and deemed by the commissioner appropriate to be issued as a separate line of authority.

~~[A "life" agent is an agent who transacts life insurance or annuity business. An agent may be appointed for life insurance only, if the insurer is a life and health insurer.~~

~~(3) A "health" agent is an agent who transacts health insurance only, whether licensed by a life insurer or other than life insurer.~~

~~(4) A "life and health" agent is an agent who transacts life insurance or annuity business, and includes also the transaction of health insurance on behalf of an insurer for whom the agent is also licensed as to life insurance.]~~

Section 3. KRS 304.9-035 is amended to read as follows:

Any ***insurer***~~[insurance company]~~ shall be liable for the acts of its agents when the agents are acting in their capacity as representatives of the ***insurer***~~[insurance company]~~ and are acting within the scope of their authority.

Section 4. KRS 304.9-080 is amended to read as follows:

(1) ***An individual or business entity shall not sell, solicit, or negotiate insurance in this state unless the individual or business entity is licensed for that line of authority in accordance with this subtitle.***

(2) No ***individual or business entity***~~[person]~~ shall in this state be, act as, or hold himself ***or herself*** out as ***a***~~[an agent, solicitor,]~~ consultant~~[,]~~ or adjuster unless then licensed as ***a***~~[an agent, solicitor,]~~ consultant~~[,]~~ or adjuster respectively.

~~[(2) No agent, or solicitor shall solicit or take applications for, procure or place for others any kind of insurance as to which he is not then licensed.]~~No consultant shall act as ***a consultant***~~[such]~~ with respect to any kind of insurance as to which he ***or she*** is not then licensed as a consultant.

(3) A consultant license must cover either or both of the following categories, as selected by the licensee:

(a) General lines;

(b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

(4) No ***individual***~~[person]~~ licensed as a consultant shall act as a consultant until he ***or she*** has filed with the commissioner a bond or insurance as prescribed in KRS 304.9-330.

(5) Except as provided in KRS 304.9-410 ***and subsection (3) of Section 21 of this Act***, no agent shall place, and no insurer shall accept, any insurance with any insurer as to which ***the agent***~~[he]~~ does not then hold a license and appointment as agent under this subtitle.

(6) The commissioner shall prescribe and furnish all forms required under this subtitle as to licenses and appointments.

Section 5. KRS 304.9-085 is amended to read as follows:

(1) A "managing general agent" is an individual ***or business entity***~~[, firm, or corporation]~~ appointed by an insurer to solicit applications from agents for insurance contracts or to negotiate insurance contracts on behalf of an insurer, and if authorized to do so by an insurer, to effectuate and countersign insurance contracts.

(2) No ***individual or business entity***~~[person]~~ shall in this state be, act as, or hold himself ***or herself*** out as a managing general agent unless then licensed as a managing general agent. In order to qualify for a managing general agent license, ***an individual***~~[a person]~~ shall:

(a) Hold a general lines~~[insurance]~~ agent license and be appointed by each authorized insurer the ***licensee***~~[person]~~ holds the contract to represent;

(b) If a nonresident, hold a nonresident general lines~~[insurance]~~ agent license and be appointed by each authorized insurer the ***licensee***~~[person]~~ represents in Kentucky. Nonresidents are subject to the restrictions of KRS 304.9-140; and

(c) Hold a surplus lines broker license if any unauthorized insurers are represented or used.

In order for a ***business entity***~~[corporation or firm]~~ to qualify for a managing general agent license, all ***individuals***~~[persons]~~ acting on behalf of the corporation or firm under its license shall be licensed general lines~~[insurance]~~ agents.

(3) As used in this chapter, "agent" includes managing general agent unless the context requires otherwise.

(4) A managing general agent is a representative of the insurers which the managing general agent holds a contract to represent. Such insurers are liable for the acts of the managing general agent in representing the insurers.

(5) The commissioner shall issue managing general agent licenses to expire on March 31, 1988, and to be renewed biennially thereafter.

Section 6. KRS 304.9-090 is amended to read as follows:

(1) The definition of[~~ agent, solicitor or~~] consultant shall not be deemed to include [~~:~~

~~(1) Salaried employees in the office of a general lines agent, which employees devote full time to clerical and administrative services, with incidental taking of insurance applications and receiving premiums in the office of the employer agent if the employee does not receive any commissions on such applications and his compensation is not varied by the volume of applications or premiums taken or received by such employee;~~

~~(2)~~]the supervising managing general agent (except as defined in KRS 304.9-085) or supervising officer or employee of an insurer who solicits only with duly licensed resident agents of the insurer[~~;~~

~~(3) Newsboys and managers of newspaper distribution offices who incidentally take applications of so-called "newspaper accident insurance" and receive premiums in connection therewith;~~

~~(4) Employees or other representatives of a group policyholder engaged in enrolling certificate holders and performing other activities in the administration of the group policy~~].

(2) Nothing in this subtitle shall be construed to require an insurer to obtain an agent license. As used in this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(3) A license as an agent or consultant shall not be required of the following:

(a) An officer, director, or employee of an insurer or of an agent, provided that the officer, director or employee does not receive any commission or other valuable consideration on policies written or sold to insurer risks residing, located, or to be performed in this state and whose compensation is not varied by the volume of applications taken or received and:

1. The officer, director, or employee's full-time activities are devoted to functions that are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or

2. The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

3. The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting agents where the officer's, director's, or employee's activities are limited to providing technical advice and assistance to licensed agents and do not include the sale, solicitation, or negotiation of insurance;

(b) The individual secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, or for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans; or performs administrative services related to a mass marketed property and casualty insurance, where no commission is paid to the individual for the service;

(c) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of agents who are not individually engaged in the sale, solicitation, or negotiation of insurance;

(e) An individual or business entity whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the individual or business entity does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(f) An individual or business entity who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one (1) state insured under that contract, provided that the individual or business entity is otherwise licensed as an agent to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interest of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell, solicit, or negotiate insurance or receive a commission; or

(h) Employees of an insurer or an agent who responds to requests from existing policy holders on existing policies, provided that those employees are not directly compensated based on the volume of premiums that may result from these services, and provided that those employees do not otherwise sell, solicit, or negotiate insurance.

Section 7. KRS 304.9-105 is amended to read as follows:

An individual applying for an agent license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of

the individual's knowledge and belief. Before approving the application, the commissioner shall find that the applicant[~~For the protection of the people of this state, the commissioner shall not issue, continue, or permit to exist, any permanent agent or solicitor license for or on behalf of any natural person unless the person demonstrates to the satisfaction of the commissioner that he is qualified therefor pursuant to the standards contained in this section and any other applicable section of this subtitle~~]:

(1) ***Is at least***[~~That the person has attained the age of~~] eighteen (18) years ***of age***[~~or more~~];

(2) [~~That the person~~]Has fulfilled the residence requirements as set forth in KRS 304.9-120;

(3) ***Has not committed any act that is a ground for denial, suspension, or revocation set forth in Section 34 of this Act;***

(4) [~~That the person~~]Is trustworthy, reliable, and of good reputation, evidence of which ***shall***[~~may~~] be submitted on behalf of the ***applicant***[~~person~~] in the form of:

(a) A certificate by the insurer or agent by which or whom the ***applicant***[~~person~~] is to be appointed or employed, subject to the issuance of the license, stating that the insurer[~~ or agent~~] has either made, or caused to be made by responsible investigators, an investigation into the trustworthiness, reliability, and good reputation of the ***applicant***[~~person~~] together with a brief synopsis of the findings resulting therefrom; or

(b) Three (3) letters of recommendation attesting to the trustworthiness, reliability, and good reputation of the person written on his ***or her*** behalf by persons not related to him ***or her*** by blood or marriage and one (1) of whom shall be a licensed resident insurance agent, which letters shall also state the extent of familiarity, both as to length of time and degree of knowledge, possessed by the writer with regard to both personal and business conduct of the person.

(5)[~~(4)~~] [~~That the person~~]Is competent to exercise the license and has:

(a) Successfully attained a general educational level equivalent to that required for graduation from an accredited high school in this state;

(b) ***Except for limited lines licenses, completed a forty (40) hour prelicensing classroom course of study for the lines of authority for which the individual has applied. The commissioner shall promulgate administrative regulations to carry out the purpose of this section***[~~Successfully completed specific courses of instruction in the field of insurance as the commissioner shall by regulation prescribe for a license when initially issued, which courses of instruction shall in the aggregate consist of or equal forty (40) hours of classroom instruction administered by or under the supervision of persons qualifying with and approved by the commissioner for the purpose and the successful completion of which shall be certified to the commissioner, on forms prescribed by him, by the person under whose supervision the instruction was administered. Programs of instruction provided by insurers authorized, or agent associations recognized, by the commissioner may be substituted for the specific courses of instruction prescribed by the commissioner when the programs have been reviewed and approved by the commissioner prior to their use, which approval shall not be unreasonably withheld if the programs of instruction are substantially similar in content and emphasis placed thereon to those prescribed by the commissioner~~];

(c) ***Except for limited line licenses, successfully passed the examinations required by the commissioner for the lines of authority for which the individual has applied***[~~Successfully passed any written examination required by the commissioner for the license pursuant to KRS 304.9-160 unless exempt pursuant to KRS 304.9-170~~]; and

(d) ***Paid the fees set forth in KRS 304.4-010***[~~The requirements contained in this subsection and subsection (3) of this section shall not be applicable to the continuance of any license issued prior to June 17, 1978~~].

(6)[~~(5)~~] [~~That the person~~]Is financially responsible to exercise the license and has:

(a) ***1.*** Filed with the commissioner the certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his ***or her*** capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than ten thousand dollars ($10,000) and fifty thousand dollars ($50,000) in the aggregate for all occurrences within one (1) year, and that the policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the commissioner; or

2.[~~(b)~~] Deposited with the commissioner cash, or a cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of ten thousand dollars ($10,000), which shall be subject to lawful levy of execution by any party to whom the ***licensee***[~~licensed person~~] has been found to be legally liable as the result of erroneous acts or failure to act in his ***or her*** capacity as an[~~ insurance~~] agent; or

3.[~~(c)~~] Had filed with the commissioner on his ***or her*** behalf, by an authorized insurer or group of affiliated insurers for which he ***or she*** is or is to become an exclusive agent, an agreement whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of the licensed person as the result of erroneous acts or failure to act in his ***or her*** capacity as an insurance agent on behalf of the insurer or group of affiliated insurers in the sum of ten thousand dollars ($10,000) for any single occurrence and that the agreement shall not be terminated until the license is surrendered to the commissioner or at least thirty (30) days' prior written notice will have been given to the commissioner, whichever shall first occur; and

(b)[~~(d)~~] Agreed with the commissioner that if at any time notice is given to the commissioner that any policy filed ***in accordance with***[~~pursuant to~~] paragraph (a) of this subsection, or agreement filed ***in accordance with***[~~pursuant to~~] paragraph (c) of this subsection, is to be terminated and has not been replaced by another policy or agreement within the time established by regulations of the commissioner, or if any deposit ***in accordance with***[~~pursuant to~~] paragraph (b) of this subsection be reduced through levy of execution and not replaced by any necessary additional deposit within the time established by regulations of the commissioner, any and all licenses held by the ***licensee***[~~person~~] are revoked and shall be promptly surrendered to the commissioner without demand.

(7)[~~(6)~~] [~~That the person,~~]To whom an agent's license has been or is to be issued, is the duly appointed agent of an authorized insurer, subject to issuance of the license.

The commissioner may require additional information or submissions for resident applications and may obtain any documents or information reasonably necessary to verify the information contained in an application.

[~~(7) That the person, to whom a solicitor's license has been or is to be issued, is regularly employed by a presently licensed resident agent, or is to be so employed subject to issuance of the license.~~

~~(8) Subsection (4)(b) of this section shall not apply to any person holding a limited license pursuant to KRS 304.9-230.~~

~~(9) No institution included in the Farm Credit System, as set forth and identified in 12 U.S.C. sec. 2002 (Public Law 92-181, sec. 1.2, Dec. 10, 1971, 85 Stat. 583) or any subsidiary or affiliate thereof doing business in this state, nor any officer or employee of any institution included in the Farm Credit System, or any subsidiary or affiliate thereof, may directly or indirectly be licensed to sell or solicit any type of insurance, except term life, credit life, accident, disability and health, and crop hail insurance in an amount appropriate to insure repayment of the loan.~~]

Section 8. KRS 304.9-107 is amended to read as follows:

The following persons shall be exempt from the licensing qualifications and requirements of KRS 304.9-105***(5)***[~~(4)~~](b) and, if otherwise properly qualified, shall be issued licenses without satisfying KRS 304.9-105***(5)***[~~(4)~~](c):

(1) Persons holding a certified life underwriter degree;[~~ and~~]

(2) Persons holding a certified property and casualty underwriter degree***; and***

(3) Persons holding a certified insurance counselor designation.

Section 9. KRS 304.9-120 is amended to read as follows:

(1) Each applicant for license as ***a resident licensee shall be qualified to designate and shall designate Kentucky as the applicant's home state at the date of application for the license and shall maintain that eligibility throughout the duration of the license***[~~agent, who is an independent contractor agent compensated on a commission basis, and each applicant for license as a solicitor must be a bona fide resident of this state at the date of application for the license and must continue to be a resident of this state while so licensed~~].

(2) In determining the good faith of an applicant's claim ***that Kentucky is the applicant's principal place of***[~~to such~~] residence, the commissioner may give due consideration to the following:

(a) The amount of time actually spent by the applicant within this state during the claimed residence period;

(b) The circumstances of ***the applicant's***[~~such~~] residence, that is, whether in a single or multiple family-type dwelling, or leased apartment, or permanent residential type; or in hotel, resort, motel, mobile home, or other temporary or transient type of dwelling or accommodation;

(c) The circumstances of the applicant, his ***or her*** past history and activities, and the probability that he ***or she*** will continue as a resident of this state indefinitely into the future if the license were to be issued;

(d) All other pertinent factors.

~~[(3) The requirements of subsection (1) of this section shall not apply as to:~~

~~(a) One employed to manage the insurance agency of a deceased licensed resident agent;~~

~~(b) An applicant or agent residing in any part of a city located partly within this state, if the other state in which the city is located in part has established a like exception to any residency requirement;~~

~~(c) Life or health insurance agents;~~

~~(d) Agents who are employees of the insurer or an affiliate of the insurer.~~

~~(4) The commissioner shall license as life insurance agent any person, firm, or corporation who is otherwise qualified therefor under this code, but who is not a resident of this state, if by the laws of the state or province of the residence of such person, firm, or corporation, residents of this state may be licensed in such state or province as nonresident life and general lines insurance agents and the commissioner may negotiate and enter into reciprocal arrangements with the insurance supervisory official of any other state or province under which the residence requirements of this subsection will be waived in favor of residents of such other state or province if like privileges in such other state or province are granted to residents of this state.~~

~~(5) If, under the laws of any other state or province, greater restrictions regarding residents and personal qualifications are imposed upon the licensing of residents of this state as agents than those imposed upon the licensing of nonresidents of this state under the laws of this state, then the commissioner may, when he considers such action necessary for the protection of domestic insurers or resident agents, impose such greater restrictions upon the licensing of residents of such state or province.]~~

Section 10. KRS 304.9-130 is amended to read as follows:

(1) A ***business entity acting as an agent is required to obtain an agent license. Application shall be made using the uniform business entity application or other application prescribed by the commissioner. Before approving the application, the commissioner shall find that:***

(a) The business entity has paid the fees set forth in KRS 304.4-010;

(b) Each officer, director, and member of the business entity who is acting as an agent has obtained an agent's license;

(c) The business entity has disclosed to the insurance department the identity of all officers and directors and whether or not they are licensed as agents; and

(d) The business entity has designated a licensed agent responsible for the business entity's compliance with the insurance laws and regulations of this state~~[firm or corporation may be licensed as an agent. If a firm, each general partner and each other individual to act for the firm under the license, and if a corporation each individual to act for the corporation under the license, shall be named in or registered with the commissioner as to the license, and shall qualify as though an individual licensee]~~.

(2) ***The licensee shall promptly notify the commissioner of all changes among its members, directors, officers, and other individuals designated in or registered as to the license***[~~An individual who does not meet the residence requirements as provided in KRS 304.9-120 shall not be so named in or registered as to such a license and shall not have the right to exercise the license powers~~].

(3) ***Each agent authorized to act for the business entity shall be named in or registered with the commissioner as to the license, and shall qualify as though an individual licensee***[~~A license shall not be issued to a firm or corporation unless it maintains a place of business in this state, and the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles~~].

(4) The ***commissioner may obtain any documents or information reasonably necessary to verify the information contained in an application***[~~licensee shall promptly notify the commissioner of all changes among its members, directors, officers and other individuals designated in or registered as to the license~~].

Section 11. KRS 304.9-140 is amended to read as follows:

(1) ***Unless denied a license in accordance with this subtitle, a nonresident individual or business entity shall receive an agent license if:***

(a) The applicant is currently licensed and in good standing in his or her home state;

(b) The applicant has submitted the proper request for license and has paid the fees required by KRS 304.4-010 and administrative regulations;

(c) The applicant has submitted or transmitted to the commissioner the application for a license that the applicant submitted to his or her home state or a completed uniform application or uniform business entity application;

(e) The applicant has complied with his or her home state's continuing education requirements;

(f) The applicant's home state awards nonresident licenses to residents of this state on the same basis; and

(g) The applicant has complied with any other applicable legal requirements[~~Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a life insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement~~].

(2) ***The commissioner may verify the applicant's license status through the database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries***[~~Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105 except as to the residence requirement~~].

(3) ***A nonresident licensee who changes his or her home state to a state other than Kentucky shall file a change of address and provide certification from the new home state within thirty (30) days of the change of home state. No fee or license application is required***[~~Nonresidents of this state, other than those referred to in subsection (1) of this section, may be licensed as insurance agents in this state without taking an examination if:~~

~~(a) A written examination is required of applicants for an insurance agent's license in such other state.~~

~~(b) The appropriate official of such other state certifies that the applicant holds a currently valid license as an insurance agent in such other state and either passed such written examination or was the holder of an insurance agent's license prior to the time such written examination was required.~~

~~(c) In such other state, a resident of this state is privileged to procure an insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state~~].

(4) Notwithstanding ***any other provisions of this chapter, on or after July 1, 2002, an individual licensed as a surplus lines broker in his or her home state shall receive a nonresident surplus lines broker license by meeting the requirements of subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of Subtitle 10 of this chapter***[~~the provisions of KRS 304.9-120, a nonresident of this state who is a full-time employee of an insurer or an affiliate of an insurer, and not compensated on a commission basis, may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement, and may act as an agent in Kentucky under said license, provided that such insurer maintains a place of business in this state~~].

(5) Notwithstanding any other provision of this subtitle, an individual licensed as a limited lines agent in his or her home state shall receive a nonresident limited lines agent license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the agent's home state.

Section 12. KRS 304.9-150 is amended to read as follows:

(1) Application for[~~ an agent or solicitor license shall be made to the commissioner by an insurer. The application for~~] a consultant license shall be made by the applicant. Applications under this subsection shall be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The form of application shall require full answers to any questions as may be reasonably necessary to determine the applicant's identity, residence, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) [~~If for an agent's or consultant's license, ~~]The application shall state the kinds of insurance proposed to be transacted[~~, and if an agent's, the application shall be deemed an appointment of the applicant as agent for the kinds of insurance, by an authorized insurer, subject to issuance of the license~~].

(4) [~~If for solicitor's license, the application shall be accompanied by written appointment of the applicant as solicitor by a licensed resident general lines agent, subject to issuance of the license.~~

~~(5) If the applicant for an agent's license is a firm or corporation, the application shall show in addition, the names of all members, officers, and directors, and shall designate each individual who is to exercise the license powers; and each individual shall furnish~~

~~information with respect to himself, as part of the application, as though for an individual license.~~

~~(6) If for license as agent, or solicitor, or consultant,~~]The application shall also show whether the applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any license was ever refused, suspended, revoked, or renewal or continuance denied, whether any insurer, general agent, agent, claims applicant is indebted to it, and if so, the details thereof; whether applicant has ever had an agency contract canceled, and the facts thereof[~~; and, if applicant is a married person, like information with respect to the spouse.~~

~~(7) As part of the application for agent's or solicitor's license, the commissioner shall require the certificate of the insurer or agent, proposed to be represented, relative to applicant's identity, residence, experience, or instruction as to the kinds of insurance to be transacted, trustworthiness, and reputation~~].

(5)[~~(8)~~] All applications shall be accompanied by the applicable license fee[~~, appointment fee,~~] and examination fee, in the respective amounts stated in KRS 304.4-010.

(6)[~~(9)~~] No applicant for license under this subtitle shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.

Section 13. KRS 304.9-160 is amended to read as follows:

(1) ***An individual applying for any license under this subtitle requiring an examination shall pass a written examination***[~~After completion and filing of application with the commissioner as required by KRS 304.9-150, the commissioner shall subject each applicant for license as agent, or solicitor,~~] unless ***exempt***[~~exempted therefrom~~] under KRS 304.9-170***. Examinations required by this section shall be developed and conducted in accordance with administrative regulations promulgated***[~~, to a written examination as to his competence to act as such agent or solicitor, which he must personally take and pass to the satisfaction of the commissioner prior to having his application for a license considered~~] by the commissioner.

(2) ***The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in KRS 304.4-010***[~~If the applicant is a firm or corporation the examination shall be so taken by each individual who is to be named in or registered as to the license, as provided in KRS 304.9-130~~].

(3) ***Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the commissioner as set forth in KRS 304.5-010***[~~examination of an applicant for an agent's license shall cover all the kinds of insurance which the appointing insurer or insurers are authorized to transact in this state; except as to a limited license provided for under KRS 304.9-230 and except that an applicant to be licensed as to health insurance only or mortgage guaranty insurance only shall not be examined as to other kinds of insurance. The commissioner shall permit applicants appointed by a life insurer authorized in this state to issue kinds of insurance other than life and health insurance and annuities, as provided in KRS 304.3-110, to take examinations covering either the other kinds of insurances, or covering life and health insurance and annuities only, or both. In the case of life insurers authorized to issue variable annuities in this state, the commissioner may require applicants~~

~~appointed by such insurers to solicit such contracts in this state, in addition to completing examinations qualifying for a life agent's license, to successfully pass a supplemental examination covering the subject of variable annuities in order to solicit, place or procure variable annuity contracts in this state~~].

(4) ***An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another*** examination[~~ of an applicant for a solicitor's license shall cover all kinds of insurance, other than life or health insurance, as to which the appointing agent is licensed.~~

~~(5) Written application for the examination shall be filed with the commissioner by or on behalf of the applicant prior to the date fixed for the examination, as provided in KRS 304.9-190, and shall be accompanied by the fee for such application as specified in KRS 304.4-010~~].

Section 14. KRS 304.9-170 is amended to read as follows:

KRS 304.9-160 shall not apply and no[~~ such~~] examination shall be required of:

(1) Any applicant for license covering ***any line of authority***[~~the same kind or kinds of insurance as~~] to which the applicant was licensed under a similar license in ***Kentucky***[~~this state~~], other than a temporary license, within the twenty-four (24) months next preceding date of application, unless the previous license was revoked[~~,~~] ***or*** suspended[~~, or continuation thereof refused~~] by the commissioner for reasons other than failure to maintain financial responsibility ***or meeting continuing education requirements*** as required by KRS 304.9-105 ***and Section 24 of this Act***.

