

1 AN ACT relating to reorganization and making an appropriation therefor.

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

3 ➔Section 1. KRS 15.010 is amended to read as follows:

4 (1) The Attorney General is the head of the Department of Law.

5 (2) The Department of Law shall include the following major organizational units:

6 (a) ***Department of Criminal Investigations***~~[Criminal Appellate Division];~~

7 (b) ***Office of*** Consumer Protection~~[Division];~~

8 (c) ***Office of Criminal Appeals***~~[Special Investigations Division];~~

9 (d) ***Office of*** Special Prosecutions~~[Division];~~

10 (e) ***Office of*** Prosecutors Advisory Council~~[Services Division];~~

11 (f) ***Office of*** Medicaid Fraud and Abuse Control~~[Division];~~

12 (g) ***Office of*** Civil and Environmental Law~~[Division];~~

13 (h) ***Office of*** Victims Advocacy~~[Division];~~

14 (i) ~~[Administrative Hearings Division;~~

15 (j) ~~]Office of Rate Intervention;~~

16 (j)~~(k)~~ ***Office of*** Administrative Services;

17 (k) ***Office of Senior Protection; and***

18 (l) ***Office of Child Abuse Prevention and Prosecution***~~[Division; and~~

19 (l) ~~]Financial Integrity Enforcement Division].~~

20 ***(3) The Department of Criminal Investigations shall be headed by a commissioner,***
 21 ***who shall be appointed by and serve at the pleasure of the Attorney General. The***
 22 ***offices outlined in subsection (2) of this section shall be headed by executive***
 23 ***directors, who shall be appointed by and serve at the pleasure of the Attorney***
 24 ***General.***

25 ➔Section 2. KRS 13B.010 is amended to read as follows:

26 As used in this chapter, unless the context requires otherwise:

27 (1) "Administrative agency" or "agency" means each state board, bureau, cabinet,

1 commission, department, authority, officer, or other entity in the executive branch
2 of state government authorized by law to conduct administrative hearings.

3 (2) "Administrative hearing" or "hearing" means any type of formal adjudicatory
4 proceeding conducted by an agency as required or permitted by statute or regulation
5 to adjudicate the legal rights, duties, privileges, or immunities of a named person.

6 (3) "Party" means:

7 (a) The named person whose legal rights, duties, privileges, or immunities are
8 being adjudicated in the administrative hearing;

9 (b) Any other person who is duly granted intervention in an administrative
10 hearing; and

11 (c) Any agency named as a party to the adjudicatory proceeding or entitled or
12 permitted by the law being enforced to participate fully in the administrative
13 hearing.

14 (4) "Agency head" means the individual or collegial body in an agency that is
15 responsible for entry of a final order.

16 (5) "Recommended order" means the whole or part of a preliminary hearing report to an
17 agency head for the disposition of an administrative hearing.

18 (6) "Final order" means the whole or part of the final disposition of an administrative
19 hearing, whenever made effective by an agency head, whether affirmative, negative,
20 injunctive, declaratory, agreed, or imperative in form.

21 (7) "Hearing officer" means the individual, duly qualified and employed pursuant to
22 this chapter, assigned by an agency head as presiding officer for an administrative
23 hearing or the presiding member of the agency head.

24 (8) "~~Office~~~~[Division]~~" means the ***Office of Civil and Environmental Law***~~[Division of~~
25 ~~Administrative Hearings]~~ in the Office of the Attorney General~~[created pursuant to~~
26 ~~KRS 15.111]~~.

27 ➔Section 3. KRS 13B.030 is amended to read as follows:

1 (1) An agency head may exercise all powers conferred on an agency relating to the
2 conduct of administrative hearings, and he may delegate conferred powers to a
3 hearing officer or a member of a collegial body that serves as an agency head, or he
4 may delegate conferred powers to a hearing officer to conduct an administrative
5 hearing before a hearing panel, reserving the authority to render a recommended
6 order to that panel. An agency head may not, however, delegate the power to issue a
7 final order unless specifically authorized by statute, or unless disqualified in
8 accordance with KRS 13B.040(2).

9 (2) (a) In securing hearing officers as necessary to conduct administrative hearings
10 under the jurisdiction of the agency, an agency may:

- 11 1. Employ hearing officers;
- 12 2. Contract with another agency for hearing officers; or
- 13 3. Contract with private attorneys through personal service contract.