(2) ***An individual who applies for an agent license in Kentucky who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the applicant is currently licensed in the other state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the agent is or was licensed in good standing for the line of authority requested***[~~In the commissioner's discretion, any applicant who has been licensed under a similar license in another state within twelve (12) months prior to his application for license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state as to applicant's license and good conduct in the state~~].

(3) ***An individual licensed as an agent in another state within the last twelve (12) months who moves to Kentucky shall make application within ninety (90) days of establishing legal residence to become a resident licensee. No prelicensing education or examination shall be required of that applicant to obtain a license for any line of authority previously held in the prior home state except where the commissioner determines otherwise by administrative regulation***[~~Persons representing public carriers who, in the course of their representation, solicit or sell insurance incidental to the transportation of persons or to the storage or transportation of property~~].

(4)[~~ Persons soliciting or negotiating credit life, credit health and accident, credit personal property, and credit unemployment insurance contracts.~~

~~(5)~~] An applicant for an agent's license who is currently licensed as a solicitor or as a consultant as to the same ***line of authority***[~~kind or kinds of insurance~~], or has been so licensed within twelve (12) months next preceding the date of application for the license, unless the previous license was revoked or suspended or continuation thereof refused by the commissioner for reasons other than failure to maintain financial responsibility as required by KRS ***304.9-330***[~~304.9-105~~].

(5)[~~(6)~~] Any applicant for license covering the same ***line of authority***[~~kind or kinds of insurance~~] as to which that applicant shall have held a valid license issued ***in accordance with***[~~pursuant to~~] this subtitle or other applicable Kentucky law which was surrendered, ***in accordance with***[~~pursuant to~~] KRS 304.2-080 or other applicable law, in order to accept employment with the Department of Insurance, provided, however, that the applicant shall apply for relicensing within one (1) year of the date of termination of his ***or her*** employment with the Department of Insurance.

[~~(7) Persons soliciting or negotiating mechanical breakdown insurance contracts.~~]

Section 15. KRS 304.9-180 is amended to read as follows:

(1) ***The***[~~Each~~] examination ***shall test the***[~~for license as agent, consultant, or solicitor shall reasonably test the applicant's competence and his~~] knowledge ***or relevant skills and abilities of the individual concerning the lines of authority for which application is made,***[~~of the kinds of insurance, policies and transactions to be handled under the license applied for, of~~] the duties and responsibilities of[~~ such~~] a licensee, and[~~ of~~] the pertinent insurance laws ***and administrative regulations*** of this state.

(2) The commissioner shall make available to applicants for license, printed information as to the general scope of, and principal subjects to be covered by, the examination for a particular license, together with information as to published books and other reference sources which may be studied by the applicant to prepare for the examination; but the commissioner shall not furnish lists of examination questions and examination questions shall not be selected from lists[~~ thereof~~] known to the commissioner to have been furnished applicants.

Section 16. KRS 304.9-190 is amended to read as follows:

(1) The commissioner shall provide a reasonable opportunity to all applicants to take the ***examinations***[~~examination~~] required by ***this subtitle***[~~KRS 304.9-160~~]. Examinations shall be held at least monthly at places in this state designated by the commissioner reasonably accessible to applicants, and at least weekly at Frankfort.

(2)[~~ All the kinds of insurance which the applicant proposes to transact under the license applied for shall be included in the same examination.~~

~~(3)~~] The commissioner shall give, conduct and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

(3)[~~(4)~~] The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same ***line***[~~kind or kinds~~] of ***authority***[~~insurance~~].

Section 17. KRS 304.9-200 is amended to read as follows:

(1) ***An agent license shall remain in effect unless terminated, canceled, expired, revoked, or suspended as long as the fees set forth in KRS 304.4-010 and all administrative regulations promulgated thereunder are paid and any applicable continuing education requirements for individual agents are met by the due date.***

(2) An individual agent who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty may be imposed as provided in KRS 304.99-020.

(3) A licensed agent who is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance may request a waiver of those procedures. The agent may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(4) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, and any other information the commissioner deems necessary.

(5) Licensees shall inform the commissioner in writing in a format acceptable to the commissioner of a change of address or change of name within thirty (30) days of the change.

(6) After completion of application for a license, and the taking and passing of any examination required under this subtitle, the commissioner shall promptly consider the same. If the commissioner finds that the applicant has fully met the requirements ***for licensure***~~[therefor]~~, the commissioner shall promptly issue the license to the applicant; otherwise, the commissioner shall refuse to issue the license and promptly notify the applicant and the appointing insurer or agent of ***the***~~[such]~~ refusal, stating the grounds thereof.

(7)~~[(2)]~~ If a license is refused, the commissioner shall promptly refund the appointment fee tendered with the license application. All other fees for application for agent, consultant,~~[solicitor,]~~ or adjuster licenses shall be deemed earned when paid and shall not be refundable.

Section 18. KRS 304.9-210 is amended to read as follows:

(1)~~[The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, the kind or kinds of insurance covered by the license, if applicable, and such other conditions as the commissioner deems proper for inclusion in the license certificate. No license shall be issued in a trade name unless the name has been duly registered or filed as required by law.~~

~~(2)]~~ The license of an agent shall not specify the name of any particular insurer by which the licensee is appointed as agent~~[, except as provided by subsection (5) of this section, as to limited licenses,]~~ and the licensee may~~[, subject to KRS 304.9-220 as to life agents,]~~ represent as ***an***~~[such]~~ agent under the one ***(1)*** license as many insurers as may appoint ***the agent***~~[him therefor]~~ in accordance with this subtitle.

~~[(3) The license of a solicitor shall show the name and address of the employer agent.]~~

(2)~~[(4)]~~ The license of a consultant shall show whether the license is for a "general lines consultant" or a "life consultant."

~~[(5) Each limited license issued pursuant to KRS 304.9-230 shall show the name of the insurer so represented, and a separate license shall be required as to each such insurer.]~~

Section 19. KRS 304.9-230 is amended to read as follows:

(1) The commissioner may issue ***in accordance with Section 4 of this Act, an agent's license with the line of authority***~~[to an applicant qualified therefor, including, but not]~~ limited~~[to, financial responsibility pursuant to KRS 304.9-105(5), under this code limited agent's licenses]~~ as follows:

(a) ***To***~~[Covering]~~ motor vehicle physical damage insurance only;

(b) To~~[persons representing]~~ common ***carrier insurance, incidental to the transportation of persons or to the storage or transportation of property only, and solicited or sold by persons representing common carriers in the course of that representation***~~[carriers, as provided in KRS 304.9-170]~~;

(c) ***To limited line credit insurance***~~[Covering]~~ only~~[insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured]~~;

(d)~~[Covering only credit life, credit health, credit personal property, and credit unemployment insurance;~~

~~(e) Covering agents writing mortgage guaranty insurance only;~~

~~(f) Covering agents:~~

~~1. Writing industrial life insurance only; or~~

~~2. Licensed by an insurer issuing policies having a face amount not in excess of five thousand dollars ($5,000) on the debit plan, if the agent actually collects and services a debit for the insurer;~~

~~(g) Covering agents writing only policies commonly referred to as mortgage redemption insurance, which consist of reducing term life insurance and accident and health insurance, if any, contained therein or sold in conjunction therewith;~~

~~(h)]~~ ***To***~~[Covering agents writing]~~ crop-hail insurance only;~~[and]~~

(e)~~[(i)]~~ ***To***~~[Covering agents writing]~~ mechanical breakdown insurance only***; and***

(f) To other limited line insurance only, as specified by the commissioner through the promulgation of administrative regulations.

(2) The ***commissioner shall promulgate administrative regulations to establish the requirements for prelicensing courses of instruction and examination***~~[fee]~~ for ***each limited lines license***~~[licenses is as specified in KRS 304.4-010]~~.

Section 20. KRS 304.9-260 is amended to read as follows:

(1) Each~~[solicitor,]~~ consultant, adjuster, and surplus lines broker license issued under this code shall continue in force until expired, suspended, revoked***,*** or otherwise terminated, but subject to payment to the commissioner at his ***or her*** office in Frankfort on or before March 31 of the applicable continuation fee for any appointment, or license in the case of a limited license, not terminated on or prior to December 31 of the preceding calendar year as stated

in KRS 304.4-010, accompanied by written request for continuation. Request for continuation shall be made as follows:

(a) As to adjuster and surplus lines broker licenses, request made and signed by the licensee.

(b)~~[As to solicitor licenses, request made and signed by the employer as to whom licensed.~~

~~(c)]~~ As to limited licenses issued under KRS 304.9-230, request made and signed by the insurer so represented.

(2) Biennially, before January 31, the department shall distribute to each respective licensee, employer, and insurer a listing of the names and addresses of that person's licensees referred to in subsection (1) whose appointments were in effect during the preceding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall continue in effect as to the kinds of insurance or classifications~~[thereof]~~ for which the respective licensees are currently appointed and subject to payment of the fees specified under KRS 304.4-010. On or before March 31, each licensee, employer, or insurer shall submit the continuation of appointment fee, as specified in KRS 304.4-010, for each appointment or license not terminated on or prior to December 31 of the preceding calendar year. Any license referred to in subsection (1) of this section as to which request for continuation and fee are not so received by the commissioner shall be deemed to have expired at midnight on March 31; except that any request and fees received by the commissioner after March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his ***or her*** discretion, if accompanied by a penalty as provided in Subtitle 99 of this chapter.

(3) The license of an agent shall continue in force as long as there is in effect as to the licensee, as shown by the commissioner's records, an appointment or appointments as agent of authorized insurers covering collectively all of the ***lines of authority***~~[kinds of insurance or classifications thereof]~~ included in the agent's license. Upon termination of all of the licensee's~~[agency]~~ appointments as to a particular ***line of authority***~~[kind of insurance or classification thereof]~~ and failure to replace an appointment within sixty (60) days thereafter, the license shall~~[thereupon]~~ expire and terminate as to the ***line of authority***~~[kind or classification of insurance]~~ and the licensee shall promptly deliver his ***or her*** license to the commissioner for reissuance, without fee or charge, as to the ***line of authority***~~[kinds of insurance or classifications thereof]~~, if any, covered by the licensee's remaining agency appointments. Upon termination of all of the licensee's~~[agency]~~ appointments ***and failure to obtain a new appointment within sixty (60) days,*** the license shall~~[forthwith]~~ terminate ***and be surrendered to the commissioner***.

(4) As a condition to or in connection with the continuation of any agent ***or***~~[,]~~ consultant~~[, or solicitor]~~ license, the commissioner may require the licensee to file with him ***or her*** information relative to use made of the license during the next preceding calendar year and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.

(5) As a condition to or in connection with the continuation of any agent~~[or solicitor]~~ license, the commissioner shall require continuous demonstration of financial responsibility as required by KRS 304.9-105***(6)***~~[(5)]~~, and any license shall terminate and be surrendered to the commissioner, as provided~~[for]~~ therein, if and when ***the***~~[such]~~ demonstration becomes impaired whether or not valid appointments under the license are then existent.

(6) Except as to the provisions of subsection (5) hereof, this section does not apply to temporary licenses issued under KRS 304.9-300.

Section 21. KRS 304.9-270 is amended to read as follows:

(1) Each insurer appointing an agent in this state shall ***obtain approval of the appointment from the commissioner by filing***~~[file]~~ with the commissioner the ***notice of*** appointment in writing, specifying the kinds of insurance or classifications thereof to be transacted by the agent for the insurer, and submit the license fee with the license application and the appointment fee with every appointment~~[thereafter]~~, or license fee in the case of limited licenses, as specified in KRS 304.4-010.

(2) ***No agent shall claim to be an agent or representative of, or in any way imply a contractual relationship with, a particular insurer, or place applications for insurance with an insurer unless the agent becomes an appointed agent of the insurer and the agent's appointment has been approved by the commissioner.***

(3) An agent may act as a representative of and place insurance with an insurer without first obtaining approval of the appointment by the commissioner for a period of thirty (30) days from the date the first insurance application is executed by the agent subject to the following criteria:

(a) The agent has filed with the commissioner, and kept in force, evidence of financial responsibility in the sum of not less than one million dollars ($1,000,000) per occurrence, and the sum of two million dollars ($2,000,000) in the aggregate, for all occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. Such a policy, bond, deposit, or combination shall not be terminated unless at least thirty (30) days prior written notice is given to the licensee and the commissioner.

(b) If the agent does not receive from the insurer acknowledgment that the agent's appointment has been approved by the commissioner within thirty (30) days from the date the first insurance application is executed, the agent shall immediately discontinue acting as an agent on behalf of the insurer until acknowledgment is received.

(4) (a) The insurer shall, no later than forty-five (45) days from the date the agency contract is executed or the first insurance application is submitted by an agent, whichever is earlier, file with the commissioner a written notice of appointment on a form prescribed by the commissioner.

(b) If there is no executed agency contract, the insurer shall also mail to the agent, within the same forty-five (45) day period specified in paragraph (a) of this subsection, a copy of the notice of appointment form filed with the commissioner.

(5) Within fifteen (15) days of receipt of the notice of appointment, the commissioner shall determine and notify the insurer whether the agent is eligible for appointment. If the agent's license is in good standing and no other grounds exist to deny the appointment, the commissioner shall approve the appointment.

(6) Subject to continuation by the insurer as provided in subsection ***(4)***~~[(3)]~~ of this section, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in KRS 304.9-280.

(7)~~[(3)]~~ Biennially, before January 31, the department shall distribute to each insurer a listing of the names and addresses of that insurer's agents whose appointment, or licenses in the case of limited licenses, were in effect during the proceeding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall remain in effect as to the kinds of insurance or classifications thereof for which the respective agents are currently appointed, and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall submit the continuation of appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010, for each appointment not terminated on or prior to December 31 of the preceding calendar year. Any appointment or license not expressly terminated shall continue, unless otherwise terminated, canceled, suspended, or revoked by the department of insurance.

Section 22. KRS 304.9-280 is amended to read as follows:

(1) Subject to the agent's contract rights, if any, an insurer may terminate an~~[agency]~~ appointment at any time. However, if any~~[agency]~~ appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission as provided in KRS 304.9-270.~~[The insurer shall promptly give written notice of such termination and the effective date thereof to the commissioner and to the agent where reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has given notice to the agent where reasonably possible.]~~

(2) ***An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a licensee shall notify the commissioner within thirty (30) days following the effective date of the termination, using a form prescribed by the commissioner, if the reason for termination is one (1) of the reasons set forth in Section 34 of this Act or if the insurer has knowledge the licensee was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in Section 34 of this Act. Upon the written request of the commissioner the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the licensee.***

(3) An insurer or authorized representative of the insurer that terminates the appointment of a licensee for any reason not set forth in subsection (2) of this section, shall notify the commissioner within thirty (30) days following the effective date of the termination, using a form prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(4) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a form acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (2) of this section had the insurer known of its existence.

(5) (a) Within fifteen (15) days after making the notification required by subsection (3) of this section the insurer shall mail a copy of the form to the licensee at his or her last known address by first-class mail. Within fifteen (15) days after making the notification required by subsection (2) of this section, the insurer shall provide a copy of the form to the licensee at his or her last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

(b) Within thirty (30) days after the licensee has received a copy of the form, the licensee may file written comments concerning the substance of the notification with the commissioner. The licensee shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the licensee as permitted under subsection (7)(c) of this section.

(6) (a) 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a licensee, the commissioner, or their respective representatives, or employees, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners, or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective representatives or employees, as a result of:

a. Any statement or information required by or provided in accordance with this section;

b. Any information relating to any statement that may be requested in writing from an insurer or licensee by the commissioner; or

c. A statement by a terminating insurer or licensee to an insurer or licensee that is limited solely and exclusively to whether a termination for cause under subsection (2) of this section was reported to the commissioner.

2. The propriety of any termination for cause under subsection (2) of this section shall be certified in writing by an officer or authorized representative of the insurer or licensee terminating the relationship.

(b) In any action brought against an individual, business entity, or organization that may have immunity under subsection (6)(a) of this section for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subsection (6)(a) of this section does not apply because the individual, business entity, or organization making the statement, or providing the information did so with actual malice.

(c) Subsection (6)(a) or (6)(b) of this section shall not abrogate or modify any existing statutory or common law privileges or immunities.

(7) (a) 1. Any document, material, or other information in the control or possession of the department that is furnished by an insurer, licensee, or an employee, or

representative acting on behalf of the insurer or licensee, or obtained by the commissioner in an investigation in accordance with this section:

a. Shall be confidential by law and privileged;

b. Shall not be subject to subpoena; or

c. Shall not be subject to discovery or admissible in evidence in any private civil action.

Notwithstanding subdivisions a., b., and c. of this subparagraph, any document, material, or other information that is furnished by an insurer, licensee, or an employee, or representative acting on behalf of the insurer or licensee, or obtained by the commissioner in an investigation in accordance with this section, that is used in a formal administrative proceeding or enforcement action in accordance with KRS Chapter 13B shall be subject to the Kentucky Open Records Act.

2. However, the commissioner is authorized to use the documents, materials, or other information referred to in subsection (7)(a)1. of this section in the furtherance of any regulatory or legal action brought to carry out the commissioner's duties.

(b) Neither the commissioner nor any individual who received documents, materials, or other information while acting under the authority of the commissioner, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection.

(c) In order to assist in the performance of the commissioner's duties, the commissioner:

1. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;

2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information; and

3. May enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner or of sharing as authorized in this subsection.

(e) The commissioner shall release only final, adjudicated actions including for cause terminations that are open to public inspection in accordance with the Kentucky Open Records Act , KRS 61.870 to 61.884, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(f) As part of the nonresident license certification process, the department shall release only final adjudicated actions on agents licensed according to this subtitle[~~Accompanying the notice of termination given the commissioner, the insurer shall file with him a statement of all the facts constituting the cause, if any, for termination. Any information, document, record, or statement so disclosed or furnished to the commissioner shall be deemed an absolutely privileged communication and shall not be admissible as evidence in any action or proceeding unless consented to in writing by the insurer.~~

~~(3) An agent terminating the employment as solicitor of a licensed solicitor shall give like notice of the termination to the commissioner, and like information as to the reasons for the termination, with like status as privileged communication unless the privilege is waived in writing by the agent~~].

Section 23. KRS 304.9-290 is amended to read as follows:

Following termination of an[~~ agency~~] appointment[~~ of a general lines agent,~~] and subject to the terms of any agreement between the agent and the insurer, the agent may continue to service, and receive from the insurer commissions or other compensation relative to, business written by him ***or her*** for the insurer during the existence of the appointment, so long as the agent continues to be licensed as to the kinds of insurance involved.

Section 24. KRS 304.9-295 is amended to read as follows:

(1) This section shall apply to ***individuals***[~~resident persons~~] licensed as agents[~~ or solicitors for the following kinds of insurance: life, health, property, casualty, or surety~~].

(2) This section shall not apply to:

(a)[~~ Persons holding licenses for which no examination is required by KRS 304.9-170 except that persons exempted from examination by KRS 304.9-170(1) and (2) shall be subject to this section;~~

~~(b)~~] ***Licensees***[~~Persons~~] holding limited ***lines of authority***[~~or restricted~~] licenses, as exempted by the commissioner ***in accordance with Section 19 of this Act***;

(b)[~~(c)~~] ***Licensees***[~~Persons~~] not licensed for one (1) full year prior to the end of a continuing education biennium as described in subsection (3) of this section;

(c)[~~(d)~~] ***Licensees***[~~Persons~~] holding nonresident licenses who have met the continuing education requirements of their ***home*** state[~~ of domicile~~] and whose ***home*** state ***gives credit to Kentucky resident agents on the same basis***[~~of domicile has a current continuing education reciprocal agreement with the commissioner~~]; or

(d)~~[(e)]~~ ***Licensees***~~[Persons]~~ maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the department with a supporting affidavit.

(3) The licensees specified in subsection (1) of this section and not exempt under subsection (2) of this section who hold a license, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) ***shall***~~[must]~~ be classroom hours, during each continuing education biennium. A continuing education biennium shall begin on July 1 and end on June 30 two (2) years later.

(4) Only continuing education courses approved by the commissioner ***shall***~~[may]~~ be used to satisfy the continuing education requirement of subsection (3) of this section.

(a) The continuing education courses which meet the commissioner's standards for continuing education requirements are:

1. Any part of the Life Underwriter Training Council life course curriculum;

2. Any part of the Life Underwriter Training Council health course curriculum;

3. Any part of the American College Chartered Life Underwriter diploma curriculum;

4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;

5. Any part of the Insurance Institute of America's programs;

6. Any part of the certified insurance counselor program;

7. Any insurance related course taught at an accredited college or university, if ***the***~~[such]~~ course is approved by the commissioner;

8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the commissioner;

9. Any correspondence course approved by the commissioner***; and***

10. Any course in accordance with provisions of reciprocal agreements the commissioner enters with other states.

(b) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved ***in accordance with***~~[pursuant to]~~ this subsection. ***Continuing education courses submitted in accordance with a reciprocal agreement shall be approved according to the provisions of the reciprocal agreement.***

(c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to ***licensees***~~[persons]~~ who do not successfully complete ***the***~~[such]~~ written examination.

(d) The fee for filing continuing education courses for approval by the commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.

(e) For continuing education courses of reciprocal states, continuing education providers shall be approved in accordance with the provisions of the reciprocal agreements.

(5) ***An individual***~~[A person]~~ teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a ***licensee***~~[person]~~ taking and satisfactorily completing ***the***~~[such]~~ course.

(6) Excess credit hours accumulated during any continuing education biennium may be carried forward. The commissioner may, by regulation, limit the number of hours carried forward.

(7) For good cause shown, the commissioner may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but ***the***~~[such]~~ extension of time shall not exceed two (2) years. What constitutes good cause for ***the***~~[such]~~ extension of time rests within the discretion of the commissioner.

(8) Every ***licensee***~~[person]~~ subject to this section shall furnish to the commissioner written certification as to the continuing education courses satisfactorily completed by ***the licensee***~~[such person]~~. ***The***~~[Such]~~ certification shall be signed by or on behalf of the organization sponsoring the continuing education course. ***The***~~[Such]~~ certification shall be on a form prescribed by the commissioner.

(9) The license of any ***individual***~~[person]~~ failing to comply with the continuing education requirement of subsection (3) of this section and who has not been granted an extension of time to comply ***in accordance with***~~[pursuant to]~~ subsection (7) of this section shall ***terminate and shall*** be~~[canceled and]~~ promptly surrendered to the commissioner without demand.

(10) The license of any ***individual***~~[person]~~ subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed~~[in lieu thereof]~~, or both, ***in accordance with***~~[pursuant to]~~ KRS 304.9-440 if ***the individual***~~[such person]~~ submits to the commissioner a false or fraudulent certificate of compliance with the continuing education requirement.

Section 25. KRS 304.9-300 is amended to read as follows:

(1) The commissioner may issue a temporary license ***for a period not to exceed one hundred eighty (180) days without requiring an examination or prelicensing course of study if the commissioner deems that a temporary license is necessary for the servicing of an insurance business***~~[as agent to or with respect to an individual who demonstrates that he is qualified therefor only as to age, residence, trustworthiness, general education and financial responsibility without requiring such individual to successfully complete specific courses of instruction or take an examination,]~~ in the following cases:

(a) To the surviving spouse or ***court-appointed personal representative***~~[next of kin or to the administrator or executor, or the employee of such administrator or executor,]~~ of a licensed agent ***who dies or becomes mentally or physically disabled, to allow adequate time for the:***

1. Sale of the insurance business owned by the agent;

2. Recovery or return of the agent to the business; or

3. Training and licensing of new personnel to operate the agent's business~~[becoming deceased]~~.

(b)~~[To the spouse, next of kin, employee or legal guardian of a licensed agent disabled by sickness, injury, or insanity.~~

~~(c)~~] To a member or employee of a ***business entity***[~~firm, or officer or employee of a corporation,~~] licensed as ***an*** agent, upon the death or disability of ***the sole***[~~an~~] individual designated in[~~ or registered under~~] the ***business entity application or the*** license[~~ to exercise the powers thereof~~].

(c)[~~(d)~~] To the designee of a licensed agent entering upon active service in the armed forces of the United States.

(d)[~~(e) To any agent appointed by an insurer issuing policies on the debit plan, if such agent actually collects and services a debit. The insurer and agent may assume that such license will be issued, effective as of the date of application, and the agent may continue on such debit until notified to the contrary by the commissioner.~~

~~(f) To a full-time ordinary life insurance agent appointed by the insurer under a training program filed with and approved by the commissioner, which program shall not be approved unless it includes the equivalent of forty (40) hours of classroom instruction in specific courses in the field of insurance as prescribed by the commissioner for the issuance of a permanent license. No such training program or temporary licensing privilege shall be granted or continued for such ordinary life agents for any insurer obtaining more than ten (10) such temporary licenses within any calendar year and which fails to qualify at least sixty-five percent (65%) of its temporary licensees for a permanent license.~~

~~(g)~~] In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of ***this***[~~such~~] license.

(2) ***In addition to the restrictions on temporary licenses set forth in Section 26 of this Act, the commissioner may, by order, limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed agent or insurer and who assumes responsibility for all acts of the temporary licensee, and may impose other similar requirements designed to protect insureds and the public. The commissioner may, by order, revoke a temporary license if the interests of insureds or the public are endangered. A temporary license shall not continue after the owner or the personal representative disposes of the business.***

(3) Application for a temporary license shall be filed with the commissioner in ***the***[~~such~~] form and containing ***the***[~~such~~] information as the commissioner may reasonably require, and be accompanied by the application fee as specified in KRS 304.4-010.

[~~(3) The temporary license shall be for a period of not over ninety (90) days, subject to extension by the commissioner in his discretion for one (1) additional period of not over ninety (90) days; except, that license issued as to an executor or administrator under paragraph (a) of subsection (1) of this section may be continued without payment of additional fee until the executor or administrator has disposed of the insurance business, but for not to exceed a period of eighteen (18) months. Temporary license issued to the spouse or next of kin under such paragraph (a) of subsection (1) of this section shall not be extended for an additional term after appointment and qualification of such an administrator or executor.~~

~~(4) The fee paid for the temporary license may be applied upon the fee required for any permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance.~~]

Section 26. KRS 304.9-310 is amended to read as follows:

(1)[~~ The commissioner shall not issue more than one (1) temporary license to or with respect to the same individual to be so licensed, within any twelve-month period.~~

~~(2)~~] The temporary license may cover only the same kinds of insurance for which the agent thereby being replaced was licensed.

(2)[~~(3)~~] The temporary licensee may represent under the license all insurers last represented by the replaced agent, and without the necessity of new appointments of the licensee; but the licensee shall not be appointed as to any additional insurer of additional kind of insurance under[~~ such~~] a temporary license. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

(3)[~~(4)~~] A temporary license shall have the same license powers and duties as under a permanent license but shall not be obtained for the sole production of controlled business as defined in KRS 304.9-100, and no sale of insurance of any kind shall be made upon the licensee's own life or the lives of any relative by blood or marriage.

Section 27. KRS 304.9-370 is amended to read as follows:

(1) Application for and acceptance of a license as a consultant, agent, ***or*** adjuster[~~ or solicitor~~] by a nonresident of Kentucky shall thereby be deemed to constitute irrevocable appointment of the Secretary of State as the attorney of the licensee for the acceptance of service of process issued in this state in any action or proceeding against the licensee arising out of ***the***[~~such~~] licensing or out of transactions under the license.

(2) Service of process against any nonresident licensee may be made in any action by service upon the Secretary of State as provided in KRS 304.3-230.

Section 28. KRS 304.09-390 is amended to read as follows:

(1) Every agent referred to in subsection (1) of KRS 304.9-120 shall have and maintain in this state a place of business accessible to the public, and wherein the licensee principally conducts transactions under his ***or her*** license. The address of ***the***[~~such~~] place shall appear upon the license. Nothing in this section shall prohibit maintenance of such a place in the licensee's residence in this state.

(2) The licenses of the licensee[~~, and those of solicitors employed by him,~~] shall be conspicuously displayed in ***the***[~~such~~] place of business in a part[~~ thereof~~] customarily open to the public.

(3) The agent shall keep at his place of business complete records of transactions under his license[~~ and those of his solicitors~~]. ***The***[~~Such~~] record shall show, as to each insurance policy or contract placed[~~ or countersigned~~] by or through the licensee, the names of the insurer and insured, the number and expiration date of, and premium payable as to, the policy or contract, and ***any***[~~such~~] other information as the commissioner may reasonably require. The record shall be kept available for inspection by the commissioner, for a period of at least five (5) years after completion of the respective transactions.

[~~(4) This section shall not apply as to life and health insurance.~~]

Section 29. KRS 304.9-400 is amended to read as follows:

That portion of all premiums or moneys which an agent~~[or solicitor]~~ collects from an insured and which is to be paid to an insurer, its agents, its managing general agents or his ***or her*** principal because of the assumption of liability through the issuance of policies or contracts for insurance, shall be held by the agent~~[or solicitor]~~ in a fiduciary capacity and shall not be misappropriated or converted to his ***or her*** own use or illegally withheld by the agent~~[or solicitor]~~.

Section 30. KRS 304.9-421 is amended to read as follows:

No agent,~~[solicitor,]~~ consultant, adjuster, or surplus lines broker shall directly or indirectly share his ***or her*** commission or other compensation received or to be received on account of a transaction under his ***or her*** license with any ***individual or business entity***~~[person]~~ not also licensed as agent,~~[solicitor,]~~ consultant, adjuster, or surplus lines broker under this subtitle as to the kinds of insurance involved in the transaction. This provision shall not affect personal use of ***the***~~[such]~~ commissions or compensation, payment of the regular salaries due employees of the agent, consultant, adjuster, or surplus lines broker, or distribution in the regular course of business of compensation and profits among members or stockholders of licensee ***business entities***~~[firms or corporations]~~.

Section 31. KRS 304.9-425 is amended to read as follows:

No insurer, ***financial institution,***~~[insurance]~~ agent, surplus lines broker,~~[solicitor,]~~ adjuster, or consultant shall pay directly or indirectly, any commission, brokerage, or other valuable consideration to any ***individual or business entity***~~[person]~~ for services as an~~[insurance]~~ agent, surplus lines broker,~~[solicitor,]~~ adjuster, or consultant within this state, unless ***the individual or business entity***~~[such person]~~ held at the time ***the***~~[such]~~ services were performed a valid license for that line of insurance as required by the laws of this state for ***the***~~[such]~~ services; nor shall any ***individual or business entity***~~[person]~~, other than ***an individual or business entity***~~[a person]~~ duly licensed by this state as an~~[insurance]~~ agent, surplus lines broker,~~[solicitor,]~~ adjuster, or consultant at the time ***the***~~[such]~~ services were performed, accept any such commission, brokerage, or other valuable consideration. Provided, that this section shall not prevent payment or receipt of renewal or other deferred commissions to or by any ***individual or business entity***~~[person]~~ entitled~~[thereto]~~ under this section.

Section 32. KRS 304.9-430 is amended to read as follows:

(1) No ***individual or business entity***~~[person]~~ shall in this state act as or hold himself ***or herself*** out to be an adjuster unless then licensed by the Kentucky Department of Insurance as an adjuster. Application for license shall be made to the commissioner according to forms as prescribed and furnished by him ***or her***. The commissioner shall issue the license as to ***applicants***~~[persons]~~ qualified~~[therefor]~~ upon payment of the license application fee stated in KRS 304.4-010~~[except that salaried employees of domestic insurers who are required to be licensed as adjusters shall not be required to pay the license fee]~~.

(2) To be licensed as an adjuster the applicant ***shall***~~[must be qualified therefor as follows]~~:

(a) ~~[Must,]~~ ***Be***~~[if]~~ an individual~~[be]~~ twenty-one (21) years or more of age.

(b) ~~[Must]~~Be a resident of Kentucky, or resident of another state which will permit residents of Kentucky to act as adjusters in ***the***~~[such]~~ other state.

(c) ~~[Must]~~Be ***an***~~[a full-time salaried]~~ employee of an insurer, a full time salaried employee of a licensed adjuster or a graduate of a recognized law school, or~~[must]~~ have~~[had]~~ experience or special education or training as to the handling of loss claims

under insurance contracts of sufficient duration and extent to make him ***or her*** reasonably competent to fulfill the responsibilities of an adjuster.

(d) ~~[Must]~~Be trustworthy and of good reputation.

(e) ~~[Must]~~Have and maintain an office accessible to the public, and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of ***the***~~[such]~~ office in the office of an insurer, of the employer, or in the home of the licensee.

(f) ~~[Must]~~Have successfully passed a written examination prescribed by the commissioner, except if the applicant has successfully passed a written examination in a state which permits residents of Kentucky to act as adjusters in ***the***~~[such]~~ other state.

(3) A ***business entity***~~[firm or corporation]~~, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is named in the license or registered with the commissioner under the license, and is qualified as for an individual license as adjuster. An additional full license fee shall be paid as to each individual in excess of one (1), so named in the license or so registered to exercise its powers.

(4) Except, that no~~[such]~~ adjuster's license or qualifications shall be required as to any adjuster who is sent into this state on behalf of an insurer for the purpose of investigating or making adjustment of a particular loss under an insurance policy, or for the adjustment of a series of losses resulting from a catastrophe common to all~~[such]~~ losses.

Section 33. KRS 304.9-432 is amended to read as follows:

(1) In the event that an applicant for an adjuster's license meets the qualification requirements of KRS 304.9-430 except that he ***or she*** has not had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him ***or her*** reasonably confident to fulfill the responsibilities as an adjuster, he ***or she*** shall not be required to take and successfully complete the prescribed written examination and may be issued a temporary license as an apprentice adjuster for a period not to exceed one ***hundred eighty (180) days***~~[(1) year]~~.

(2) ~~[Such]~~A temporary license as an apprentice adjuster shall be subject to the following terms and conditions:

(a) ***An individual***~~[A person]~~ holding a temporary license as apprentice adjuster shall have all of the privileges and obligations of an adjuster licensed under the insurance code;

(b) ***An individual***~~[A person]~~ holding a temporary license as an apprentice adjuster shall at all times be a full-time salaried employee of an insurer or an adjuster and subject to training, direction, and control by a licensed adjuster acting in the same capacity as that ***for*** which the applicant applied~~[for]~~;

(c) A temporary license as apprentice adjuster shall be subject to suspension, revocation, or conditions ***in accordance with***~~[pursuant to]~~ KRS 304.9-440; and

(d) ***An individual***~~[A person]~~ may hold only one (1) temporary license as an apprentice adjuster.

Section 34. KRS 304.9-440 is amended to read as follows:

(1) The commissioner may ***place on probation,*** suspend***,*** or may impose conditions upon the continuance of a license for not more than twelve (12) months,~~[or may]~~ revoke***,*** or refuse to ***issue or renew***~~[continue]~~ any license issued under this subtitle or any surplus lines broker license***, or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for***~~[if, after notice to the licensee and to the insurer represented (as to an agent) or to the employer (as to a solicitor) and a hearing, the commissioner finds that as to the licensee]~~ any one (1) or more of the following causes~~[exist]~~:

(a) ***Providing incorrect, misleading, incomplete, or materially untrue information in the license application***~~[Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner]~~.

(b) ***Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner***~~[Willful violation of or noncompliance with any applicable provision of this code, or willful violation of any lawful rule, regulation, or order of the commissioner]~~.

(c) Obtaining or attempting to obtain ***a***~~[any such]~~ license through misrepresentation or fraud.

(d) ***Improperly***~~[Misappropriation or conversion to his own use, or illegal]~~ withholding, ***misappropriating, or converting any***~~[of]~~ moneys ***or properties received in the course***~~[belonging to policyholders, insurers, beneficiaries, or others and received in the conduct]~~ of ***doing insurance*** business~~[under the license]~~.

(e) ***Intentionally misrepresenting***~~[Willful material misrepresentation of]~~ the terms of ***an***~~[any]~~ actual or proposed insurance contract ***or application for insurance***.

(f) ***Having been convicted of any***~~[Conviction, by final judgment, of a misdemeanor for which restitution is ordered in excess of three hundred dollars ($300), or a]~~ felony~~[involving dishonesty, breach of trust, or moral turpitude]~~.

(g) ***Having admitted or been found to have committed any unfair insurance trade practice or insurance fraud***~~[In the conduct of his affairs under the license the licensee has used fraudulent, coercive, or dishonest practices, or has shown himself to be incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public]~~.

(h) ***Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere***~~[Surrendering or otherwise terminating any other license issued by this state or any other jurisdiction under threat of disciplinary action, denial or refusal of the issuance of or renewal of any other license issued by this state or any other jurisdiction, or revocation or suspension of any other license held by the licensee issued by this state or any other jurisdiction]~~.

(i) Having any insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(j) Surrendering or otherwise terminating any other license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other

jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;

(k) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(l) Cheating, including improperly using notes or any other reference material to complete an examination for an insurance license;

(m) Knowingly accepting insurance business from an individual who is not licensed, but who is required to be licensed under this subtitle;

(n) Failing to comply with an administrative or court order imposing a child support obligation;

(o) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;

(p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars ($300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude; or

(q) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the commissioner.

(2) The license of a ***business entity***[~~firm or corporation~~] may be suspended, revoked, or refused [~~:~~

~~(a)~~]for any ***cause relating***[~~of such causes as relate~~] to an individual designated in or registered ***under***[~~as to~~] the license [~~to exercise its powers; or~~

~~(b)~~]if ***the commissioner finds that*** an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the ***partnership***[~~firm~~] or corporation and ***the***[~~such~~] violation was not reported to the Department of Insurance nor corrective action taken[~~ thereon~~]. ***The applicant or licensee may make written demand upon the commissioner in accordance with KRS 304.2-310 for a hearing before the commissioner to determine the reasonableness of the commissioner's action.***

(3) The commissioner shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.

Section 35. KRS 304.9-450 is amended to read as follows:

(1) Upon suspension or revocation of any[~~ such~~] license the commissioner shall[~~ forthwith~~] notify the licensee[~~ thereof~~] either in person or by mail addressed to the licensee at his ***or her*** address last of record with the commissioner. Notice by mail shall be deemed effectuated when so mailed. The commissioner shall give like notice to the insurer represented by the agent, in the case of an agent's license[~~, and to the employer in the case of a solicitor's license~~].

(2)[~~ Suspension or revocation of the license of an agent shall automatically suspend the licenses of all solicitors employed by him.~~

~~(3)~~] The commissioner shall not again issue a license under this code to or as to any ***individual or business entity***[~~person~~] whose license has been revoked, until after expiration of one (1) year and thereafter not until ***the individual or business entity***[~~such person~~] again qualifies[~~ therefor~~] in accordance with the applicable provisions of this code. ***An individual or business entity***[~~A person~~] whose license has been revoked twice shall not again be eligible for any license under this code.

(3)[~~(4)~~] If the license of a ***business entity***[~~firm or corporation~~] is[~~ so~~] suspended or revoked, no member***,***[~~ of such firm, or~~] officer***,*** or director of ***the business entity***[~~such corporation,~~] shall be licensed or be designated in or as to any license to exercise the powers thereof during the period of ***the***[~~such~~] suspension or revocation, unless the commissioner determines upon substantial evidence that ***the***[~~such~~] member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

(4) In the event that the action by the commissioner is to nonrenew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner in accordance with KRS 304.2-310.

Section 36. KRS 304.9-455 is amended to read as follows:

(1) Each person licensed under this subtitle shall notify the commissioner in writing immediately if his ***or her*** license to conduct ***insurance*** securities, real estate, auctioneer, investment, financial, or financial planning business of any kind in this state or elsewhere is surrendered or terminated under threat of disciplinary action, refused, suspended, revoked, or renewal of continuance denied.

(2) A licensee shall report to the commissioner any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(3) Within thirty (30) days of service upon the licensee of any criminal complaint, information, or indictment in any jurisdiction, the licensee shall submit to the commissioner a copy of the initial complaint, indictment, or information filed. The licensee shall further submit copies of all relevant legal documents, including the order resulting from the hearing, any plea, agreement, judgment, or other relevant legal documents.

SECTION 37. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall not assess a greater fee for an insurance license or related service to an individual or business entity not residing in this state, based solely on the fact that the individual or business entity does not reside in this state.

Section 38. KRS 304.10-020 is amended to read as follows:

This Surplus Lines Law shall not apply to reinsurance, or to the following insurances when so placed by[~~ licensed~~] agents or surplus lines brokers ***licensed in***[~~of~~] this state:

(1) Ocean marine and foreign trade insurances.

(2) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(3) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(4) Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of~~[such]~~ aircraft or against liability other than workers' compensation and employer's liability arising out of the ownership, maintenance or use of~~[such]~~ aircraft.

Section 39. KRS 304.10-070 is amended to read as follows:

(1) A broker shall not place surplus lines insurance with an insurer that he ***or she*** knows, or in the exercise of reasonable diligence could know***:***

(a) Has a surplus in regard to ***policyholders***~~[policyholder]~~ of less than ***six***~~[three]~~ million dollars ***($6,000,000);***~~[($3,000,000),]~~

(b) Has not established satisfactory evidence of good repute and financial integrity;

(c) Is unsound financially***;***~~[,]~~ or~~[that]~~

(d) Is ineligible under the Kentucky insurance code.

(2) A broker may:

(a) Place insurance covering certificates of investment with an insurance company or guarantee fund which is financially sound and has capital funds and reserves in excess of fifteen million dollars ($15,000,000); and

(b) Place insurance with a United States insurance exchange which the commissioner, in his ***or her*** discretion, may designate for use by surplus lines brokers licensed by the Commonwealth of Kentucky.

(3) A broker shall not place insurance with an alien insurer that is not recognized by the National Association of Insurance Commissioners and does not maintain in the United States a trust fund for the benefit of United States policyholders of at least ***five***~~[one]~~ million ***four***~~[five]~~ hundred thousand dollars ***($5,400,000)***~~[($1,500,000)]~~.

(4) A broker shall not place insurance with an insurer that has engaged in the insurance business less than three (3) years unless ***the***~~[such]~~ insurer has deposited with the ***commissioner***~~[custodian of insurance securities]~~ publicly-traded securities with a market value of at least ***six***~~[three]~~ hundred thousand dollars ***($600,000)***~~[($300,000)]~~.

(5) This section shall not apply to surplus lines insurers eligible to do business in Kentucky as of July 15, 1982, except that the commissioner may revoke~~[such]~~ eligibility, or may order ***the***~~[such]~~ insurer to comply with this section or may suspend the operation of the insurer in Kentucky.

(6) The commissioner may declare that a surplus lines insurer is ineligible to transact business in Kentucky. The commissioner shall promptly mail notice of all declarations of ineligibility to each surplus lines broker if at any time the commissioner has reason to believe that a surplus lines insurer:

(a) Is in unsound financial condition;

(b) Has acted in an untrustworthy manner;

(c) No longer meets the standards set forth in this subtitle;

(d) Has willfully violated the laws of Kentucky; or

(e) Does not conduct a proper claims practice.

Section 40. KRS 304.10-110 is amended to read as follows:

(1) As to a surplus lines risk which has been assumed by an unauthorized insurer ***under***[~~pursuant to~~] this subtitle, and if the premium[~~ thereon~~] has been received by the surplus lines broker who placed ***the***[~~such~~] insurance, in all questions[~~ thereafter~~] arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for ***the***[~~such~~] coverage; and the insurer shall be liable to the insured as to losses covered by ***the***[~~such~~] insurance and for unearned premiums which may become payable to the insured upon cancellation of ***the***[~~such~~] insurance whether or not in fact the broker is indebted to the insurer with respect to ***the***[~~such~~] insurance or for any other cause.

(2) Each unauthorized insurer assuming a surplus lines risk under this subtitle shall be deemed[~~ thereby~~] to have subjected itself to the terms of this section.

Section 41. KRS 304.10-120 is amended to read as follows:

(1) Any person while licensed in this state as ***an***[~~a resident general lines~~] agent who:

(a) ***Is a resident of Kentucky;***

(b) Has been continuously licensed for at least three (3) years;

(c)[~~(b)~~] Is deemed by the commissioner to be competent and trustworthy with respect to the handling of surplus lines; ***and***

(d)[~~(c)~~] Represents at least three (3) insurers admitted to transact property or casualty insurance in Kentucky;[~~ and~~

~~(d) Maintains an office at a designated location in this state;]~~

may be licensed as a surplus lines broker.

(2) Application for the license shall be made to the commissioner on forms as designated and furnished by the commissioner.

(3) The license fee shall be as specified in KRS 304.4-010.

(4) The license and licensee shall be subject to the applicable provisions of Subtitle 9 ***of this chapter***.

(5) In order for a surplus lines broker's license to be renewed, the licensee ***shall***[~~must~~] have at least five (5) current appointments with property or casualty insurers admitted to do business in Kentucky.

(6) Notwithstanding subsection (1)(a) of this section, on or after July 1, 2002, an individual licensed as a surplus lines broker in the applicant's home state may be issued a nonresident surplus lines broker's license in Kentucky if the applicant's home state issues surplus lines broker licenses to Kentucky residents on the same basis.

Section 42. KRS 304.10-130 is amended to read as follows:

(1) The commissioner may suspend or revoke any surplus lines broker's license:

(a) If the broker fails to file his ***or her*** annual statement or to remit the tax as required by this subtitle; or

(b) If the broker fails~~[to maintain an office in this state, or]~~ to keep records, or to allow the commissioner to examine his ***or her*** records as required by this subtitle~~[, or if he removes his records from the state]~~; or

(c) If the broker knowingly or negligently places a surplus lines coverage in an insurer that is in unsound financial condition in violation of KRS 304.10-070; or

(d) For any other applicable cause for which ***an***~~[a general lines]~~ agent's license may be suspended or revoked.

(2) The procedures provided by Subtitle 9 ***of this chapter*** for suspension or revocation of licenses shall apply to suspension or revocation of a surplus lines broker's license.

(3) Upon suspending or revoking the broker's surplus lines license the commissioner shall also suspend or revoke all other licenses of or as to the same ***individual***~~[person]~~ under this code.

(4) No broker whose license has been suspended or revoked shall again be so licensed until any fines or delinquent taxes ***owed***~~[owing by him]~~ have been paid, or, in case of revocation until after expiration of one (1) year from the date revocation became final.

Section 43. KRS 304.10-140 is amended to read as follows:

Prior to issuance of a license as a surplus lines broker, the applicant shall file with the commissioner, and~~[thereafter]~~ for as long as the license remains in effect shall keep in force:

(1) Evidence of financial responsibility in the sum of not less than ***one million***~~[five hundred thousand]~~ dollars ***($1,000,000)***~~[($500,000)]~~ per occurrence, and the sum of ***two***~~[one]~~ million~~[five hundred thousand]~~ dollars ***($2,000,000)***~~[($1,500,000)]~~ in the aggregate, for all~~[such]~~ occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or ***a***~~[any]~~ combination of ***a bond issued by an authorized corporate surety and a deposit,***~~[these evidences of financial responsibility]~~. ***The***~~[Such]~~ policy, bond, deposit, or combination ***of a bond or deposit***~~[thereof]~~ shall not be terminated unless at least thirty (30) days' prior written notice is given to the licensee and the commissioner; and

(2) A bond in favor of the State of Kentucky in the penal sum of ***fifty***~~[twenty]~~ thousand dollars ***($50,000)***~~[($20,000)]~~, with an authorized corporate surety guaranteeing that he ***or she*** will conduct business under the license in accordance with the provisions of this subtitle and that he ***or she*** will promptly remit the taxes required by KRS 304.10-180. The aggregate liability of the surety for any and all claims on any~~[such]~~ bond shall in no event exceed the penal sum~~[thereof]~~. No~~[such]~~ bond shall be terminated unless not less than thirty (30) days prior written notice~~[thereof]~~ is given to the licensee and filed with the commissioner.