14 (b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this
15 section only if the Attorney General has first determined that the Attorney
16 General's Office cannot provide the needed hearing officers to the agency. If
17 the Attorney General determines that the Attorney General's Office can
18 provide the needed hearing officers to the agency, the agency shall use the
19 hearing officers provided by the Attorney General's Office. The expenses
20 incurred by the Attorney General's Office in providing the hearing officers to
21 the agency shall be paid to the Attorney General's Office by the agency in the
22 following manner:

- 23 1. The amount to be paid by the agency to the Attorney General's Office
24 shall be established by vouchers submitted by the Attorney General's
25 Office to the agency which shall be promptly paid by the agency, at the
26 beginning of, at the end of, or at any time during the provision of the
27 hearing officers by the Attorney General's Office.

1 2. The expenses to be paid to the Attorney General's Office shall be
2 calculated according to the amount of time spent by the salaried hearing
3 officers of the Attorney General's Office in providing the services. The
4 charge for time spent shall not exceed twenty-five percent (25%) more
5 than the amount allowed for a sole practitioner under personal service
6 contract. The Attorney General may require payment in advance of the
7 provision of the requested services based on his calculation of the
8 amount of time that will be spent by the salaried hearing officers of the
9 Attorney General's Office in providing the services. The agency shall be
10 reimbursed for any overpayment at the conclusion of the provision of
11 services by the Attorney General's Office.

12 (3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and
13 the employing agency, with the advice of the office~~[division]~~, may find necessary to
14 assure competency in the conduct of an administrative hearing. The qualifications in
15 this subsection shall not, however, apply to a member of a board, commission, or
16 other collegial body who may serve as a hearing officer in his capacity as a member
17 of the collegial body.

18 (4) All hearing officers, including members of collegial bodies who serve as hearing
19 officers, shall receive training necessary to prepare them to conduct a competent
20 administrative hearing. The training shall pertain to the conduct of administrative
21 hearings generally and to the applications of the provisions of this chapter,
22 specifically. The office~~[division]~~ shall establish by administrative regulation
23 minimum standards concerning the length of training, course content, and instructor
24 qualifications. Required training shall not exceed eighteen (18) classroom hours for
25 initial training and six (6) classroom hours per year for continuing training. Actual
26 training may be conducted by an agency or any other organization, if the training
27 program offered has been approved by the office~~[division]~~ as meeting minimum

1 standards.

2 ➔Section 4. KRS 15.111 is amended to read as follows:

3 ~~[(1)]~~The *Office of Civil and Environmental Law in the Office of the Attorney*
4 *General*~~[Division of Administrative Hearings is created in the Office of Attorney~~
5 ~~General.~~

6 ~~(2) This division~~ shall have the following responsibilities:

7 ~~(1)(a)~~ Employing and maintaining a pool of hearing officers for assignment to the
8 individual agencies at their request, for the conduct of administrative hearings. The
9 Attorney General's office may also employ other staff as necessary to carry out
10 functions and responsibilities assigned by KRS Chapter 13B;

11 ~~(2)(b)~~ Reviewing and approving or disapproving requests from agencies for waivers
12 from provisions of KRS Chapter 13B;

13 ~~(3)(c)~~ Providing training in administrative hearing procedures for hearing officers as
14 required in KRS 13B.030, either by developing and offering the training, or by
15 contracting with appropriate organizations for the provision of training, or by
16 approving training developed and submitted by the agencies;

17 ~~(4)(d)~~ Consulting with the Personnel Cabinet and employing agencies in the
18 establishment of relevant and appropriate qualifications for classes of hearing
19 officers;

20 ~~(5)(e)~~ Establishing, in cooperation with the *Office*~~[Division]~~ of Consumer
21 Protection, a clearinghouse for complaints concerning the administrative hearing
22 process in Kentucky. Each complaint received shall be referred to the agency that is
23 the subject of the complaint, and the action of the agency to resolve the complaint
24 shall be noted and reported to the *Office of Civil and Environmental*
25 *Law*~~[division]~~;

26 ~~(6)(f)~~ Reporting to the Legislative Research Commission by July 1 of each odd-
27 numbered year, the status of the administrative hearing process in Kentucky. The

1 report shall include a compilation of statistical data and other information necessary
2 to assess the effectiveness and efficiency of hearing procedures and
3 recommendations for making improvements to the system. Agencies shall provide
4 the information requested by the Office of Civil and Environmental Law~~[Division~~
5 ~~of Administrative Hearings]~~ necessary to complete the report.