Section 44. KRS 304.10-160 is amended to read as follows:

(1) Each broker shall keep in his ***or her*** office~~[in this state]~~ a full and true record of each surplus lines coverage procured by him ***or her***, including a copy of each daily report, if any, a copy of each certificate of insurance issued by him ***or her***, and~~[such]~~ of the following items as may be applicable:

(a) Amount of the insurance;

(b) Gross premium charged;

(c) Return premium paid, if any;

(d) Rate of premium charged upon the several items of property;

(e) Effective date of the contract, and the terms thereof;

(f) Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by ***the***[~~such~~] insurer if less than the entire risk;

(g) Name and address of the insured;

(h) Brief general description of the property or risk insured and where located or to be performed; and

(i) Other information as may be required by the commissioner.

(2) The record[~~ shall not be removed from this state and~~] shall be open to examination by the commissioner at all times within five (5) years after issuance of the coverage to which it relates.

Section 45. KRS 304.10-180 is amended to read as follows:

(1) [~~On or before the first day of April of each year~~]Each broker shall ***pay the following taxes***[~~remit to the State Treasurer through the commissioner~~]***:***

(a) On or before the first day of April each year, a tax at the rate of three percent (3%) on the premiums, ***assessments, fees, charges, or other consideration deemed part of the premium as defined in KRS 304.14-030***[~~exclusive of sums collected to cover federal and state taxes and examination fees~~], on surplus lines insurance subject to tax transacted by him ***or her*** with unauthorized insurers during the preceding calendar year as shown by his ***or her*** annual statement filed with the commissioner. ***The tax shall not be assessed on the premium surcharge tax, the local government premium tax, or any other state or federal tax. The tax shall be remitted to the commissioner.*** When collected the tax shall be credited to the ***insurance regulatory trust***[~~general~~] fund***, as established by KRS 304.2-400;***

(b) The premium surcharge tax, to be remitted to the Kentucky Revenue Cabinet, in accordance with KRS 136.392; and

(c) The local government premium tax, to be remitted to the appropriate city, county, or urban-county government taxing authority, in accordance with KRS 91A.080.

(2) If a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

Section 46. KRS 304.2-120 is amended to read as follows:

(1) In general, orders and notices of the commissioner shall be issued in accordance with this chapter. Notices, recommended orders, and final orders issued as a result of an administrative hearing shall be issued in accordance with KRS Chapter 13B.

(2) Orders and notices of the commissioner shall be effective only when in writing signed by ***the commissioner***[~~him~~] or by ***the commissioner's***[~~his~~] authority.

(3) Every order of the commissioner shall state its effective date, and shall concisely state:

(a) Its intent or purpose;

(b) The grounds on which ***it is*** based;

(c) The provisions of this code ***under***~~[pursuant to]~~ which action is~~[so]~~ taken or proposed to be taken; and

(d) All other matters required by law.

(4) All persons holding licenses or certificates of authority from the commissioner shall maintain current residence, business, home office, and administrative addresses, as applicable, on file with the commissioner. ***Licensees***~~[These persons]~~ shall ***inform***~~[notify]~~ the commissioner in writing ***in a format acceptable to the commissioner of***~~[immediately upon]~~ any change in addresses ***or legal name within thirty (30) days of the change***. As a condition to holding a license or certificate of authority from the commissioner, persons holding licenses or certificate of authority are deemed to have consented to service of notices and orders of the commissioner at their addresses on file with the commissioner and any notice or order of the commissioner mailed or delivered to the address on file with the commissioner constitutes valid service of notice or order.

Section 47. KRS 189.285 is amended to read as follows:

(1) A person shall not operate a motorcycle on a highway:

(a) Except when that person is in possession of a valid motorcycle operator's license; and

(b) Unless that person uses an approved eye-protective device, in the manner prescribed by the secretary of the Transportation Cabinet, at all times such vehicle is in motion; and

(c) Unless the motorcycle is equipped with a rear-view mirror.

(2) A person shall not operate or ride as a passenger on a motorcycle:

(a) Except on a seat permanently attached to that vehicle and specifically designed to carry the operator or passenger in a safe manner; and

(b) Except when using a footrest permanently attached to that vehicle and specifically designed to carry that person in a safe manner.

(3) The following persons shall be required to wear protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times the motorcycles they are riding are in motion on a public highway:

(a) A person under the age of twenty-one (21) years who is operating a motorcycle or who is a passenger on a motorcycle or in a sidecar attachment;

(b) A person who possesses a motorcycle instruction permit and who is operating a motorcycle; ***and***

(c) A person who has held a valid motorcycle operator's license, or combination motor vehicle-motorcycle operator's license, for less than one (1) year and who is operating a motorcycle~~[; and~~

~~(d) Any person who does not provide proof of health insurance to the county clerk when registering a motorcycle in accordance with KRS 186.865~~].

(4) A motorcycle operator authorized to drive a motorcycle on an instruction permit shall not be authorized to carry passengers.

(5) The secretary of the Transportation Cabinet shall by regulation fix minimum standards for approved protective headgear and for approved eye-protective devices, and prescribe the manner in which they shall be used. The secretary shall maintain and cause to be published a list of approved protective headgear and of approved eye-protective devices. The secretary may prescribe by regulation minimum standards for other protective devices and require the use of those devices.

(6) As used in this chapter and KRS Chapter 186, "motorcycle" means any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride in an enclosed cab and excluding a moped as defined in this section.

(7) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

Section 48. The following KRS sections are repealed:

186.865 Motorcycle registration requirements -- Health insurance requirements.

304.4-015 Payment schedule for biennial fees.

304.9-050 "Solicitor" defined.

304.9-060 "Service representative" defined -- General requirements.

304.9-220 Multiple licensing, life agents.

304.9-380 Solicitors -- Special requirements.

304.9-434 Exemption from written examination.

304.9-455 Licensed person to notify commissioner of licensure disciplinary action.

Approved April 7, 2000

CHAPTER 394

(HCR 44)

A CONCURRENT RESOLUTION relating to the establishment of a task force to complete a study to identify barriers to quality end of life care relating to pain management, best practices, and strategies to improve quality of care.

WHEREAS, the purpose of this concurrent resolution is to establish a task force to assess the quality of end-of-life health care for all Kentuckians relating to pain management, and to make

recommendations on how to improve health care to ensure that patients experience a peaceful, natural, and, as much as possible, pain-free end-of-life experience, while preserving the sanctity of human life. Nothing in this concurrent resolution shall be construed to authorize a study or to support physician or other health care provider-assisted suicide, euthanasia, or any other measures which might result in a premature end to any human life; and

WHEREAS, the National Task Force on End-of-Life Care in Managed Care reported that end-of-life care has been an intractable problem across the United States and contributions from many sectors of the American society will be needed to improve access to comprehensive, high-quality care, to strengthen accountability, and to develop payment methods; and

WHEREAS, a group of researchers completed a four (4) year Study to Understand Prognoses and Preferences for Outcomes and Risks of Treatments (SUPPORT) in five (5) teaching hospitals in the United States to improve end-of-life decision making and reduce the frequency of a mechanically supported, painful, and prolonged process of dying. The researchers found shortcomings in the care for seriously ill hospitalized patients including pain management and physician knowledge of the patient's desires regarding resuscitation; and

WHEREAS, some patients die in physical pain and discomfort, despite the technical capability to control most symptoms near the end of life; and

WHEREAS, physicians are often fearful of disciplinary actions for prescribing appropriate medications to promote comfort in patients who are dying; and

WHEREAS, consumers are unaware of their rights to make decisions about end of life care; and

WHEREAS, legal matters surrounding advance directives often complicate decision making for patients, families, and health care practitioners; and

WHEREAS, patients and families have the right to a seamless health care system that provides access to holistic care which includes care for the mind, body, and soul through both technical methods and supportive care; and

WHEREAS, reimbursement for care should support access to both technical and supportive care; and

WHEREAS, the curriculum for health care providers is limited in the amount of content related to palliative or end of life care; and

WHEREAS, the opportunities for medical students, residents, and other health care providers to participate in guided palliative care experiences need to be expanded;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Legislative Research Commission is directed to establish a twenty (20) member task force to complete a study to identify the barriers to quality end-of-life care and pain management, to identify strategies to improve access to quality end-of-life care that is based upon patients' and families' desires, to identify ways to strengthen accountability to determine whether quality care is being delivered, and to identify payment methods for delivering a seamless system of care. The Speaker of the House shall appoint two (2) members of the House of Representatives,

and eight (8) at-large members to the task force. The President of the Senate shall appoint two (2) members of the Senate and eight (8) at-large members to the task force. A majority of the membership shall choose a chair to preside over the work of the task force. Of the sixteen (16) at-large members of the task force to be appointed by the Speaker of the House and the President of the Senate, at least one (1) member shall be appointed from a list of names submitted by Kentucky Right to Life, at least one (1) member shall be appointed from a list of names submitted by the Kentucky Catholic Conference, and at least one (1) member shall be appointed from a list of names submitted by the Family Foundation of Kentucky. The remaining at-large members of the task force shall include representatives from the following associations: the Kentucky Nurses Association, the Kentucky Medical Association, the Kentucky Hospital Association, the Kentucky Pharmacists Association, the Kentucky Association of Hospices, the Department for Public Health, the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, the Office of Aging Services, and the Kentucky Association of Health Care Facilities.

Section 2. The task force shall submit a final report of its findings and recommendations to the Legislative Research Commission no later than September 1, 2001.

Section 3. Staff services to be utilized in completing the work of the task force are estimated to cost $30,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Section 4. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Section 5. Effective January 1, 2002, this concurrent resolution shall be void.

Approved April 7, 2000

CHAPTER 395

(HJR 141)

A JOINT RESOLUTION recommending that Kentucky's four-year public universities establish a Scouting and Civil Air Patrol Scholarship Program modeled after the successful Eagle Scout Scholarship Program at the University of Louisville.

WHEREAS, young men who earn the Eagle Scout rank in Boy Scouts of America and the Mitchell Award in the Civil Air Patrol, and young women who earn the Gold Award in the Girl Scouts of America, are recognized for outstanding performance and achievement in their communities; and

WHEREAS, these young men and women have demonstrated high principles of character, commitment to excellence, leadership, and service to their communities; and

WHEREAS, the importance of scouting programs is evident in many communities, and especially for African American males who often face tremendous obstacles, by providing support and structure for building character and developing potential of each young person; and

WHEREAS, the scholarships awarded to Eagle Scouts under the University of Louisville's Trustees Scholarship Program recognizes outstanding scholar scouts and cadets and should be replicated across the Commonwealth; and

WHEREAS, The Commonwealth of Kentucky needs to retain its brightest and most talented students in its public institutions;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly recommends that Kentucky's four-year public universities establish a Scouting and Civil Air Patrol Scholarship program modeled after the successful University of Louisville Scholarship program which rewards young people who have been awarded the Gold Award by the Girl Scouts or the Mitchell Award by the Civil Air Patrol, or who have achieved the rank of Eagle Scout in the Boy Scouts.

Section 2. A university may award a scholarship to a Girl Scout, Boy Scout, or Civil Air Patrol Cadet based on the following criteria that may include:

(1) Kentucky residency;

(2) A high ACT score;

(3) A grade point average of at least 3.0 upon graduating from high school;

(4) Active membership in a Girl Scout troop, a Boy Scout troop, Explorer post or venture unit, or a Civil Air Patrol squadron during and until graduation from high school; and

(5) Financial need of the Girl Scout, Boy Scout or Civil Air Patrol Cadet.

Section 3. The university shall create other eligibility criteria of equal weight that will ensure the greatest number of African Americans awarded the Gold Award by the Girl Scouts or the Mitchell Award by the Civil Air Patrol, or who have achieved the rank of Eagle Scout in the Boy Scouts will have the greatest likelihood of being awarded a scholarship under this program. In determining the eligibility criteria, consideration shall be given to honors and awards received and to volunteer or leadership positions in school, civic, community, and religious organizations.

Section 4. One (1) year from the adoption date of this Resolution, the presidents of Kentucky's four-year public universities or their designees shall make a report to the Interim Joint Committee on Education on the progress made toward designating at least one academic scholarship for a high-achieving Eagle Scout Scholarship.

Section 5. The Clerk of the House of Representatives is directed to transmit a copy of this Resolution to the presidents of the Kentucky four-year public universities.

Approved April 7, 2000

CHAPTER 396

(HB 585)

AN ACT relating to the operation of a motor vehicle.

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

SECTION 1. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act:

(1) "Applicant" means any person applying for an instruction permit or an operator's license who must use a bioptic telescopic device in order to operate a motor vehicle;

(2) "Binocular vision" means visual acuity that is 20/200 or better in both eyes, with or without corrective lenses;

(3) "Bioptic telescopic device" means a two (2) focus optical system used to magnify distant objects by including a small telescope that is mounted in a spectacle lens in a manner to allow an unobstructed view of the horizontal visual field through a person's normal distance corrective lens;

(4) "Certified driver training program" means a program that provides and coordinates comprehensive assessment and training of driving skills and responses that emphasizes the vision, hearing, psychological, perceptual, orientation, and mobility skills of an applicant and that is certified by the department;

(5) "Combined visual acuity" means visual acuity attained by using both eyes together where a person has binocular vision;

(6) "Corrective lenses" means eyeglasses, contact lenses, and intraocular lenses, but does not mean a bioptic telescopic device;

(7) "Daytime driving restriction" means operation of a motor vehicle is restricted to the period of time from between thirty (30) minutes after sunrise and thirty (30) minutes before sunset. Under this restriction, driving during adverse weather conditions that significantly reduce the visibility of the roadway, other traffic, and traffic control devices shall be prohibited;

(8) "Department" means the Department for the Blind;

(9) "Monocular vision" means visual acuity that is 20/200 or better in only one (1) eye, with or without corrective lenses;

(10) "Restricted out-of-state driver" means a person who has been issued, by another state, a valid operator's license with a restriction requiring the use of a bioptic telescopic device;

(11) "Vision specialist" means a licensed ophthalmologist or optometrist;

(12) "Visual acuity" means the measure of a person's visual acuity based on the Snellen visual acuity scale; and

(13) "Visual field" means the area of physical space visible to the eye in a given fixed position.

SECTION 2. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

(1) All persons applying for an initial operator's license or an initial instruction permit shall submit to a test of visual acuity and visual field at the time of application.

(2) Persons whose visual acuity is 20/40 or better without corrective lenses shall not have a restriction placed on their driving privileges. Persons whose visual acuity is 20/40 or better with corrective lenses shall have their driving privileges restricted to mandate the use of the corrective lenses. If a person fails to meet a 20/40 visual acuity standard, the State Police shall refer the person to a vision specialist for examination.

(3) A person referred to a vision specialist by the State Police under subsection (2) of this section whose visual acuity is 20/60 or better shall be eligible to test for an instruction permit or operator's license. If corrective lenses were prescribed by the vision specialist,

the person's driving privileges shall be restricted to mandate the use of the corrective lenses.

(4) Persons who meet the requirements of Section 3 of this Act and are issued operator's licenses under Section 4 of this Act shall have their driving privileges restricted to the use of a bioptic telescopic device.

SECTION 3. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

(1) Applicants accepted to participate in a certified driver training program shall meet the following minimum vision requirements:

(a) A distance visual acuity of 20/200 or better, with corrective lenses, in the applicant's better eye;

(b) A visual field of at least one hundred twenty (120) degrees horizontally and eighty (80) degrees vertically in the same eye as used in paragraph (a) of this subsection;

(c) A distance visual acuity of 20/60 or better using a bioptic telescopic device; and

(d) No ocular diagnosis or prognosis that indicates a likelihood that significant deterioration of visual acuity or visual field to levels below the minimum standards outlined in this subsection will occur.

(2) Upon acceptance into a certified driver training program, an applicant shall be given an examination to test his or her knowledge of the motor vehicle laws of the Commonwealth. This examination may be taken orally. Upon successful completion of this examination, the applicant shall be issued a temporary instruction permit, that shall be valid only when the applicant is accompanied by an employee of a certified driver training program. Temporary instruction permits issued under this section shall be valid for one (1) year from the date of issue.

(3) An applicant who successfully completes a certified driver training program shall be reexamined by a vision specialist upon completion of the program. The examination shall certify that the applicant continues to meet the visual acuity and visual field standards set forth in subsection (1) of this section.

(4) An applicant who successfully completes a certified driving training program and passes the visual reexamination required by subsection (3) of this section shall be eligible to take a comprehensive operator's license examination administered by the State Police. The operator's license examination shall include testing of the applicant's driving skills over a route specifically designed to test the applicant's competency using a bioptic telescopic device.

(5) An applicant who is a restricted out-of-state driver establishing residence in Kentucky shall be required to take and pass a temporary instruction permit examination before being eligible to take the operator's license examination. An applicant who is a restricted out-of-state driver establishing residence in Kentucky shall not be required to complete a certified driver training program, but shall be required to take and pass the visual examination outlined in subsection (3) of this section before taking the operator's license examination.

(6) If an applicant or restricted out-of-state driver fails the operator's license examination three (3) times, he or she shall not be eligible to retake the examination until successfully completing additional training from a certified driver training program and obtaining an affidavit from the program director recommending that the applicant or restricted out-of-state driver be allowed to retake the examination.

(7) The Department for the Blind shall promulgate administrative regulations in accordance with KRS Chapter 13A to set standards for a certified driver training program and to otherwise carry out the provisions of this section.

SECTION 4. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

(1) The circuit clerk shall issue, to an applicant who successfully passes the operator's license examination outlined in subsection (4) of Section 3 of this Act, an operator's license with the following restrictions:

(a) Required use of a bioptic telescopic device; and

(b) Restricted to daytime driving.

(2) A restriction to daytime driving in accordance with subsection (1) of this section shall be removed if the licensed driver:

(a) Drives for thirty-six (36) months without any at-fault accidents and without any license suspensions;

(b) Successfully completes additional evaluation and training specifically designed for night driving from a certified driver training program; and

(c) Passes a comprehensive night driving examination.

(3) An operator's license issued under Sections 3 and 4 of this Act shall be effective for one (1) year and shall expire on the last day of the birth month of the license holder. The license holder shall undergo a comprehensive visual examination by a vision specialist before a license can be renewed. If the vision specialist certifies that the conditions causing the visual impairment are stable, then the circuit clerk shall issue a renewal license. If the conditions causing the visual impairment are unstable or deteriorating, the license holder may be required to undergo additional testing as required by the department before a renewal license may be issued.

Section 5. KRS 186.480 is amended to read as follows:

(1) The State Police may examine every unlicensed applicant for an operator's license except as otherwise provided in this section. The examination shall be held in the county where the applicant resides unless***:***

(a) The applicant is granted written permission by the circuit clerk of the county in which he resides to take the examination in another county, and the State Police agree to arrange for the examination in the other county***; or***

(b) The applicant is tested using a bioptic telescopic device.

(2) The examination ***shall***~~[may]~~ include a test of the applicant's eyesight ***to ensure compliance with the visual acuity standards set forth in Section 2 of this Act. The examination shall also include a test of the applicant's***~~[, his]~~ ability to read and understand highway signs regulating, warning and directing traffic, ***the applicant's***~~[his]~~ knowledge of traffic laws and

an actual demonstration of ***the applicant's*** ability to exercise ordinary and reasonable control in the operation of a motor vehicle. An applicant for a motorcycle operator's license shall be required to show his ability to operate a motorcycle, in addition to other requirements of this section. The provisions of this subsection shall not apply to an applicant who:

(a) At the time of application, holds a valid operator's license from another state, provided that state affords a reciprocal exemption to a Kentucky resident; or

(b) Is a citizen of the Commonwealth who has been serving in the United States military and has allowed his operator's license to expire.

(3)[~~(2)~~] Any person whose operator's license is denied, suspended, or revoked for cause shall apply for reinstatement at the termination of the period for which the license was denied, suspended, or revoked by submitting to the examination. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated.

Section 6. This Act takes effect January 1, 2001.

Approved April 10, 2000

CHAPTER 397

(HB 911)

AN ACT relating to excise taxes.

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

Section 1. KRS 138.344 is amended to read as follows:

(1) Except as otherwise provided in KRS 138.220 to 138.500, any person who shall purchase gasoline or special fuel, on which the tax as imposed by KRS 138.220 has been paid, for the purpose of operating or propelling stationary engines or tractors for agricultural purposes, or who shall purchase special fuels, on which the tax as imposed by KRS 138.220 has been paid, for consumption in unlicensed vehicles or equipment for nonhighway purposes shall be reimbursed for the tax so paid on the gasoline or special fuel. No refund shall be authorized unless applications and all necessary information are filed with the cabinet on a calendar quarter or calendar year basis on forms and in the manner prescribed by it for refund of the tax paid on the fuel. In lieu of the tax refund procedure herein, the tax on special fuels[~~ for operating or propelling stationary engines or tractors for agricultural purposes~~] may be credited by the dealer to the purchaser as provided in KRS 138.358. The dealer and the purchases shall be subject to the same rules, conditions and responsibilities as provided in KRS 138.344 to 138.355. The tax shall be refunded with interest at the tax interest rate as defined in KRS 131.010(6).

(2) The information to be required from the permit holder, by the cabinet, in order that the refund may be allowed, shall be as follows:

(a) Name and address of permit holder .... permit number .....

(b) Total number of gallons purchased .... and total purchase price ..... (Invoices to be attached to refund application.)

(c) Total number of gallons used on highways .....

(d) Total number of gallons on which refund is claimed ..... (Line b minus line c.)

(e) Other information as the cabinet may require to reasonably protect the revenues of the Commonwealth.

Section 2. KRS 138.358 is amended to read as follows:

(1) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a tank having no dispensing outlet and used exclusively to heat a personal residence, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively to heat the personal residence to which it is delivered. No person so certifying shall use the special fuel for any other purpose.~~[Special fuel delivered into a tank having no dispensing outlet and used exclusively to heat a commercial building shall be subject to refund pursuant to KRS 138.351 to 138.355.]~~ The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.

(2) Any special fuels dealer who sells special fuels, on which the tax imposed by KRS 138.220 has been paid, exclusively for the purpose of operating or propelling stationary engines or tractors for agricultural purposes, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively for the purpose of operating or propelling stationary engines or tractors for agricultural purposes. No person so certifying shall use the special fuels for any other purpose. Sales made from a retail filling station do not qualify for the credit. The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.

(3) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a nonhighway use storage tank of a resident nonprofit religious, charitable, or educational organization or state or local governmental agency which has qualified for exemption from Kentucky sales and use tax pursuant to KRS 139.470(7) or 139.495 shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement certifying the purchaser's sales and use tax purchase exemption authorization issued pursuant to KRS Chapter 139. No organization or agency so certifying shall use or allow the use of any nonhighway special fuel so acquired for any purpose other than fueling unlicensed vehicles or equipment for nonhighway purposes. The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.

(4) Any special fuels dealer who sells special fuels, on which the tax imposed by KRS 138.220 has been paid, which shall be used exclusively for consumption in unlicensed vehicles or equipment for nonhighway purposes, shall be entitled to claim a credit against the tax

due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively for nonhighway purposes. No person making the certification shall use the special fuels for any other purpose. Sales made from a retail filling station do not qualify for the credit. The Revenue Cabinet may require dealers claiming the credit authorized in this subsection to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth. This credit shall not apply to special fuels taxes subject to a refund under KRS 138.445.

SECTION 3. A NEW SECTION OF KRS CHAPTER 138 IS CREATED TO READ AS FOLLOWS:

(1) No person shall sell or deliver nontaxable diesel fuel or diesel fuel contaminated with dye when the person knows or has reason to know that the fuel will be used in a motor vehicle on any public highway.

(2) No person shall introduce nontaxable diesel fuel or diesel fuel contaminated with dye into the supply tank of any motor vehicle licensed for highway use.

(3) No person shall use nontaxable diesel fuel contaminated with dye in any motor vehicle actually used on a public highway.

(4) The prohibitions contained in this section shall not apply to:

(a) Persons operating motor vehicles that have received fuel into the fuel tank outside this state in a jurisdiction that permits introduction of nontaxable diesel fuel into the fuel supply tank of highway vehicles; and

(b) Uses of nontaxable fuel on the highway which are lawful under the Internal Revenue Code and regulations, including state and local government vehicles, and buses, unless otherwise prohibited by KRS Chapter 138.

(5) The cabinet may assess a civil penalty as follows:

(a) For first offenses, one thousand dollars ($1,000) or ten dollars ($10) per gallon of nontaxable fuel involved, whichever is greater, against any person who violates this section. The capacity of the fuel tank shall be assumed to be the amount of fuel involved, unless a lesser amount can be adequately verified by the violator; and

(b) For subsequent offenses, the penalty shall be the amount determined in paragraph (a) of this subsection, multiplied by the number of separate violations by the violator.

Section 4. KRS 138.210 is amended to read as follows:

As used in KRS 138.220 to 138.446, unless the context requires otherwise:

(1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or contaminated and returned to storage. The loss shall be reported within thirty (30) days after discovery of the loss to the cabinet in a manner and form prescribed by the cabinet, supported by proper evidence which in the sole judgment of the cabinet substantiates the alleged loss or contamination and which is confirmed in writing to the reporting dealer by the cabinet. The cabinet may make any investigation deemed necessary to establish the bona fide claim of the loss;

(2) "Gasoline dealer" or "special fuels dealer" means any person who is:

(a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;

(b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;

(c) Distributing gasoline from bulk storage in this state;

(d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arms length transactions;

(e) In the case of gasoline, receiving or accepting delivery within this state of gasoline for resale within this state in amounts of not less than an average of one hundred thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the cabinet, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or

(f) Regularly exporting gasoline or special fuels;

(3) "Cabinet" means the Revenue Cabinet;

(4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Eliott Closed Cup Test, or when tested in a manner approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, V.M. and P & naphthas, turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless the products are used wholly or in combination with gasoline as a motor fuel;

(b) "Special fuels" means and includes all combustible gases**,**~~[and]~~ liquids***, and taxable diesel fuel*** capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, ***nontaxable diesel fuel exclusively used for nonhighway purposes in off-highway equipment and nonlicensed motor vehicles,*** or liquefied petroleum gas as defined in KRS 234.100;

(c) "Taxable diesel fuel" means any liquid other than gasoline that, without further processing or blending, is suitable for use as a fuel in a diesel powered highway vehicle. Taxable diesel fuel does not include unblended kerosene No. 5, and No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;

(d) "Nontaxable diesel fuel" means diesel fuel that is required to be dyed under United States Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or the Internal Revenue Service, and excludes fuel used in state or local government licensed vehicles;

(5) "Received" or "received gasoline" or "received special fuels" shall have the following meanings:

(a) Gasoline and special fuels produced, manufactured, or compounded at any refinery in this state or acquired by any dealer and delivered into or stored in refinery, marine, or pipeline terminal storage facilities in this state shall be deemed to be received when it has been loaded for bulk delivery into tank cars or tank trucks consigned to destinations within this state. For the purpose of the proper administration of this chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to collect the tax, it shall be presumed that all gasoline and special fuel loaded by any licensed dealer within this state into tank cars or tank trucks is consigned to destinations within this state, unless the contrary is established by the dealer, pursuant to rules and regulations prescribed by the cabinet; and

(b) Gasoline and special fuel acquired by any dealer in this state, and not delivered into refinery, marine, or pipeline terminal storage facilities, shall be deemed to be received when it has been placed into storage tanks or other containers for use or subject to withdrawal for use, delivery, sale, or other distribution. Dealers may sell gasoline or special fuel to licensed bonded dealers in this state in transport truckload, carload, or cargo lots, withdrawing it from refinery, marine, pipeline terminal, or bulk storage tanks, without paying the tax. In such instances, the licensed bonded dealer purchasing the gasoline or special fuel shall be deemed to have received such fuel at the time of withdrawal from the seller's storage facility and shall be responsible to the state for the payment of the tax thereon;

(6) "Refinery" means any place where gasoline or special fuel is refined, manufactured, compounded, or otherwise prepared for use;

(7) "Storage" means all gasoline and special fuel produced, refined, distilled, manufactured, blended, or compounded and stored at a refinery storage or delivered by boat at a marine terminal for storage, or delivered by pipeline at a pipeline terminal, delivery station, or tank farm for storage;

(8) "Transporter" means any person who transports gasoline or special fuel on which the tax has not been paid or assumed;

(9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or

operator for the purpose of storing gasoline or special fuel for resale or delivery to retail outlets or consumers;

(10) "Average wholesale price" shall mean:

(a) The weighted average per gallon wholesale tank wagon price of gasoline, exclusive of the nine cents ($0.09) per gallon federal tax in effect on January 1, 1984, any increase in the federal gasoline tax after July 1, 1984, and any fee on imported oil imposed by the Congress of the United States after July 1, 1986, as determined by the Revenue Cabinet from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month required by the cabinet;

(b) Notwithstanding the provisions of paragraph (a) of this subsection, for purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no case shall "average wholesale price" be deemed to be less than one dollar and eleven cents ($1.11) per gallon, and in no case shall "average wholesale price" be deemed to be more than one dollar and fifty cents ($1.50) per gallon on or before June 30, 1982. In fiscal year 1982-83, the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of fiscal year 1981-82; in each subsequent fiscal year the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of the previous fiscal year;

(11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways and any trailer or semitrailer attached to or having its front end supported by the motor vehicles;

(12) "Public highways" means every way or place generally open to the use of the public as a matter or right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(13) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;

(14) "Retail filling station" means any place accessible to general public vehicular traffic where gasoline or special fuel is or may be placed into the fuel supply tank of a licensed motor vehicle.

Approved April 10, 2000

CHAPTER 398

(HB 939)

AN ACT relating to campaign finance.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 121 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds and declares that:

(a) The intent of disclosure of campaign finance information is to make that information about the role of money in politics accessible to the public;

(b) The volume of campaign finance reports submitted each year to the state renders it virtually impossible, without the help of computer technology, to derive meaningful conclusions from the records;

(c) Computer automation is a necessary and effective means of transmitting, organizing, storing, and retrieving vast amounts of data submitted by candidates in election campaigns; and

(d) Although candidates are currently permitted to file campaign finance reports electronically if they so choose, very few candidates have chosen to do so, and therefore access to campaign finance data through electronic or on-line technology is limited.

(2) The General Assembly enacts this legislation to accomplish the following:

(a) To improve the existing system of electronic reporting and extend its usage to more candidates;

(b) To allow concerned persons easy, convenient, and timely access to campaign finance reports submitted to the state;

(c) To ease the burden on candidates and committees of tabulating, filing, and maintaining public records of financial activity;

(d) To strengthen both the disclosure and enforcement capabilities of the Registry of Election Finance;

(e) To cooperate in the standardization of reporting formats among states so that interstate as well as intrastate sources of political money can be known;

(f) To provide for a fully informed electorate; and

(g) To help restore public trust in the governmental and electoral institutions of this state.

Section 2. KRS 121.015 is amended to read as follows:

As used in this chapter:

(1) "Registry" means the Kentucky Registry of Election Finance;

(2) "Election" means any primary, runoff primary, regular, or special election to fill vacancies regardless of whether a candidate or slate of candidates is opposed or unopposed in an election. Each primary, runoff primary, regular, or special election shall be considered a separate election;

(3) "Committee" includes the following:

(a) "Campaign committee," which means one (1) or more persons who receive contributions and make expenditures to support or oppose one (1) or more specific

candidates or slates of candidates for nomination or election to any state, county, city, or district office, but does not include an entity established solely by a candidate which is managed solely by a candidate and a campaign treasurer and whose name is generic in nature, such as "Friends of (the candidate)," and does not reflect that other persons have structured themselves as a committee, designated officers of the committee, and assigned responsibilities and duties to each officer with the purpose of managing a campaign to support or oppose a candidate in an election;

(b) "Political issues committee," which means three (3) or more persons joining together to advocate or oppose a constitutional amendment or public question which appears on the ballot if that committee receives or expends money in excess of one thousand dollars ($1,000);

(c) "Permanent committee," which means a group of individuals, including an association, committee or organization, other than a campaign committee, political issues committee, inaugural committee, or party executive committee, which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year;

(d) An executive committee of a political party; and

(e) "Inaugural committee," which means one (1) or more persons who receive contributions and make expenditures in support of inauguration activities for any candidate or slate of candidates elected to any state, county, city, or district office;

(4) "Contributing organization" means a group which merely contributes to candidates, campaign committees, or executive committees from time to time from funds derived solely from within the group, and which does not solicit or receive funds from sources outside the group itself. However, any contributions made by the groups in excess of one hundred dollars ($100) shall be reported to the registry;

(5) "Testimonial affair" means an affair held in honor of a person who holds or who is or was a candidate for nomination or election to a political office in this state designed to raise funds for any purpose not charitable, religious, or educational;

(6) "Contribution" means any:

(a) Payment, distribution, loan, deposit, or gift of money or other thing of value, to a candidate, his agent, a slate of candidates, its authorized agent, a committee, or contributing organization. As used in this subsection, "loan" shall include a guarantee, endorsement, or other form of security where the risk of nonpayment rests with the surety, guarantor, or endorser, as well as with a committee, contributing organization, candidate, slate of candidates, or other primary obligor. No person shall become liable as surety, endorser, or guarantor for any sum in any one (1) election which, when combined with all other contributions the individual makes to a candidate, his agent, a slate of candidates, its agent, a committee, or a contributing organization, exceeds the contribution limits provided in KRS 121A.050 or KRS 121.150;

(b) Payment by any person other than the candidate, his authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or a contributing organization, of compensation for the personal services of another person which are rendered to a

candidate, slate of candidates, committee, or contributing organization, or for inauguration activities;

(c) Goods, advertising, or services with a value of more than one hundred dollars ($100) in the aggregate in any one (1) election which are furnished to a candidate, slate of candidates, committee, or contributing organization or for inauguration activities without charge, or at a rate which is less than the rate normally charged for the goods or services; or

(d) Payment by any person other than a candidate, his authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or contributing organization for any goods or services with a value of more than one hundred dollars ($100) in the aggregate in any one (1) election which are utilized by a candidate, slate of candidates, committee, or contributing organization, or for inauguration activities;

(7) Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include:

(a) Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, committee, or contributing organization;

(b) A loan of money by any financial institution doing business in Kentucky made in accordance with applicable banking laws and regulations and in the ordinary course of business; or

(c) An independent expenditure by any individual or permanent committee;

(8) "Candidate" means any person who has received contributions or made expenditures, has appointed a campaign treasurer, or has given his consent for any other person to receive contributions or make expenditures with a view to bringing about his nomination or election to public office, except federal office;

(9) "Slate of candidates" means any two (2) persons who have filed a joint notification and declaration pursuant to KRS 118.127, received contributions or made expenditures, appointed a campaign treasurer, designated a campaign depository, or given their consent for any other person to receive contributions or make expenditures with a view to bringing about their nomination for election to the offices of Governor and Lieutenant Governor. Unless the context requires otherwise, any provision of law that applies to a candidate shall also apply to a slate of candidates;

(10) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists;

(11) "Fundraiser" means an individual who directly solicits and secures contributions on behalf of a candidate or slate of candidates for a statewide-elected state office or an office in a jurisdiction with a population in excess of two hundred thousand (200,000) residents;~~[and]~~

(12) "Independent expenditure" means the expenditure of money or other things of value for a communication which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, and which is made without any coordination, consultation, or cooperation with any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them, and which is not made in concert with, or

at the request or suggestion of any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them***;***

(13) "Electronic reporting" means the use of technology, having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, by which an individual or other entity submits, compiles, or transmits campaign finance reports to the registry, or by which the registry receives, stores, analyzes, or discloses the reports;

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures;

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

(16) "Filer" means any candidate, committee, or other individual or entity required to submit financial disclosure reports to the registry; and

(17) "Filer-side software" means software provided to or used by the filer that enables transmittal of financial reports to the registry.

Section 3. KRS 121.120 is amended to read as follows:

(1) The registry may:

(a) Require by special or general orders, any person to submit, under oath, any written reports and answers to questions as the registry may prescribe;

(b) Administer oaths or affirmations;

(c) Require by subpoena, signed by the chairman, the attendance and testimony of witnesses and the production of all documentary evidence, excluding individual and business income tax records, relating to the execution of its duties;

(d) In any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the registry and has the power to administer oaths and, in those instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (c);

(e) Initiate, through civil actions for injunctive, declaratory, or other appropriate relief, defend, or appeal any civil action in the name of the registry to enforce the provisions of this chapter through its legal counsel;

(f) Render advisory opinions under KRS 121.135;

(g) Promulgate administrative regulations necessary to carry out the provisions of this chapter;

(h) Conduct investigations and hearings expeditiously, to encourage voluntary compliance, and report apparent campaign finance law violations to the appropriate law enforcement authorities;

(i) Petition any court of competent jurisdiction to issue an order requiring compliance with an order or subpoena issued by the registry. Any failure to obey the order of the court may be punished by the court as contempt; and

(j) Conduct random audits of receipts and expenditures of committees which have filed registration papers with the registry pursuant to KRS 121.170.

(2) No person shall be subject to civil liability to any person other than the registry or the Commonwealth for disclosing information at the request of the registry.

(3) The registry may appoint a full-time executive director, legal counsel, and an accountant for auditing purposes, all of whom shall serve at the pleasure of the registry. The registry may also appoint such other employees as are necessary to carry out the purposes of this chapter. All requests for personnel appointments shall be forwarded by the registry directly to the secretary of the Personnel Cabinet and shall be subject to his review and certification only.

(4) The registry shall adopt official forms and perform other duties necessary to implement the provisions of this chapter and KRS Chapter 121A. The registry shall not require the listing of a person's Social Security number on any form developed by the registry. Without limiting the generality of the foregoing, the registry shall:

(a) Develop prescribed forms for the making of the required reports;

(b) Prepare and publish a manual for all candidates, slates of candidates, and committees, describing the requirements of the law, including uniform methods of bookkeeping and reporting, requirements as to reporting dates, and the length of time that candidates, slates of candidates, and committees are required to keep any records pursuant to the provisions of this chapter and KRS Chapter 121A;

(c) Develop a filing, coding, and cross-indexing system;

(d) Make each report filed available for public inspection and copying during regular office hours at the expense of any person requesting copies of them;

(e) Preserve all reports for at least six (6) years from the date of receipt. Duly certified reports shall be admissible as evidence in any court in the Commonwealth;

(f) Prepare and make available for public inspection a summary of all reports grouped according to candidates, slates of candidates, committees, contributing organizations, parties, and exploratory committees as defined in KRS 121A.010(9)(e) containing the total receipts and expenditures; and

1. For each contribution made by a permanent committee of any amount to a candidate, slate of candidates, or exploratory committee, the date, name, and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;

2. For each contribution in excess of one hundred dollars ($100) made to a candidate or slate of candidates for a statewide-elected state office, to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, or to an exploratory committee, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which

he is doing business, and the amount contributed by each contributor, listed alphabetically; and

3. For each contribution in excess of one hundred dollars ($100) made to any candidate or campaign committee other than those specified in subparagraph 2., the date, name, address, occupation, and employer of each other contributor or, if the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor, listed alphabetically;

(g) Prepare and publish an annual report with cumulative compilations named in paragraph (f) of this subsection;

(h) Distribute upon request, for a nominal fee, copies of all summaries and reports;

(i) Determine whether the required reports have been filed and if so, whether they conform with the requirements of this chapter and KRS Chapter 121A; give notice to delinquents to correct or explain defections; issue an order, if appropriate, as provided in KRS 121.140; and make public the fact that a violation has occurred and the nature thereof;

(j) Conduct random audits of receipts and expenditures of candidates running for city, county, urban-county government, charter county government, and district offices. When the registry audits the records of any selected candidate, it shall also audit the records of all other candidates running for the same office in the selected city, county, urban-county government, charter county government, or district office;

(k) Conduct audits of receipts and expenditures of all candidates or slates of candidates running for statewide office;

(l) Require that candidates and slates of candidates shall maintain their records for a period of six (6) years from the date of the regular election in their respective political races;

(m) Initiate investigations and make investigations with respect to reports upon complaint by any person and initiate proceedings on its own motion;

(n) Forward to the Attorney General or the appropriate Commonwealth's or county attorney any violations of this chapter and KRS Chapter 121A which may become the subject of civil or criminal prosecution; and

(o) Direct and administer the provisions of KRS Chapter 121A.

(5) All policy and enforcement decisions concerning the regulation of campaign finance shall be the ultimate responsibility of the registry. No appointed or elected state officeholder or any other person shall, directly or indirectly, attempt to secure or create privileges, exemptions, or advantages for himself or others in derogation of the public interest at large in a manner that seeks to leave any registry member or employee charged with the enforcement of the campaign finance laws no alternative but to comply with the wishes of the officeholder or person. Registry members and employees shall be free of obligation or the appearance of obligation to any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations. It shall not be considered a violation of this subsection for an officeholder or other person to seek remedies in a court of law to any policy or enforcement decision he considers to be an abridgement of his legal rights.

(6) If adequate and appropriate agency funds are available, the registry shall:

(a) Develop or acquire a system for electronic reporting for use by individuals and entities required to file campaign finance reports with the registry under this chapter or KRS Chapter 121A. The registry shall promulgate administrative regulations under KRS Chapter 13A which provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under this chapter or KRS Chapter 121A;

(b) Accept test files from software vendors and persons wishing to file reports electronically for the purpose of determining whether the file format complies with the nonproprietary standardized format developed under paragraph (a) of this subsection and is compatible with the registry's system for receiving the data;

(c) Make all paper or electronic reports filed with the registry pertaining to candidates for the General Assembly and statewide office available on the Internet free of charge, in an easily understood format that allows the public to browse, search, and download the data contained in the reports by each of the reporting categories required by this chapter or KRS Chapter 121A, including, but not limited to:

1. The name of each candidate or committee;

2. The office sought by each candidate;

3. The name of each contributor;

4. The address of each contributor;

5. The employer or business occupation of each contributor, or if the contributor is a permanent committee, a description of the major business, social, or political interest represented by the permanent committee;

6. The date of each contribution; and

7. The amount of each contribution.

(d) Make all data specified in paragraph (c) of this subsection available on the Internet no later than ten (10) business days after its receipt by the registry. If a contribution or expenditure report is filed late with the registry, that data shall be made available on the Internet within twenty-four (24) hours of the registry's receipt of the data;

(e) Make filer-side software available free of charge to all individuals or entities subject to the reporting requirements of this chapter or KRS Chapter 121A;

(f) Establish a training program on the electronic reporting program and make it available free of charge to all individuals and entities subject to the reporting requirements of this chapter or KRS Chapter 121A; and

(g) Maintain all campaign finance data pertaining to legislative and statewide candidates on-line for twenty (20) years after the date the report containing the data is filed, and then archive the data in a secure format.

(7) In conjunction with the program of electronic reporting set out in subsection (6) of this section, the registry may:

(a) Develop or acquire a computer system that provides for on-line Internet submission of the reports required by this chapter or KRS Chapter 121A utilizing security procedures to ensure the integrity of the data transmitted; and

(b) Provide procedures for verifying electronic signatures placed upon reports under this chapter or KRS Chapter 121A.

Section 4. KRS 121.150 is amended to read as follows:

(1) No contribution shall be made or received, directly or indirectly, other than an independent expenditure, to support inauguration activities or to support or defeat a candidate, slate of candidates, constitutional amendment, or public question which will appear on the ballot in an election, except through the duly appointed campaign manager, or campaign treasurer of the candidate, slate of candidates, or registered committee. Any person making an independent expenditure, shall report these expenditures when the expenditures by that person exceed five hundred dollars ($500) in the aggregate in any one (1) election, on a form provided ***or using a format approved*** by the registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.

(2) Except as provided in KRS 121.180(10), the solicitation from and contributions by campaign committees, political issues committees, permanent committees, and party executive committees to any religious, charitable, civic, eleemosynary, or other causes or organizations established primarily for the public good is expressly prohibited; except that it shall not be construed as a violation of this section for a candidate to contribute to religious, civic, or charitable groups.

(3) No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf, shall accept any anonymous contribution in excess of fifty dollars ($50), and all anonymous contributions in excess of fifty dollars ($50) shall be returned to the donor, if the donor can be determined. If no donor is found, the contribution shall escheat to the state and be transferred to the election campaign fund established by KRS 121A.020. No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf shall accept anonymous contributions in excess of one thousand dollars ($1,000) in the aggregate in any one (1) election. Anonymous contributions in excess of one thousand dollars ($1,000) in the aggregate which are received in any one (1) election shall escheat to the state and be transferred to the election campaign fund established by KRS 121A.020.

(4) No candidate, committee, or contributing organization, nor anyone on their behalf, shall accept a cash contribution in excess of fifty dollars ($50) in the aggregate from each contributor in any one (1) election. No candidate, committee, or contributing organization, nor anyone on their behalf, shall accept a cashier's check or money order in excess of the maximum cash contribution limit unless the instrument clearly identifies both the payor and the payee. A contribution made by cashier's check or money order which identifies both the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in this section. No person shall make a cash contribution in excess of fifty dollars ($50) in the aggregate in any one (1) election to a candidate, committee, or contributing organization, nor anyone on their behalf.

(5) No candidate, slate of candidates, committee, contributing organization, nor anyone on their behalf, shall accept any contribution in excess of one hundred dollars ($100) from any person who shall not become eighteen (18) years of age on or before the day of the next general election.

(6) No candidate, campaign committee, political issues committee, nor anyone acting on their behalf, shall accept a contribution of more than one thousand dollars ($1,000) from any person, permanent committee, or contributing organization in any one (1) election; except that no candidate for school board, his campaign committee, nor anyone acting on their behalf shall accept a contribution of more than one hundred dollars ($100) from any person or more than two hundred dollars ($200) from any permanent committee or contributing organization in any one (1) election. No person, permanent committee, or contributing organization shall contribute more than one thousand dollars ($1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf, in any one (1) election; except that no person shall contribute more than one hundred dollars ($100) and no permanent committee or contributing organization shall contribute more than two hundred dollars ($200) to any one (1) school board candidate, his campaign committee, nor anyone acting on their behalf, in any one (1) election. Limits on contributions for slates of candidates for Governor and Lieutenant Governor which may be made or received in any one (1) election shall be governed by the provisions of KRS 121A.050.