6 ➔Section 5. KRS 15.113 is amended to read as follows:

7 (1) The Office of the Attorney General~~[Financial Integrity Enforcement Division is~~
8 ~~created in the Department of Law. The division]~~ shall:

- 9 (a) Investigate illegal redemption of food stamp benefits in cooperation with the
10 United States Department of Agriculture and the Cabinet for Health and
11 Family Services;
- 12 (b) Verify eligibility of food stamp program applicants as to past criminal history;
- 13 (c) Investigate the illegal distribution of counterfeit merchandise; and
- 14 (d) Investigate the use of personal identification and financial information by
15 persons for the purpose of theft, or fraud, or both theft and fraud, and other
16 illegal or fraudulent activity which may involve electronic commerce.

17 (2) The Office of the Attorney General shall coordinate with the Department of
18 Financial Institutions, the United States Secret Service, the Federal Trade
19 Commission, the Kentucky Bankers' Association, and any other agency or
20 organization to prepare and disseminate information to prevent identity theft.

21 ➔Section 6. KRS 15.753 is amended to read as follows:

22 (1) This section shall apply to:

- 23 (a) The Attorney General and his staff;
- 24 (b) A county attorney and his staff; and
- 25 (c) A Commonwealth's attorney and his staff.

26 (2) A person named in subsection (1) of this section who is sued for any act or omission
27 in the course of his duties and who has a judgment for monetary damages rendered

1 against him and who personally suffers actual financial loss, unreimbursed from any
2 source, by the enforcement and satisfaction of the judgment, including any costs or
3 attorney's fees awarded pursuant thereto, shall be indemnified by the
4 Commonwealth from funds appropriated to the Finance and Administration Cabinet
5 for the payment of judgments, to the extent of his actual financial loss.

6 (3) The indemnification shall be contingent upon an express determination by the
7 **Prosecutors**~~Prosecutor's~~ Advisory Council that the act or omission which resulted
8 in liability was within the scope and course of the officer's employment and
9 occurred during the performance of duty and was committed or omitted in the good
10 faith belief that the act or omission was lawful and proper.

11 (4) If the officer seeking indemnification is the Attorney General, the determination
12 referred to in subsection (3) of this section shall be made by the Governor.

13 (5) The indemnification shall not be construed to abrogate or limit any privilege,
14 immunity, or matter of defense otherwise available to the person claiming
15 indemnification and shall not constitute a waiver of any privilege, immunity, or
16 matter or defense including the sovereign immunity of the Commonwealth.

17 (6) The indemnification shall not be the subject of comment, directly or indirectly,
18 before any jury hearing any cause of action in which the Attorney General, a county
19 or Commonwealth's attorney, or a member of their staff is a party, and any comment
20 before the jury shall result in an immediate mistrial.

21 ➔Section 7. KRS 189A.050 is amended to read as follows:

22 (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall
23 be sentenced to pay a service fee of three hundred seventy-five dollars (\$375),
24 which shall be in addition to all other penalties authorized by law.

25 (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS
26 534.020 and KRS 534.060.

27 (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid

1 into the general fund, and the remainder of the revenue collected from the service
2 fee imposed by this section shall be utilized as follows:

3 (a) Twelve percent (12%) of the amount collected shall be transferred to the
4 Department of Kentucky State Police forensic laboratory for the acquisition,
5 maintenance, testing, and calibration of alcohol concentration testing
6 instruments and the training of laboratory personnel to perform these tasks;

7 (b) Twenty percent (20%) of the service fee collected pursuant to this section
8 shall be allocated to the Department of Public Advocacy;

9 (c) One percent (1%) shall be transferred to the Prosecutors~~Prosecutor's~~
10 Advisory Council for training of prosecutors for the prosecution of persons
11 charged with violations of this chapter and for obtaining expert witnesses in
12 cases involving the prosecution of persons charged with violations of this
13 chapter or any other offense in which driving under the influence is a factor in
14 the commission of the offense charged;

15 (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:

16 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust
17 fund established under KRS 211.476; and

18 2. Fifty percent (50%) shall be credited to the Cabinet for Health and
19 Family Services, Department for Behavioral Health, Developmental and
20 Intellectual Disabilities, for the purposes of providing direct services to
21 individuals with brain injuries that may include long-term supportive
22 services and training and consultation to professionals working with
23 individuals with brain injuries. As funding becomes available under this
24 subparagraph, the cabinet may promulgate administrative regulations
25 pursuant to KRS Chapter 13A to implement the services permitted by
26 this subparagraph;

27 (e) Any amount specified by a specific statute shall be transferred as provided in

1 that statute;

2 (f) Forty-six percent (46%) of the amount collected shall be transferred to be
3 utilized to fund enforcement of this chapter and for the support of jails,
4 recordkeeping, treatment, and educational programs authorized by this chapter
5 and by the Department of Public Advocacy; and

6 (g) The remainder of the amount collected shall be transferred to the general fund.