(7) Permanent committees or contributing organizations affiliated by bylaw structure or by registration, as determined by the Registry of Election Finance, shall be considered as one (1) committee for purposes of applying the contribution limits of subsection (6) of this section.

(8) No permanent committee shall contribute funds to another permanent committee for the purpose of circumventing contribution limits of subsection (6) of this section.

(9) No person shall contribute funds to a permanent committee, political issues committee, or contributing organization for the purpose of circumventing the contribution limits of subsection (6) of this section.

(10) No person shall contribute more than one thousand five hundred dollars ($1,500) to all permanent committees and contributing organizations in any one (1) year.

(11) No person shall contribute more than two thousand five hundred dollars ($2,500) to the state executive committee of a political party and its subdivisions and affiliates in any one (1) year. Contributions a person makes to a political party in excess of one thousand dollars ($1,000) in any one (1) year shall be deposited in a separate account which the state executive committee maintains for the exclusive purpose of paying administrative costs incurred by the political party.

(12) No person shall make a payment, distribution, loan, advance, deposit, or gift of money to another person to contribute to a candidate, committee, contributing organization, or anyone on their behalf. No candidate, committee, contributing organization, nor anyone on their behalf shall accept a contribution made by one (1) person who has received a payment, distribution, loan, advance, deposit, or gift of money from another person to contribute to a candidate, committee, contributing organization, or anyone on their behalf.

(13) No candidates running as a slate for the offices of Governor and Lieutenant Governor shall make combined total personal loans to their committee in excess of fifty thousand dollars ($50,000) in any one (1) election. No candidate for any other statewide elected state office shall lend to his committee any amount in excess of twenty-five thousand dollars ($25,000)

in any one (1) election. In campaigning for all other offices, no candidate shall lend to his committee more than ten thousand dollars ($10,000) in any one (1) election.

(14) Subject to the provisions of subsection (20) of this section, no candidate or slate of candidates for nomination to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for primary election expenses after the date of the primary. No person other than the candidate or slate of candidates shall contribute for primary election expenses after the date of the primary.

(15) Subject to the provisions of subsection (20) of this section, no slate of candidates for nomination for election to the offices of Governor and Lieutenant Governor, nor its campaign committees, nor anyone on their behalf, shall solicit or accept contributions for runoff primary election expenses after the date of the runoff primary. No person other than the slated candidates shall contribute for runoff primary election expenses after the date of the runoff primary.

(16) Subject to the provisions of subsection (20) of this section, no candidate or slate of candidates for any state, county, city, or district office at a regular election, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for regular election expenses after the date of the regular election. No person other than the candidate or slate of candidates shall contribute for regular election expenses after the date of the regular election.

(17) Subject to the provisions of subsection (20) of this section, no candidate or slate of candidates for nomination or election to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for special election expenses after the date of the special election. No person other than the candidate or slate of candidates shall contribute for special election expenses after the date of the special election.

(18) Nothing in subsections (14) to (17) of this section shall be deemed to prohibit a slate of candidates from receiving transfers from the election campaign fund established by KRS 121A.020 for which it is eligible for matches of qualifying contributions received prior to the date of the election but for which no transfer from the fund had been made prior to the date of the election.

(19) The provisions of subsections (14) and (16) of this section shall apply only to those candidates in a primary or regular election which shall be conducted subsequent to January 1, 1989. The provisions of subsections (15) and (17) of this section shall apply only to those candidates or slates of candidates in a runoff primary or special election which shall be conducted subsequent to January 1, 1993.

(20) A candidate, slate of candidates, or a campaign committee may solicit and accept contributions after the date of a primary election, runoff primary election, regular election, or special election to defray necessary expenses that arise after the date of the election associated with election contests, recounts, and recanvasses of a specific election, complaints regarding alleged campaign finance violations that are filed with the registry pertaining to a specific election, or other legal actions pertaining to a specific election to which a candidate, slate of candidates, or campaign committee is a party. Reports of contributions received and expenditures made after the date of the specific election shall be made in accordance with KRS 121.180.

(21) No slate of candidates for Governor and Lieutenant Governor or their immediate families shall loan any money, service, or other thing of value to their campaign, and all moneys, services, or other things of value which are loaned shall be deemed a contribution, which may not be recovered by the slate of candidates, except to the extent of a combined total of fifty thousand dollars ($50,000).

(22) No candidate, slate of candidates, committee, except a political issues committee, or contributing organization, nor anyone on their behalf, shall knowingly accept a contribution from a corporation, directly or indirectly.

(23) Nothing in this section shall be construed to restrict the ability of a corporation to administer its permanent committee insofar as its actions can be deemed not to influence an election as prohibited by KRS 121.025.

(24) In addition to the prohibitions set forth in this section, no slate of candidates shall accept any contribution during the twenty-eight (28) days immediately preceding a primary or regular election except as provided in KRS 121A.030(5).

(25) No candidate, slate of candidates, or committee, nor anyone on their behalf, shall solicit a contribution of money or services from a state employee, whether or not the employee is covered by the classified service provisions of KRS Chapter 18A. However, it shall not be a violation of this subsection for a state employee to receive a solicitation directed to him as a registered voter in an identified precinct as part of an overall plan to contact voters not identified as state employees.

(26) (a) A candidate for elective public office, except slates of candidates for Governor and Lieutenant Governor, shall not accept contributions from permanent committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the candidate in any one (1) election or ten thousand dollars ($10,000) in any one (1) election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate in an election that is accepted from permanent committees shall be calculated as of the day of each election. Funds in a candidate's campaign account which are carried forward from one (1) election to another shall not be considered in calculating the acceptable percentage or dollar amount of contributions which may be accepted from permanent committees for the election for which the funds are carried forward. A candidate may, without penalty, contribute funds to his campaign account not later than sixty (60) days following the election so as not to exceed the permitted percentage or dollar amount of contributions which may be accepted from permanent committees or the candidate may, not later than sixty (60) days after the end of the election, refund any excess permanent committee contributions on a pro rata basis to the permanent committees whose contributions are accepted after the aggregate limit has been reached.

(b) The provisions of paragraph (a) of this subsection regarding the receipt of aggregate contributions from permanent committees in any one (1) election shall also apply separately to the receipt of aggregate contributions from executive committees of any county, district, state, or federal political party in any one (1) election.

(27) No candidate or slate of candidates for any office in this state shall accept a contribution, including an in-kind contribution, which is made from funds in a federal campaign account.

No person shall make a contribution, including an in-kind contribution, from funds in a federal campaign account to any candidate or slate of candidates for any office in this state.

Section 5. KRS 121.180 is amended to read as follows:

(1) (a) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any preelection finance reports required by subsection (3) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that contributions will not be accepted or expended in excess of three thousand dollars ($3,000) in any one (1) election to further the candidacy or to support or oppose a constitutional amendment or public question which will appear on the ballot. For a candidate for judicial office who desires to be exempt from filing preelection campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (l)1. or 2. of this subsection. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.

(b) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any campaign finance reports required by subsections (3) and (4) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that currently no contributions have been received and that contributions will not be accepted or expended in excess of one thousand dollars ($1,000) in any one (1) election. For a candidate for judicial office who desires to be exempt from filing any campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (l)1. or 2. of this subsection. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.

(c) For a primary election, a candidate or slate of candidates shall file a request for exemption not later than the deadline for filing nomination papers and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its

terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. For a runoff primary election, a slate of candidates shall file its request for exemption not later than five (5) days after the date of the preceding primary election and shall be bound by its terms unless rescinded in writing not later than ten (10) days after the date of the preceding primary election. For a regular election, a candidate or slate of candidates shall file or rescind in writing a request for exemption not later than twenty-five (25) days after the date of the preceding primary election, or runoff primary, if one is held, except as provided in subparagraph 2. of paragraph (d) of this subsection. For a special election, a candidate or slate of candidates shall file a request for exemption not later than ten (10) days after the candidate or slate of candidates is nominated for a special election and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date on which the nomination for a special election is made. A political issues committee chairman shall file a request for exemption not later than ten (10) days after the date on which the committee registers with the registry and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the date on which the request for exemption is filed.

(d) 1. A candidate or slate of candidates that revokes a request for exemption in a timely manner may exercise the remaining option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars ($3,000) in an election. If a candidate or slate of candidates elects to exercise a different option, the candidate or slate of candidates shall file the appropriate form with the officer who received the filing papers of the candidate or slate of candidates not later than the deadline for filing a revocation.

2. A candidate for any city or county office or for any school board office, who is exempted from some or all campaign finance reporting requirements pursuant to paragraph (a) or (b) of this subsection but who accepts contributions or makes expenditures in excess of the exempted amount in an election, shall file all applicable reports required for the remainder of that election, based upon the amount of contributions or expenditures the candidate accepts or receives in that election. The filing of applicable required reports by a candidate after the exempted amount is exceeded shall serve as notice to the registry that the initial exemption has been rescinded. No further notice to the registry shall be required and no penalty for exceeding the initial exempted amount shall be imposed against the candidate, except for failure to file applicable reports required after the exempted amount is exceeded.

(e) Any candidate or slate of candidates that is subject to an August filing deadline and that intends to execute a request for exemption shall file the appropriate request for exemption not later than the filing deadline and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. A candidate or slate of candidates that is covered by this paragraph shall have the same reversion rights as those provided in subparagraph 1. of paragraph (d) of this subsection.

(f) Any candidate or slate of candidates that will appear on the ballot in a regular election that has signed either request for exemption for that election may exercise the

reversion rights provided in subparagraph 1. of paragraph (d) of this subsection if a candidate or slate of candidates that is subject to an August filing deadline subsequently files in opposition to the candidate or slate of candidates. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate or slate of candidates covered by this paragraph shall comply with the deadline for rescission provided in subparagraph 1. of paragraph (d) of this subsection.

(g) Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate or slate of candidates that has filed a request for exemption for a regular election that later is opposed by a person who has filed a declaration of intent to receive write-in votes may rescind the request for exemption and exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.

(h) Any candidate or slate of candidates that has filed a request for exemption may petition the registry to determine whether another person is campaigning as a write-in candidate prior to having filed a declaration of intent to receive write-in votes, and, if the registry determines upon a preponderance of the evidence that a person who may later be a write-in candidate is conducting a campaign, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may petition the registry to permit the candidate or slate of candidates to exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.

(i) If the opponent of a candidate or slate of candidates is replaced due to his withdrawal because of death, disability, or disqualification, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection not later than fifteen (15) days after the party executive committee nominates a replacement for the withdrawn candidate or slate of candidates.

(j) A person intending to be a write-in candidate for any office in a regular or special election may execute a request for exemption under paragraph (a) or (b) of this subsection and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline for the regular or special election. A person intending to be a write-in candidate who revokes a request for exemption in a timely manner may exercise the remaining exemption option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars ($3,000) in an election. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a person intending to be a write-in candidate who elects to exercise a different exemption option shall file the appropriate form with the officer who received the initial request for exemption not later than fifteen (15) days after the filing deadline for the regular or special election.

(k) Except as provided in subparagraph 2. of paragraph (d) of this subsection, the campaign committee of any candidate or slate of candidates that has filed a request for exemption or a political issues committee whose chairman has filed a request for exemption shall be bound by its terms unless it is rescinded in a timely manner and no new request for exemption has been executed.

(l) 1. Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate, slate of candidates, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this

subsection that accepts contributions or makes expenditures, or whose campaign treasurer accepts contributions or makes expenditures, in excess of the applicable limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and, in lieu of other penalties prescribed by law, pay a fine of not more than five hundred dollars ($500) plus the amount by which the spending limit was exceeded.

2. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate, slate of candidates, campaign committee, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that knowingly accepts contributions or makes expenditures in excess of the applicable spending limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and shall be guilty of a Class D felony.

(2) (a) State and county executive committees shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, or made, since the date of the last report, including:

1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;

2. For other contributions in excess of one hundred dollars ($100), the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;

3. The total amount of cash contributions received during the reporting period; and

4. A complete statement of expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name and address of each person to whom an expenditure is made in excess of twenty-five dollars ($25), and the amount, date, and purpose of each expenditure.

(b) This report shall be in the hands of the registry or postmarked within five (5) days after the thirtieth day following the primary, runoff primary if slates of candidates of that party participate, and regular elections. If an individual gives a reportable contribution to a state or county executive committee with the intention that the contribution or a portion of the contribution go to a candidate or slate of candidates, the name of the contributor and the sum shall be indicated on the committee report. The receipts and expenditures of funds remitted to each political party under KRS 141.071 to 141.073 shall be separately accounted for and reported to the registry in the manner required by KRS 121.230. The separate report may be made a separate section within the report required, by this subsection, to be in the hands of the registry or postmarked within five (5) days after the thirtieth day following each regular election.

(3) (a) Except for candidates or slates of candidates, campaign committees, or political issues committees exempted from reporting requirements pursuant to subsection (1) of this section, each campaign treasurer of a candidate, slate of candidates, campaign committee, or political issues committee who accepts contributions or expends, expects to accept contributions or expend, or contracts to expend more than three thousand dollars ($3,000) in any one (1) election, and each fundraiser who secures contributions in excess of three thousand dollars ($3,000) in any one (1) election, shall make a full report~~[, upon a prescribed form,]~~ to the registry, ***on a form provided or using a format approved by the registry,*** of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, and made, since the date of the last report, including:

1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;

2. For each contribution in excess of one hundred dollars ($100) made to a candidate or slate of candidates for a statewide-elected state office, or to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor; and

3. For each contribution in excess of one hundred dollars ($100) made to any candidate or campaign committee other than those specified in subparagraph 2. or a political issues committee, the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;

4. The total amount of cash contributions received during the reporting period; and

5. A complete statement of all expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name, address, and occupation of each person to whom an expenditure is made in excess of twenty-five dollars ($25), and the amount, date, and purpose of each expenditure.

(b) Reports of all candidates, campaign committees, political issues committees, and registered fundraisers shall be made as follows:

1. Candidates as defined in KRS 121.015(8), campaign committees, political issues committees, and fundraisers which register in the year before the year an election in which the candidate or public question shall appear on the ballot, shall file financial reports with the registry at the end of the first calendar quarter after the person becomes a candidate or following registration of the committee or fundraiser, and each calendar quarter thereafter, ending with the last calendar quarter of that year. Candidates, committees, and registered fundraisers shall make all reports required by this section during the year in which the election takes place;

2. All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the thirty-second day preceding an election, including all previous contributions and expenditures;

3. All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the fifteenth day preceding the date of the election; and

4. All reports to the registry shall be ***received by***~~[in the hands of]~~ the registry or postmarked within five (5) days after each filing deadline.

(4) Except for candidates, slates of candidates, and political issues committees, exempted pursuant to subsection (1)(b) of this section, all candidates, regardless of funds received or expended, campaign committees, political issues committees, and registered fundraisers shall make post-election reports within thirty (30) days after the election.

(5) In making the preceding reports, the total gross receipts from each of the following categories shall be listed: proceeds from the sale of tickets for events such as testimonial affairs, dinners, luncheons, rallies, and similar fundraising events, mass collections made at the events, and sales of items such as campaign pins, buttons, hats, ties, literature, and similar materials. When any individual purchase or the aggregate purchases of any item enumerated above from a candidate or slate of candidates for a statewide-elected state office or a campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars ($100), the purchaser shall be identified by name, address, age, if less than the legal voting age, occupation, and employer and the employer of the spouse of the purchaser or, if the purchaser or the spouse of the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. When any individual purchase or the aggregate purchases of any item enumerated above from any candidate or campaign committee other than a candidate or slate of candidates for a statewide-elected state office or campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars ($100), the purchaser shall be identified by name, address, age if less than the legal voting age, occupation, and employer, or if the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. The lists shall be maintained by the campaign treasurer, political issues committee treasurer, registered fundraiser, or other sponsor for inspection by the registry for six (6) years following the date of the election.

(6) Each permanent committee, except a federally-registered out-of-state permanent committee, inaugural committee, or contributing organization shall make a full report~~[, upon a prescribed form,]~~ to the registry***, on a form provided or using a format approved by the registry,*** of all money, loans, or other things of value, received by it from any source, and all expenditures authorized, incurred, or made, since the date of the last report, including:

(a) For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;

(b) For other contributions in excess of one hundred dollars ($100), the full name, address, age if under the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the

contributor is self-employed, the name under which he is doing business shall be listed;

(c) An aggregate amount of cash contributions, the amount contributed by each contributor, and the date of each contribution; and

(d) A complete statement of all expenditures authorized, incurred, or made, including independent expenditures. This report shall be made by a permanent committee, inaugural committee, or contributing organization to the registry on the last day of the first calendar quarter following the registration of the committee with the registry and on the last day of each succeeding calendar quarter until such time as the committee terminates. A contributing organization shall file a report of contributions received and expenditures ***on a form provided or using a format approved***~~[made on forms prescribed]~~ by the registry not later than the last day of each calendar quarter in which contributions are received or expenditures are made. All reports to the registry shall be postmarked or received not later than five (5) days after each filing deadline.

(7) If the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry a supplemental statement of contributions and expenditures not more than thirty (30) days after the deadline for filing the final statement. Subsequent supplemental statements shall be filed annually, to be ***received by***~~[in the hands of]~~ the registry or postmarked not later than ten (10) days after November 1 of each year, until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit, or until the year before the candidate seeks to appear on the ballot for the same office for which the funds in the campaign account were originally contributed, in which case the candidate shall file the supplemental annual report not later than ten (10) days after November 1 of that year or at the end of the first calendar quarter of that year after the candidate files his nomination papers for the next year's primary or regular election. All contributions shall be subject to KRS 121.150.

(8) All reports filed under the provisions of this chapter shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry. A duplicate ***paper*** copy of each report filed ***either on paper or electronically*** with the registry shall be filed by the candidate, slate of candidates, or committee with the county clerk in the county in which the candidate or persons running as a slate of candidates reside at the same time. County clerks shall maintain these reports for public inspection for a period of one (1) year from the date the last report is required to be filed.

(9) A candidate or slate of candidates is relieved of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate states in writing or on forms provided by the registry that:

(a) Within five (5) business days after personally receiving any contributions, the candidate or slate of candidates shall surrender possession of the contributions to the treasurer of their principal campaign committee without expending any of the proceeds thereof. No contributions shall be commingled with the candidate's or slated candidates' personal funds or accounts. Contributions received by check, money order, or other written instrument shall be endorsed directly to the campaign committee and shall not be cashed or redeemed by the candidate;

(b) The candidate or slate of candidates shall not make any unreimbursed expenditure for the campaign, except that this paragraph does not preclude a candidate or slate from making an expenditure from personal funds to the designated principal campaign committee, which shall be reported by the committee as a contribution received; and

(c) The waiver shall continue in effect as long as the candidate or slate of candidates complies with the conditions under which it was granted.

(10) No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office; except that nothing in this subsection shall be deemed to prohibit a candidate or slate of candidates from using funds in the campaign account to purchase admission tickets for any fundraising event or testimonial affair for another candidate or slate of candidates if the amount of the purchase does not exceed one hundred dollars ($100) per event or affair. Any funds or contributions solicited or received by or on behalf of a candidate, slate of candidates, or any committee, which has been organized in whole or in part to further any candidacy for the same person or to support or oppose the same public issue, shall be deemed to have been solicited or received for the current candidacy or for the election on the public issue if the funds or contributions are solicited or received at any time prior to the regular election for which the candidate, slate of candidates, or public issue is on the ballot. Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto.

(11) (a) Any publisher of newspapers or magazines, owner or lessor of billboards, or any other person, company, corporation, or business organization offering its communications or advertising services for hire to the public who receives funds for the purchase of advertising services or material, shall file with the registry a copy of the material or communication purchased which supports or opposes any slate of candidates or committee; a copy of the receipt for the funds paid; the name and address of each purchaser; and the source of the funds for the purchase if different than the purchaser.

(b) A radio or television station or network that receives funds for the purchase of advertising services or material that supports or opposes a slate of candidates or committee shall file with the registry a copy of the documentation of paid political campaign advertisements that is required to be maintained by the Federal Communications Commission, along with a cover letter from the manager of the station or network or the manager's designee.

(c) All information required to be reported by paragraphs (a) and (b) of this subsection shall be in the hands of the registry or postmarked not later than the thirtieth day following the primary, runoff primary, and regular elections that are held subsequent to the date that the broadcasting or printing of the advertisement occurs.

(d) The provisions of this subsection shall apply only to purchases of advertising services or material to support or oppose a slate of candidates for election to the offices of Governor and Lieutenant Governor.

(e) Notwithstanding KRS 121.990 and KRS 121A.990, penalties for violation of this subsection shall be assessed in accordance with the provisions of KRS 121.140(2).

(12) (a) For the purposes of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a candidate for a particular office, means the period of time beginning January 1 following a regular election for the office and ending December 31 following the next regular election for that office.

(b) For the purpose of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a constitutional amendment or public question which appears on the ballot, means the period of time beginning January 1 following a regular election for any state legislative office and ending December 31 following the next regular election for any state legislative office.

(c) If adequate and appropriate agency funds are available to implement this subsection, beginning on January 1, 2002, the option of electronic reporting shall be made available by the registry for all of the following:

1. Candidates for statewide office and slates of candidates that during the election cycle receive contributions or loans in the aggregate of twenty-five thousand dollars ($25,000) or more, or at any time have a balance in a campaign account or accounts in the aggregate of twenty-five thousand dollars ($25,000) or more;

2. Candidates for the General Assembly that during the election cycle receive contributions or loans in the aggregate of twelve thousand five hundred dollars ($12,500), or at any time have a balance in an aggregate of twelve thousand five hundred dollars ($12,500) or more; and

3. Campaign committees, political issues committees, permanent committees, registered fundraisers, contributing organizations, and individuals and entities making independent expenditures that during the election cycle receive contributions or loans in an aggregate of twenty-five thousand dollars ($25,000) or more, make expenditures in an aggregate of twenty-five thousand dollars ($25,000) or more, or at any time have a balance in an aggregate of twenty-five thousand dollars ($25,000) or more.

(13) Filers specified in subsection (12) of this section shall also continue to file required campaign finance reports in paper format until the registry deems it is no longer necessary. The paper copy shall continue to be the official version for audit and other legal purposes.

(14) Filers not required to file reports electronically, as set forth in this section, are strongly encouraged to do so voluntarily.

(15) The date that an electronic or on-line report shall be deemed to have been filed with the registry shall be the date on which it is received by the registry.

(16) All electronic or on-line filers shall affirm, under penalty of perjury, that the report filed with the registry is complete and accurate.

(17) Filers who submit computer disks which are not readable, cannot be copied, or are not accompanied by any requisite paper copy shall be deemed to not be in compliance with the requirements set forth in this section.

(18) No candidate is obligated to file any reports electronically.

Approved April 10, 2000

CHAPTER 399

(SB 70)

AN ACT proposing an amendment to Sections 201, 209, and 218 of the Constitution of Kentucky relating to abolition of the Railroad Commission.

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

Section 1. It is proposed that Section 201 of the Constitution of Kentucky be amended to read as follows:

No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company owning a parallel or competing line or structure, or acquire by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same; nor shall any railroad company or other common carrier combine or make any contract with the owners of any vessel that leaves or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying: Provided, however, That telephone companies may acquire by purchase or lease, or otherwise, and operate, parallel or competing exchanges, lines and structures, and the property of other telephone companies, if the~~[Railroad Commission or such other]~~ state ***agency***~~[commission]~~ as may have jurisdiction over such matters shall first consent thereto, and if, further, each municipality wherein such property or any part thereof is located shall also first consent thereto as to the property within its limits, but under any such acquisition and operation toll line connections with the property so acquired shall be continued and maintained under an agreement between the purchasing company and the toll line companies then furnishing such service, and in the event they are unable to agree as to the terms of such an agreement the~~[Railroad Commission or such other]~~ state ***agency***~~[commission]~~ as may have jurisdiction over such matters, shall fix the term of such agreement.

Section 2. It is proposed that Section 218 of the Constitution of Kentucky be amended to read as follows:

It shall be unlawful for any person or corporation, owning or operating a railroad in this State, or any common carrier, to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of property of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the

same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier, or person or corporation, owning or operating a railroad in this State, to receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the ***state agency as may have jurisdiction over such matters***~~[Railroad Commission]~~, such common carrier, or person or corporation owning or operating a railroad in this State, may in special cases, after investigation by the ***appropriate state agency***~~[commission]~~, be authorized to charge less for longer than for shorter distances for the transportation of passengers, or property; and the ***appropriate state agency***~~[commission]~~ may, from time to time, prescribe the extent to which such common carrier, or person or corporation, owning or operating a railroad in this State, may be relieved from the operation of this section.

Section 3. It is proposed that the present Constitution of Kentucky be amended by repealing the following section.

209 Railroad Commission -- Election, term, and qualifications of Commissioners -- Commissioners' districts -- Powers and duties -- Removal -- Vacancies.

Section 4. It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding, that:

(1) Any Railroad Commissioner serving in office at the time of the ratification of this amendment shall continue in office until the expiration of his current term.

(2) Upon the proposed amendment's approval by the voters of the Commonwealth, the statutory duties of the Railroad Commission shall continue in effect until the effective date of legislation enacted by the General Assembly to implement this amendment.

Section 5. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

Governor's signature not required

CHAPTER 400

(SB 116)

AN ACT relating to victims of crime.

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

Section 1. KRS 196.280 is amended to read as follows:

(1) ***(a)*** The Department of Corrections shall provide or contract with a private entity to provide to members of the public who have made a notification request, notification of the release of an incarcerated person from a ***penitentiary, as defined in KRS 197.010,*** juvenile detention facility, regional jail, or county jail. The ***warden,*** jailer***,*** or chief administrator, or a person designated by the ***warden,*** jailer***,*** or chief administrator, of a ***penitentiary,*** juvenile detention facility, regional jail, or county jail, shall make available to the Department of Corrections, or any private entity under contract with the Department of Corrections, the information necessary to implement this section in a timely manner ***and before the release of any incarcerated person from the penitentiary, juvenile detention facility, regional jail, or county jail***. The Department

of Corrections or the private entity under contract with the Department of Corrections shall be responsible for retrieving the information and notifying the requester in accordance with administrative regulations promulgated by the Department of Corrections.

(b) If an incarcerated person escapes from any penitentiary, juvenile detention facility, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall immediately provide the information necessary to implement this section.

(c) If, upon a hearing, a court releases an incarcerated person and the incarcerated person does not return to the penitentiary, juvenile detention facility, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall provide the information necessary to implement this section as soon as practicable.

(2) The Department of Corrections shall promulgate administrative regulations for the implementation of this section.

(3) Notwithstanding KRS 610.320 or 610.340, this section shall require the release of information relating to juveniles who have been charged with a felony offense pursuant to KRS Chapters 507, 508, 509, 510, or 515, or KRS 530.020, 530.064, or 531.310. The release of information shall be limited to the extent necessary to comply with the provisions of this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

A civil action may be maintained under this section against any person who commits the conduct prohibited under KRS 508.140 or 508.150. A civil action may be maintained under this section whether or not the individual who is alleged to have violated KRS 508.140 or 508.150 has been charged or convicted of the alleged crime. Liability under this section shall include the actual damages caused by the violation and may include punitive damages, court costs, and reasonable attorney's fees. An action under this section shall be brought within two (2) years of the last act of conduct in violation of this section.

Section 3. KRS 431.064 is amended to read as follows:

(1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapters 508 or 510, or charged with a crime involving a violation of a protective order issued pursuant to KRS 403.740 or 403.750, the court or agency having authority to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person:

(a) Is a threat to the alleged victim or other family or household member; and

(b) Is reasonably likely to appear in court.

(2) Before releasing a person arrested for or charged with a crime specified in subsection (1) of this section, the court shall make findings, on the record if possible, concerning the determination made in accordance with subsection (1), and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence or abuse and

to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

(a) An order enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim or other family or household member;

(b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;

(c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;

(d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;

(e) An order prohibiting the person from possession or consumption of alcohol or controlled substances;

(f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court; or

(g) Any combination of the orders set out in paragraphs (a) to (f).

(3) If conditions of release are imposed, the court imposing the conditions on the arrested or charged person shall:

(a) Issue a written order for conditional release; and

(b) Immediately distribute a copy of the order to pretrial services.

(4) The court shall provide a copy of the conditions to the arrested or charged person upon release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon request, the court shall hold a prompt hearing to review the conditions.

(6) The victim, as defined in KRS 421.500, of the defendant's alleged crime, or an individual designated by the victim in writing, shall be entitled to a free certified copy of the defendant's conditions of release, or modified conditions of release, upon request to the clerk of the court which issued the order releasing the defendant. The victim or the victim's designee may personally obtain the document at the clerk's office or may have it delivered by mail.

(7) ***The circuit clerk, or the circuit clerk's designee, in cooperation with the court that issued the order releasing the defendant, shall cause the conditions of release to be entered into the computer system maintained by the clerk and the Administrative Office of the Courts within twenty-four (24) hours following its filing, excluding weekends and holidays. Any modification of the release conditions shall likewise be entered by the circuit clerk, or the circuit clerk's designee.***

(8) The information entered under this section shall be accessible to any agency designated by the Kentucky State Police as a terminal agency for the Law Information Network of Kentucky.

(9) All orders issued under this section which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts. If the conditions of pre-trial release are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.

(10) Any person who violates any condition of an order issued pursuant to this section is guilty of a Class A misdemeanor.

Section 4. KRS 438.250 is amended to read as follows:

(1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.

(2) The written results of the testing shall be made available to each public servant, ***victim of the crime,*** criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis. ***The victim of the crime shall receive written results as provided in KRS 510.320.***

(3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.

(4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.

(5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

Section 5. KRS 510.320 is amended to read as follows:

(1) For purposes of this section, "human immunodeficiency virus test" means a test of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection.

(2) A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by

the judge of the availability of human immunodeficiency virus testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.

(3) When a defendant has been convicted of any offense in subsection (2) of this section, other provisions of law to the contrary notwithstanding, the sentencing court, regardless of any prior human immunodeficiency virus test, shall order the defendant to undergo a human immunodeficiency virus test, under the direction of the Cabinet for Health Services.

(4) (a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS Chapter 61.

(b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Cabinet for Health Services to the victim, or the parent or guardian of a victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing, and to any other agency as directed pursuant to KRS Chapter 214.

(c) ***The Cabinet for Health Services shall immediately provide to the victim the results of any human immunodeficiency virus test conducted under this section.***

(d) In addition, the Cabinet for Health Services shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this section which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail.

(5) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Cabinet for Health Services shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health-care and support services.

(6) The cost of testing under this section shall be paid by the defendant tested, unless the court has determined the defendant to be indigent.

(7) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

Approved April 11, 2000

CHAPTER 401

(SB 263)

AN ACT relating to public safety.

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

Section 1. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health Services, the controlled substances listed in this section are included in Schedule I:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters,

and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, ***or***~~[and]~~ salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxeridine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, ***including*** their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, ***or***~~[and]~~ salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphinol; Methyldesorphine; Methyldihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, ***or***~~[and]~~ salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3,4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone).

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.

Section 2. KRS 439.265 is amended to read as follows:

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

(3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.

(b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.

(4) ***If the defendant is a violent offender as defined in Section 3 of this Act, the sentence shall not be probated under this section.***

(5) If the defendant has been convicted of an offense under KRS[~~ 510.040,~~] 510.050, [~~510.070,~~]510.080, 530.020, 530.064, or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.

(6)[~~(5)~~] If the defendant has been convicted of an offense under KRS 510.060, 510.090, or 510.110, prior to considering the motion to suspend a sentence, the court shall order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

(7)[~~(6)~~] The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

(8)[~~(7)~~] The provisions of this section shall not apply where a sentence of death has been imposed.

Section 3. KRS 439.3401 is amended to read as follows:

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony

involving the death of the victim or serious physical injury to a victim, or rape in the first degree or sodomy in the first degree of the victim. The court shall designate in its judgment if the victim suffered death or serious physical injury.

(2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on ***probation or*** parole until he has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.

(3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on ***probation or*** parole until he has served at least eighty-five percent (85%) of the sentence imposed.

(4) A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.

(5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

(6) This section shall apply only to those persons who commit offenses after July 15, 1998.

(7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.

Section 4. KRS 510.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; ***or penetration of the anus of one person by a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by a foreign object in the course of the performance of generally recognized health care practices;***

(2) "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;

(3) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through

reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;

(4) "Mentally retarded person" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;

(5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of a controlled or intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;

(6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act;

(7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;

(8) "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs~~[or anus]~~ of one person by a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ~~[or anus]~~ by a foreign object in the course of the performance of generally recognized health care practices; and

(9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor.

Section 5. KRS 500.050 is amended to read as follows:

(1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.

(2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.

(3) For purposes of this section, an offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.

~~[(4) No offense in KRS Chapter 510 involving deviate sexual intercourse or sexual intercourse by the other spouse shall be prosecuted unless formally reported to the police within one (1) year after the commission of the offense. The report shall be signed by the victim of the offense.]~~

SECTION 6. A NEW SECTION OF KRS CHAPTER 510 IS CREATED TO READ AS FOLLOWS:

Unless a higher penalty is otherwise prescribed and notwithstanding any provision of this chapter to the contrary, a person who commits a third or subsequent misdemeanor offense under this chapter, except for violations of KRS 510.150, may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor.

Section 7. KRS 532.040 is amended to read as follows:

When a person is convicted of an offense, other than a capital offense ***or having been designated a violent offender as defined in Section 3 of this Act***, the court, where authorized by KRS Chapter 533 and where not prohibited by other provisions of applicable law, may sentence such person to a period of probation or to a period of conditional discharge as provided in that chapter. A sentence to probation or conditional discharge shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with KRS Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of conviction. In any case where the court imposes a sentence of probation or conditional discharge, it may also impose a fine as authorized by KRS Chapter 534.

SECTION 8. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for a person who has been designated as a violent offender as defined in Section 3 of this Act, unless such probation is granted in accordance with Section 3 of this Act.

Section 9. KRS 532.045 is amended to read as follows:

(1) As used in this section:

(a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;

(b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS~~[510.040,]~~ 510.050,~~[510.070,]~~ 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:

(a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;

(e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of three (3) years conditional discharge required by KRS 532.043.

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.

(5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the evaluation or treatment.

(6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(7) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.

(8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any evaluation performed pursuant to this section and afford a fair

opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the evaluation. It shall not be necessary to disclose the sources of confidential information.

(9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Section 10. KRS 439.510 is amended to read as follows:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet. Information shall be made available to sex offender treatment programs operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services who request the information in the course of conducting an evaluation or treatment pursuant to KRS ***439.265(6)***[~~439.265(5)~~], 532.045(3), or 532.050(4).

SECTION 11. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

(1) Upon receiving notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, any agency with the responsibility of entering domestic violence records into the Law Information Network of Kentucky shall notify:

(a) The court in the jurisdiction where the domestic violence order was issued under KRS 403.750; and

(b) The law enforcement agencies, as designated by the Kentucky State Police, that have jurisdiction in the county where the domestic violence order was issued and in the county of the victim's residence if different from the county where the domestic violence order was issued.

(2) The Kentucky State Police shall develop a protocol for providing notice to the required court and law enforcement agencies under subsection (1) of this section. Within the protocol, the Kentucky State Police shall designate which local law enforcement agencies are to receive notice in each county. A minimum of one (1) law enforcement agency shall be designated in each county.

(3) When a designated law enforcement agency for the county where the domestic violence order was issued or where the victim resides receives notice under subsection (1)(b) of this section, that agency shall make reasonable efforts to ensure that the petitioner who obtained the domestic violence order is notified that the respondent has purchased or attempted to purchase a firearm.

(4) Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities.

(5) This section shall apply only to domestic violence orders issued, or reissued, on or after the effective date of this Act.

Section 12. KRS 421.500 is amended to read as follows:

(1) As used in KRS 421.500 to 421.575, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate. If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS 421.500 to 421.575:

(a) The spouse;

(b) An adult child if paragraph (a) of this subsection does not apply;

(c) A parent if paragraphs (a) and (b) of this subsection do not apply;

(d) A sibling if paragraphs (a) through (c) of this subsection do not apply; and

(e) A grandparent if paragraphs (a) through (d) of this subsection do not apply.

(2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS 421.500 to 421.575. Communication between the victim and the special advocate shall be privileged.

(3) Law enforcement personnel shall ensure that victims receive information on available protective, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:

(a) Availability of crime victim compensation where applicable;

(b) Community based treatment programs;

(c) The criminal justice process as it involves the participation of the victim or witness;

(d) The arrest of the accused; and

(e) How to register to be notified when a person has been released from prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.

(4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045 or 524.055.

(5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:

(a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;

(b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if

possible, of judicial proceedings relating to their case, including***, but not limited to,*** the defendant's release on bond and any special conditions of release; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; ***and of a scheduled hearing for shock probation or for bail pending appeal and any orders resulting from that hearing;*** and

(c) The victim knows how to register to be notified when a person has been released from a prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;

(d) The victim receives information on available:

1. Protective, emergency, social, and medical services;

2. Crime victim compensation, where applicable;

3. Restitution, where applicable;

4. Assistance from a victim advocate; and

5. Community-based treatment programs; and

(e) The victim of crime may, pursuant to KRS 15.247, receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.

(6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, any conditions of release, a negotiated plea, and entry into a pretrial diversion program.

(7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.

(8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.

(9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.

(10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

Section 13. KRS 508.130 is amended to read as follows:

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

(1) (a) To "stalk" means to engage in an intentional course of conduct:

1. Directed at a specific person or persons;

2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and

3. Which serves no legitimate purpose.

(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

(2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. Constitutionally-protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.

(3) "Protective order" means:

(a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;

(b) A foreign protective order, as defined in KRS 403.7521(1);

(c) An order issued under KRS 431.064; and

(d) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

Section 14. KRS 508.140 is amended to read as follows:

(1) A person is guilty of stalking in the first degree,

(a) When he intentionally:

1. Stalks another person; and

2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

a. Sexual contact as defined in KRS 510.010;

b. Serious physical injury; or

c. Death; and

(b) 1. A protective order~~[or other judicial order as provided for in KRS Chapter 403]~~ has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or

2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or

3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor~~[, other than a violation of KRS 508.150,]~~ against the same victim or victims; or

4. The act or acts were committed while the defendant had a deadly weapon on or about his person.

(2) Stalking in the first degree is a Class D felony.

Section 15. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.540:

(1) "Cabinet" means the Justice Cabinet.

(2) ***(a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:***

1. Kidnapping, as set forth in KRS 509.040, except by a parent;

2. Unlawful confinement, as set forth in KRS 509.020, except by a parent;

3. Sex crime;

4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;

5. Promoting prostitution, as set forth in KRS 529.030, 529.040, and 529.050, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);

6. Use of a minor in a sexual performance, as set forth in KRS 531.310;

7. Sexual abuse, as set forth in KRS 510.120 and 510.130;

8. Any attempt to commit any of the offenses described in subparagraphs 1. to 7. of this paragraph; and

9. Solicitation to commit any of the offenses described in subparagraphs 1. to 7. of this paragraph.

(b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense.

(3) "Law enforcement agency" means any lawfully-organized investigative agency, police unit, or police force of federal, state, county, city, metropolitan government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws.

(4) "Registrant" means:

(a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:

1. A sex crime; or

2. A criminal offense against a victim who is a minor; or

(b) Any person required to register under subsection (6) or (7) of Section 16 of this Act; or

(c) Any sexually violent predator.

(5)~~[(3)]~~ "***Registrant***~~[Sex offender]~~ information" means the name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, ***fingerprints, a photograph,*** aliases used, residence,~~[vehicle registration data,]~~ a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of ***registrants***~~[sex offenders]~~.

(6)~~[(4)]~~ "Sex crime" means***:***

(a) A felony offense defined in KRS Chapter 510, KRS 530.020, 530.064,~~[or]~~ 531.310, ***or 531.320;***

(b) A felony attempt to commit a ***felony offense specified in paragraph (a) of this subsection; or***

(c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection~~[sex crime, or similar offenses in another jurisdiction]~~.

(7) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme.

Section 16. KRS 17.510 is amended to read as follows:

(1) The cabinet shall develop and implement a~~[sex offender]~~ registration system ***for registrants*** which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.

(2) ***A registrant shall, on or before the date of***~~[Any person eighteen (18) years of age or older at the time of the offense or any youthful offender who has committed or attempted to commit a sex crime shall, within ten (10) days after]~~ his ***or her*** release by the court, the parole board,~~[or]~~ the cabinet, ***or any detention facility,*** register with the appropriate local probation and parole office in the county in which he ***or she intends to reside***~~[resides]~~. ***The person in charge of the release shall facilitate the registration process.***

(3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register~~[under this section]~~ by the court at the time of sentencing and by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register~~[under this section]~~ has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky ***40601***.

(4) The court or the official shall order the person to***:***

(a) Register with the appropriate local probation and parole office***; and***

(b) ***Report to a local detention facility within forty-eight (48) hours. The facility shall obtain the person's fingerprints under KRS 441.046 and the person's photograph. The local detention facility shall send the fingerprints and the photograph to the Information Services Center, Kentucky State Police, Frankfort, Kentucky 40601***.

(5) ***(a)*** The appropriate probation and parole office shall send the ***registration form containing the registrant information as well as any special conditions imposed by the court or the Parole Board,***~~[form]~~ to the Information Services Center, Kentucky State Police, Frankfort, Kentucky ***40601***.

(b) ***The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.***

(c) ***Any employee of the Justice Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.***

(6) Any person who has~~[pled guilty or]~~ been convicted in a court of another state ***or territory***,~~[of]~~ a court of the United States, or a court martial of the United States Armed Forces of~~[the commission or attempt to commit]~~ a sex crime ***or criminal offense against a victim who is a minor, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws,*** shall be informed at the time of his ***or her*** relocation to Kentucky of the duty to register under this section***, and to comply with the requirements of subsection (4)(b) of this section,*** by the interstate compact officer of the Department of Corrections or the Department of Juvenile Justice. The officer shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained. The officer shall order the person to complete the registration form***, and the officer shall facilitate the registration process***. The officer shall then send the form***, including any special conditions imposed by the court or the Parole Board in the state of conviction*** to the Information Services Center, Kentucky State Police, Frankfort, Kentucky ***40601, and to the appropriate local probation and parole office in the county of the registrant's residence***.

(7) If a person is required to register~~[as a sex offender]~~ under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration~~[under this section]~~ if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section ***and the requirements of subsection (4)(b) of this section and shall register with the appropriate local probation and parole office in the county of employment, vocation, or schooling***. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational

benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

(8) The registration form shall be a written statement signed by the person which shall include ***registrant***~~[sex offender]~~ information.

(9) For purposes of this section and KRS 17.550 to 17.991, a post office box number shall not be considered an address.

(10) ***(a)*** If the residence address of any registrant changes, ***but the registrant remains in the same county,*** the person shall register, ***on or before the date***~~[within ten (10) days]~~ of the change of address, with the appropriate local probation and parole office in the county ***in which he or she resides***~~[of his new residence]~~.

(b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.

2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) days after the date of the change of address.

(c) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.

2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section~~[The appropriate local probation and parole office shall send this information to the Information Services Center, Kentucky State Police, Frankfort, Kentucky]~~.

(11) Any person required to register under this section who violates any of the provisions of this section is guilty of a Class ***D felony***~~[A misdemeanor]~~.

(12) Any person required to register under this section who knowingly provides false, misleading, or incomplete information is guilty of a Class ***D felony***~~[A misdemeanor]~~.

(13) ***(a)*** The ***Justice Cabinet shall verify the addresses of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under subsection (2) of Section 17 of this Act and at least once every calendar year for a person required to register under subsection (3) of Section 17 of this Act. If the Justice Cabinet determines that a person has moved without providing his or her new address to the appropriate local probation and parole office or offices as required under paragraphs (a) and (b) of subsection (10) of this section, the Justice Cabinet shall notify the appropriate local probation and parole office of the new address. The office shall then forward this information as set forth under subsection (5) of this section. The Justice Cabinet shall also notify the appropriate court, Parole Board, and appropriate corrections agency.***

(b) When the appropriate court, Parole Board, or appropriate corrections agency receives notice from the Justice Cabinet, or any other source, that a person has

failed to comply with any of the registration requirements under this section, then the court, Parole Board, or corrections agency:

1. Shall consider revocation of the parole, probation, or conditional discharge of any person released under its authority; and

2. Shall notify the appropriate county attorney for prosecution[~~appropriate court, parole authority, or corrections agency shall be immediately notified to consider revocation of the parole, probation, or conditional discharge of any person released under its authority who has failed to register within the prescribed time period as required by this section.~~

~~(14) The statement required by subsection (6) of this section shall not be open to inspection by the public and may only be accessible to law enforcement agencies.~~

~~(15) Any person who disseminates, receives, or otherwise uses or attempts to use information in the registry database, knowing the dissemination, receipt, or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor~~].

Section 17. KRS 17.520 is amended to read as follows:

(1) ***A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time under this section.***

(2) (a) Lifetime registration is required for:

1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;

2. Any person who has been convicted of unlawful confinement, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;

3. Any person convicted of a sex crime:

a. Who has one (1) or more prior convictions of a criminal offense against a victim who is a minor; or

b. Who has one (1) or more prior sex crime convictions;

4. Any person who has been convicted of two (2) or more criminal offenses against a victim who is a minor;

5. Any person who has been convicted of:

a. Rape in the first degree under KRS 510.040; or

b. Sodomy in the first degree under KRS 510.070; and

6. Any sexually violent predator.

(3) All other registrants are required to register for ten (10) years following discharge from confinement or ten (10) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.

(4) If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, or conditional discharge, the registration requirements are tolled during the reincarceration.

(5) An offender who has pled guilty or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.

(6) The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, Kentucky State Police, Frankfort, Kentucky 40601[~~Persons classified as high risk sex offenders as provided by subsection (3) of KRS 17.550 shall remain registered for the lifetime of the offender, unless redesignated pursuant to KRS 17.578.~~

~~(2) Persons classified as low or moderate risk sex offenders shall remain registered for a period of ten (10) years following their discharge from confinement or ten (10) years following their maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.~~

~~(3) If a sex offender is reincarcerated for another offense or as the result of having violated the terms of probation, parole, or conditional discharge, the registration requirements are tolled during the subsequent incarceration~~].

Section 18. KRS 17.550 is amended to read as follows:

As used in KRS 17.550 to 17.991, the following definitions shall apply:

(1) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;

(2) "Sex offender" means a person who has been convicted of a sex crime as defined in KRS 17.500[~~ who suffers from a mental or behavioral abnormality or personality disorder characterized by a pattern or repetitive, compulsive behavior that makes the offender a threat to public safety~~];

(3)[~~ "High risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a high risk of recommitting a sex crime. This term means the same as a sexually violent predator as defined by 42 U.S.C. sec. 14071. A person determined to be a sexually violent predator in a federal jurisdiction or in another state will be classified as a high risk sex offender for the purpose of this section;~~

~~(4) "Moderate risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Advisory Board that have been demonstrated to correlate with a moderate risk of recommitting a sex crime;~~

~~(5) "Low risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a low risk of recommitting a sex crime;~~

~~(6) "Mental or behavioral abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that individual to the commission of a sex crime;~~

~~(7) "Personality disorder" means a condition where a person exhibits personality traits which are inflexible and maladaptive and cause either significant functional impairment or subjective distress;~~

~~(8)~~] "***Approved***[~~Certified~~] provider" means a mental health professional ***licensed or*** certified ***in Kentucky whose scope of practice includes providing mental health treatment services and who is approved*** by the Sex Offender Risk Assessment Advisory Board***, under administrative regulations promulgated by the board,*** to ***provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020***[~~conduct sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessment pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045~~]; and

(4)[~~(9)~~] "Victim" means victim as defined by KRS 421.500.

SECTION 19. A NEW SECTION OF KRS 17.550 TO 17.991 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky State Police shall establish a website available to the public. The website shall display:

(a) The registrant information, except for information that identifies a victim, fingerprints, and Social Security numbers, obtained by the Information Services Center, Kentucky State Police, under Section 16 of this Act; and

(b) The sex offender information, except for information that identifies a victim, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Kentucky State Police, under KRS 17.510 prior to the effective date of this Act.

The website shall be updated every day except for Saturdays, Sundays, and state holidays.

(2) The information pertaining to an individual shall be maintained on the website so long as that individual is registered in accordance with KRS 17.500 to 17.540.

(3) The following language shall be prominently displayed on the website: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEBSITE TO HARASS A PERSON IDENTIFIED ON THIS WEBSITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEBSITE."

(4) (a) Any Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.

(b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.

(5) The Justice Cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the website created in this section and the location of public access to the website in the county where the person resides.

Section 20. KRS 17.552 is amended to read as follows:

No person shall conduct ***comprehensive sex offender presentence evaluations or treatment***~~[sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045,]~~ without first obtaining ***approval***~~[a certification]~~ from the Sex Offender Risk Assessment Advisory Board.

Section 21. KRS 17.554 is amended to read as follows:

(1) A Sex Offender Risk Assessment Advisory Board is hereby created. The board shall ***approve***~~[certify]~~ providers who shall conduct ***comprehensive sex***~~[sexual]~~ offender ***presentence evaluations and treatment***~~[risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045]~~.

(2) The board shall develop a ***comprehensive sex offender presentence evaluation***~~[risk assessment procedure]~~ that shall be used by ***approved***~~[certified]~~ providers in assessing the risk of recommitting a sex crime by a sex offender,~~[and]~~ the threat posed to public safety***, amenability to sex offender treatment, and the nature of the required sex offender treatment***. The ***evaluation***~~[procedure]~~ shall be based upon, but not limited to the following factors:

(a) Criminal history;

(b) Nature of the offense;

(c) Conditions of release that minimize risk;

(d) Physical conditions that minimize risk;

(e) Psychological or psychiatric profiles;

(f) Recent behavior that indicates an increased risk of recommitting a sex crime;

(g) Recent threats or gestures against persons or expressions of an intent to commit additional offenses; and

(h) Review of the victim impact statement.

Section 22. KRS 17.558 is amended to read as follows:

(1) The board may issue, refuse to issue, reissue, or renew a provider ***approval***~~[certificate]~~, or may probate, suspend, or revoke the ***approval***~~[certificate]~~ of a provider~~[who conducts sexual offender assessments]~~.

(2) The board shall revoke the ***approval***~~[certificate]~~ of a provider~~[who conducts sexual offender assessments]~~ while his ***or her approval***~~[certification]~~ is suspended.

Section 23. KRS 17.560 is amended to read as follows:

(1) Prior to the refusal to issue, renew, probate, suspend, or revoke the ***approval***~~[certificate]~~ 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***~~[a certified]~~ 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***~~[certified]~~ provider.

(4) Any final order of the board may be appealed to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 24. KRS 17.564 is amended to read as follows:

(1) The board may promulgate all reasonable administrative regulations not inconsistent with this chapter that are necessary to carry into effect the purposes of KRS 17.550 to 17.991.

(2) The board may promulgate administrative regulations requiring mandatory continuing education for ***approved***~~[certified]~~ providers~~[to continue conducting sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045,]~~ as a condition for obtaining their renewal ***approvals***~~[certificates]~~.

Section 25. KRS 17.566 is amended to read as follows:

Only persons ***approved***~~[certified]~~ under KRS 17.550 to 17.991 may be known as ***approved***~~[certified]~~ providers in the Commonwealth of Kentucky, or use any words or letters or assume any titles or description tending to convey the impression that they are ***approved***~~[certified]~~ providers~~[who conduct sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045]~~.

Section 26. KRS 17.574 is amended to read as follows:

(1) Any statutes to the contrary notwithstanding, all state or local detention or correctional facilities, hospitals, or institutions shall forward all relevant information pertaining to a sex offender to be discharged, paroled, or released to the ***approved***~~[certified]~~ provider for review prior to the release or discharge for consideration in making recommendations to the sentencing court. The relevant information shall include but is not limited to:

(a) The institutional record;

(b) The medical record including all psychological records; and

(c) The treatment record.

(2) All confidential records provided pursuant to this section shall remain confidential, unless otherwise ordered by a court or by another person duly authorized to release the information.

Section 27. KRS 17.576 is amended to read as follows:

Communications made in the course of ***comprehensive sex offender presentence evaluations or treatment***[~~sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, or 532.045~~] to the ***approved***[~~certified~~] provider and any employee of the ***approved***[~~certified~~] provider who is assigned to assist in the assessments shall be privileged from disclosure in any civil or criminal proceeding, ***other than to determine sentence,***unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The sexual offender shall be informed in writing of the limits of the privilege created in this section.

Section 28. KRS 17.578 is amended to read as follows:

[~~(1)~~]A person ***required to register under the provisions of Sections 16 and 17 of this Act shall be relieved of any further duty to register only upon reversal of the underlying conviction or upon a pardon***[~~designated a "high risk sex offender" and who is required to register for his lifetime pursuant to the provisions of this chapter may be relieved of any further duty to register upon the grant of a petition for relief by the sentencing court entered no earlier than ten (10) years after the date of discharge from probation, parole, or release from incarceration, whichever is most recent. If the petition is denied, the person may petition for relief from the high risk designation every five (5) years thereafter.~~

~~(2) Upon receipt of the petition for relief, the sentencing court shall request an updated assessment to a certified provider.~~

~~(3) The sentencing court shall conduct a second hearing as provided in KRS 17.570~~].

SECTION 29. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

No registrant, as defined in Section 15 of this Act, who is placed on probation, parole, or any form of supervised release, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, or licensed day care facility. The measurement shall be taken in a straight line from the nearest wall of the school to the nearest wall of the registrant's place of residence.

SECTION 30. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

The following shall be immune from suit for good faith conduct under KRS 17.500 to 17.540 and KRS 17.550 to 17.991:

(1) Law enforcement agencies including the Justice Cabinet;

(2) Independent contractors acting under the direction of law enforcement agencies;

(3) State and county officials;

(4) Approved providers, as defined under Section 18 of this Act; and

(5) Employees of any of the agencies, entities, and persons identified in subsections (1), (2), (3), and (4) of this section.

Section 31. KRS 197.410 is amended to read as follows:

(1) A person is considered to be a "sexual offender" as used in this chapter when he ***or she has been adjudicated guilty of a sex crime, as defined in Section 15 of this Act, or any similar offense in another jurisdiction***[~~:~~

~~(a) Has been adjudicated guilty of any felony described in KRS Chapter 510; or~~

~~(b) Has been adjudicated guilty of any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510; or~~

~~(c) Has been adjudicated guilty of any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510; or~~

~~(d) Has been adjudicated guilty of a felony offense under KRS 530.020; or~~

~~(e) Has been adjudicated guilty of a felony offense relating to sexual activity under KRS 530.064; or~~

~~(f) Has been adjudicated guilty of a felony offense under KRS 531.310]~~.

(2) A sexual offender becomes an "eligible sexual offender" when the sentencing court or department officials, or both, determine that the offender:

(a) Has demonstrated evidence of a mental, emotional, or behavioral disorder, but not active psychosis or mental retardation; and

(b) Is likely to benefit from the program.

(3) "Department" is the Department of Corrections.

Section 32. KRS 197.440 is amended to read as follows:

Communications made in the application for or in the course of a sexual offender's diagnosis and treatment in the program between a sexual offender or member of the offender's family and any employee of the department who is assigned to work in the program, ***or approved provider, as defined in Section 18 of this Act,*** shall be privileged from disclosure in any civil or criminal proceeding, ***other than proceedings to determine the sentence,*** unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the offender should continue to participate in the program. The offender shall be informed in writing of the limits of the privilege created in this section.

Section 33. KRS 439.265 is amended to read as follows:

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

(3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.

(b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.

(4) If the defendant has been convicted of an offense under KRS 510.040, 510.050, 510.070, 510.080, 530.020, 530.064, or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.

(5) ***When a defendant has been convicted of a sex crime, as defined in Section 15 of this Act, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation***[~~If the defendant has been convicted of an offense under KRS 510.060, 510.090, or 510.110, prior to considering the motion to suspend a sentence, the court shall order an evaluation~~] of the defendant[~~ to be~~] conducted by the sex offender treatment program operated or approved by the Department of Corrections or the ***Sex Offender Risk Assessment Advisory Board***[~~Department for Mental Health and Mental Retardation Services~~]. The ***comprehensive sex offender presentence*** evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

(6) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

(7) The provisions of this section shall not apply where a sentence of death has been imposed.

Section 34. KRS 532.045 is amended to read as follows:

(1) As used in this section:

(a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS

520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;

(b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.040, 510.050, 510.070, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:

(a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;

(e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of three (3) years conditional discharge required by KRS 532.043.

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of ***the comprehensive sex offender presentence***~~[an]~~ evaluation of the offender performed by ***an approved provider, as defined in Section 18 of this Act or*** the~~[sex offender treatment program operated or approved by the]~~ Department of Corrections~~[or the Department for Mental Health and Mental Retardation Services]~~. The court shall use the ***comprehensive sex offender presentence*** evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the ***Sex Offender Risk Assessment Advisory Board***~~[Department for Mental Health and Mental Retardation Services]~~.

(5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the ***comprehensive sex offender presentence*** evaluation or treatment.

(6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(7) ***The comprehensive sex offender presentence evaluation and*** all communications relative to the ***comprehensive sex offender presentence*** evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440***. The comprehensive sex offender presentence evaluation shall be filed under seal*** and shall not be made a part of the court record subject to review in appellate proceedings ***and shall not be made available to the public***.

(8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any ***comprehensive sex offender presentence*** evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel ***and the Commonwealth's attorney*** a copy of the ***comprehensive sex offender presentence*** evaluation. It shall not be necessary to disclose the sources of confidential information.

(9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Section 35. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of ***a sex crime, as defined in Section 15 of this Act***[~~any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall~~], prior to determining the sentence, ***the court shall*** order ***a comprehensive sex offender presentence***[~~an~~] evaluation of the defendant to be conducted by ***an approved provider, as defined in Section 18 of this Act or*** the[~~ sexual offender treatment program operated or approved by the~~] Department of Corrections[~~ or the Department for Mental Health and Mental Retardation Services~~]. The ***comprehensive sex offender presentence*** evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the ***comprehensive sex offender presentence*** evaluation shall be furnished to the ***court, the Commonwealth's attorney,***[~~Commonwealth~~] and to ***counsel for*** the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the ***comprehensive sex offender presentence*** evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any ***comprehensive sex offender presentence*** evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the ***comprehensive sex offender presentence*** evaluation or treatment.

(5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.

(6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 36. KRS 532.100 is amended to read as follows:

(1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.

(2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.

(3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.

(4) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1) ***or a crime under subsection (11) or (12) of Section 16 of this Act***, the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this subsection shall be granted a waiver by the commissioner of the Department of Corrections.

(5) The jailer of a county in which a Class D felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.

(6) Class D felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).

(7) State prisoners, excluding the Class D felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

Section 37. The provisions of Sections 15 to 30 of this Act shall apply to all persons who, after the effective date of this Act, are required under Section 16 of this Act to become registrants, as defined in Section 15 of this Act.

Section 38. The following KRS sections are repealed:

17.570 Order for sex offender risk assessment -- Cost -- Hearing -- Appeal -- Notice to sheriff upon release of sex offender.

17.572 Notification for high, moderate, and low risk sex offenders.

510.310 Evidence of violation inadmissible in child custody or visitation suit -- Exception.

Section 39. KRS 508.032 is amended to read as follows:

(1) If ***a person commits***~~[an individual is found guilty or pleads guilty to]~~ a third or subsequent offense of assault in the fourth degree ***under***~~[pursuant to]~~ KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, ***then the person may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall***

indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor~~[the penalty shall be enhanced by one (1) degree above the penalty otherwise provided for the offense]~~. The victim in the second or subsequent offense is not required to be the same person who was assaulted in the prior offenses in order for the provisions of this section to apply.

(2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered by a court of competent jurisdiction.

Section 40. Whereas the federal government has mandated that the Commonwealth immediately enact public safety legislation contained in Sections 15 to 38 of this Act or lose federal funding, an emergency is declared to exist, and Sections 15 to 38 of this Act take effect upon this Act's passage and approval by the Governor or upon this Act otherwise becoming law.

Approved April 11, 2000

CHAPTER 402

(SB 130)

AN ACT relating to volunteer fire department aid.

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

Section 1. KRS 95A.262 is amended to read as follows:

(1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Health Services, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

(2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot ***eight thousand dollars ($8,000)***~~[six thousand five hundred dollars ($6,500)]~~ annually to each qualifying department, and beginning on July 1 of ***2001***~~[1999]~~, the commission shall allot ***eight thousand two hundred fifty dollars ($8,250)***~~[seven thousand five hundred dollars ($7,500)]~~ annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars ($500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative

regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to purchase workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

(3) There shall be allotted two hundred thousand dollars ($200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars ($200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.

(4) Applications for funding low-interest loans and firefighters' training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.

(7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five

percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.

(8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.

(9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:

(a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;

(b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;

(c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;

(d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;

(e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;

(f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

(g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.

(10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars ($10,000) or the actual amount of the loss, whichever is less.

(11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.

(12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.

(13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.

(14) There shall be allotted each year of the 1992-93 biennium one million dollars ($1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars ($1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund,

which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Approved April 14, 2000

CHAPTER 403

(HB 144)

AN ACT relating to services for persons with mental retardation and other developmental disabilities, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:

(1) Assistance and support to citizens of the Commonwealth with mental retardation and other developmental disabilities are necessary and appropriate roles of state government;

(2) The current system of services and supports to persons with mental retardation and other developmental disabilities suffers from a lack of program coordination, funding, controls on quality of care, and review and evaluation;

(3) As part of the review and evaluation, it is necessary to require:

(a) Identification, development, and provision of services and supports for persons with mental retardation and other developmental disabilities using available institutional care as appropriate and integrated with community-based services designed to be inclusive, responsive to individual needs, and protective of the individual's legal rights to equal opportunity;

(b) Review of current funding mechanisms to determine the best method to establish an array of community-based comprehensive services using facility-based outpatient services and supports that are available through public and private sectors including nonprofit and for-profit service providers that will allow persons with mental retardation and other developmental disabilities the opportunity to participate in community life. The review shall include consideration of the

availability of residential alternatives, employment opportunities, and opportunities for participation in community-based social and recreational activities; and

(c) Development of funding strategies to promote appropriate use of community-based services and supports that provide:

1. Flexibility for persons with mental retardation and other developmental disabilities;

2. Distribution of available funds among all interested service providers, including nonprofit and for-profit service providers, based on the needs of the person with mental retardation and other developmental disabilities; and

3. Efficiency and accountability to the general public;

(4) Sections 1 to 3 of this Act shall be construed to protect and to promote the continuing development and maintenance of the physical, mental, and social skills of persons with mental retardation and other developmental disabilities; and

(5) Sections 1 to 3 of this Act shall not be construed:

(a) To alter any requirements or responsibilities that are mandated by any state or federal law;

(b) To relieve any organizational unit or administrative body of its duties under state or federal law; or

(c) To transfer among state organizations or administrative bodies any responsibilities, powers, or duties that are mandated by state or federal law.

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disabilities. The commission shall consist of:

(a) The secretary of the Cabinet for Health Services;

(b) The secretary of the Cabinet for Families and Children;

(c) The commissioner of the Department for Mental Health and Mental Retardation Services;

(d) The commissioner of the Department for Medicaid Services;

(e) The commissioner of the Department of Vocational Rehabilitation;

(f) The director of the University Affiliated Program at the Interdisciplinary Human Development Institute of the University of Kentucky;

(g) The director of the Developmental Disabilities Council;

(h) Two (2) members of the House of Representatives, appointed by the Speaker of the House;

(i) Two (2) members of the Senate, appointed by the Senate President; and

(j) Public members, appointed by the Governor within ninety (90) days of the effective date of this Act, as follows:

1. Three (3) family members, at least one (1) of whom shall be a member of a family with a child with mental retardation or other developmental disabilities, and one (1) of whom shall be a member of a family with an adult with mental retardation or other developmental disabilities;

2. Three (3) persons with mental retardation or other developmental disabilities;

3. Two (2) business leaders;

4. Three (3) direct service providers representing the Kentucky Association of Regional Programs and the Kentucky Association of Residential Resources; and

5. One (1) representative of a statewide advocacy group.

The six (6) appointments made under subparagraph 1. and subparagraph 2. of this paragraph shall be chosen to reflect representation from each of Kentucky's six (6) congressional districts.

(2) The secretary of the Cabinet for Health Services shall serve as chair of the commission.

(3) Members defined in paragraphs (a) to (h) of subsection (1) of this section shall serve during their terms of office. All public members appointed by the Governor shall serve a four (4) year term and may be reappointed.

(4) All public members of the commission shall receive twenty-five dollars ($25) per day for attending each meeting. All commission members shall be reimbursed for necessary travel and other expenses actually incurred in the discharge of duties of the commission.

SECTION 3. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

(1) The commission created in Section 2 of this Act shall meet at least quarterly during the 2000-2001 biennium, at least biennially thereafter, or upon the call of the chair, the request of four (4) or more members, or the request of the Governor.

(2) The commission shall serve in an advisory capacity to accomplish the following;

(a) Advise the Governor and the General Assembly concerning the needs of persons with mental retardation and other developmental disabilities;

(b) Develop a statewide strategy to increase access to community-based services and supports for persons with mental retardation and other developmental disabilities. The strategy shall include:

1. Identification of funding needs and related fiscal impact; and

2. Criteria that establishes priority for services for individuals approved for slots that consider timeliness and service needs;

(c) Assess the need and potential utilization of specialized outpatient clinics for medical, dental, and special therapeutic services for persons with mental retardation and other developmental disabilities;

(d) Evaluate the effectiveness of state agencies and public and private service providers, including nonprofit and for-profit service providers in:

1. Dissemination of information and education;

2. Providing outcome oriented services; and

3. Efficiently utilizing available slots and resources, including blended funding streams;

(e) Develop a recommended comprehensive ten (10) year plan for placement of qualified persons in the most integrated setting appropriate to their needs;

(f) Recommend an effective quality assurance and consumer satisfaction monitoring program that includes recommendations as to the appropriate role of family members, persons with mental retardation and other developmental disabilities, and advocates in quality assurance efforts; and

(g) Advise the Governor and the General Assembly on whether the recommendations should be implemented by administrative regulations or proposed legislation for the 2002 General Assembly.

(3) Within six (6) months after the effective date of this Act, the secretary of the Cabinet for Health Services shall present the plan to the Governor and the members of the General Assembly.

(4) The commission shall review the plan annually and shall submit annual updates no later than October 1 to the Governor and the Legislative Research Commission.

(5) The commission shall cease to exist four (4) years after the effective date of this Act unless otherwise reauthorized by the General Assembly.

SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Supports for Community Living waiver program" means funding from the Department for Medicaid Services to serve individuals with mental retardation or other developmental disabilities who qualify for intermediate care and choose to live in a community-based setting; and

(b) "Slots" means the dedication of provider or financial resources for services to persons with mental retardation or other developmental disabilities.

(2) The Department for Medicaid Services shall develop and implement flexible reimbursement and payment strategies that reflect the individually determined needs for services and supports by persons with mental retardation and other developmental disabilities participating in the Supports for Community Living waiver program.

(3) The Department for Medicaid Services shall allocate slots to the fourteen (14) community mental health regions based on percentage of total population.

(4) The Department for Medicaid Services shall reallocate underutilized slots to address statewide needs and shall reallocate slots in emergency situations to address unmet needs for services and supports.

(5) Within six (6) months after the effective date of this Act, the Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.

Section 5. KRS 347.010 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:

(1) A ***comprehensive and outcome-driven***~~[complete, effective]~~ system of services and ***supports***~~[care]~~ provided to persons with developmental disabilities must be ***designed,*** coordinated, consistent, ***and*** monitored~~[and designed]~~ to meet the ***self-determined*** needs of those persons as well as to protect their legal and human rights;

(2) The current system of services and ***supports***~~[care]~~ for persons with developmental disabilities needs substantial improvement in order to provide an array of services ***including person-driven community-based services and supports***~~[which allows active treatment and habilitation]~~;

(3) It is necessary to require:

(a) The identification***,***~~[and evaluation of, and the]~~ development***,***~~[and]~~ provision***, and evaluation*** of services and ***supports***~~[active treatment]~~ for~~[,]~~ persons with developmental disabilities;

(b) ***Inter and intra-agency planning, development, implementation, and evaluation of services and supports that are the most community inclusive, responsive to individual needs, and that assure legal and human rights for equal opportunity***~~[Interagency development, coordinated planning and implementation of active treatment and service programs which are the least restrictive and individually appropriate for persons with developmental disabilities, while safeguarding their legal and human rights]~~;

(c)~~[Development and provision of programs in the public and private sectors for the habilitation and active treatment of persons with developmental disabilities; and~~

~~(d)]~~ Establishment of an array of ***community-based*** comprehensive services and ***supports, provided by***~~[residential alternatives in the]~~ public and private sectors ***that***~~[to]~~ allow persons with developmental disabilities the ***right to participate in the life of the community, including residential alternatives, employment, and social and recreational activities***~~[opportunity to live in the least restrictive, individually appropriate environment]~~; and

(d) Funding strategies that promote the development of community-based services and supports that demonstrate:

1. Flexibility for the person with developmental disabilities;

2. Distribution of available funds among all interested service providers based on the needs of the person with developmental disabilities; and

3. Efficiency and accountability to the general public.

(4) The provisions of this chapter shall be construed to protect and promote the continuing development and maintenance of physical, mental***,*** and social skills of persons with developmental disabilities; ***and***

(5) The provisions of this chapter shall not alter requirements and responsibilities mandated under any state or federal act, relieve any organizational unit or administrative body of its duties under ***those***~~[said]~~ acts***,*** or transfer among state organizations or administrative bodies any responsibilities, powers***,*** or duties mandated by ***those***~~[said]~~ acts.

Section 6. Whereas the current methods of providing access to community-based services and supports to persons with mental retardation and other developmental disabilities are inefficient and ineffective; and whereas there is a fundamental need for a comprehensive evaluation of the efforts of state agencies to provide needed services; and whereas there is a need to increase access to community-based services for persons with mental retardation and other developmental disabilities, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 14, 2000