7 (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be
8 placed in trust and agency accounts that shall not lapse.

9 ➔Section 8. KRS 205.712 is amended to read as follows:

10 (1) The Department for Income Support, Child Support Enforcement, is established in
11 the Cabinet for Health and Family Services.

12 (2) The duties of the Department for Income Support, Child Support Enforcement, or
13 its designee, shall include:

14 (a) Serve as state agency authorized to administer Part D of Title IV of the Social
15 Security Act, 42 U.S.C. secs. 651 to 669;

16 (b) Serve as the information agency as provided in the Uniform Interstate Family
17 Support Act, KRS Chapter 407;

18 (c) Serve as collector of all court-ordered or administratively ordered child
19 support payments pursuant to Part D of Title IV of the Social Security Act;

20 (d) Serve as the agent for enforcement of international child support obligations,
21 and respond to requests from foreign reciprocating countries;

22 (e) Establish and enforce an obligation upon receipt of a completed, notarized
23 voluntary acknowledgment-of-paternity form;

24 (f) Enforce Kentucky child support laws, including collection of court-ordered or
25 administratively ordered child support arrearages and prosecution of persons
26 who fail to pay child support;

27 (g) Publicize the availability of services and encourage the use of these services

- 1 for establishing paternity and child support;
- 2 (h) Pay the cost of genetic testing to establish paternity, subject to recoupment
3 from the alleged father, when paternity is administratively or judicially
4 determined; and obtain additional testing when an original test is contested,
5 upon request and advance payment by the contestant;
- 6 (i) Establish child support obligations and seek modification of judicially or
7 administratively established child support obligations in accordance with the
8 child support guidelines of the Commonwealth of Kentucky as provided under
9 KRS 403.212;
- 10 (j) Administratively establish child support orders which shall have the same
11 force and effect of law;
- 12 (k) Issue an administrative subpoena to secure public and private records of utility
13 and cable companies and asset and liability information from financial
14 institutions for the establishment, modification, or enforcement of a child
15 support obligation;
- 16 (l) Impose a penalty for failure to comply with an administrative subpoena;
- 17 (m) Provide notices, copies of proceedings, and determinations of support
18 amounts to any parties or individuals who are applying for or receiving Title
19 IV-D services, or who are parties to cases in which Title IV-D services are
20 being provided;
- 21 (n) Issue interstate administrative subpoenas to any individual or entity for
22 financial or other information or documents which are needed to establish,
23 modify, or enforce a child support obligation pursuant to Part D of Title IV of
24 the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative
25 subpoena lawfully issued in another state to an individual or entity residing in
26 this state shall be honored and enforced in the Circuit Court where the
27 individual or entity resides; and

- 1 (o) May promulgate administrative regulations to implement this section and
2 adopt forms or implement other requirements of federal law relating to
3 interstate administrative subpoenas.
- 4 (3) Effective September 30, 1999, the cabinet shall establish a system to receive and
5 process all child support payments. The system shall include existing computer
6 systems to record the payments. The automated system shall include a state case
7 registry that contains records with respect to each case in which services are being
8 provided by the cabinet and each child support order established or modified in the
9 state on or after October 1, 1998.
- 10 (4) The cabinet shall establish and operate a state disbursement unit for the collection,
11 disbursement, and recording of payments under support orders for all Title IV-D
12 cases and for all cases initially issued in the state on or after January 1, 1994, in
13 which a wage withholding has been court-ordered or administratively ordered,
14 pursuant to Part D of Title IV of the Social Security Act. Establishment of the state
15 unit may include the designation and continuation of existing local collection units
16 to aid efficient and effective collection, disbursement, and recording of child
17 support payments.
- 18 (5) After the establishment of the disbursement unit child support collection system, the
19 cabinet or its designee shall serve as collector of all court-ordered or
20 administratively ordered child support payments pursuant to Part D of Title IV of
21 the Social Security Act.
- 22 (6) Where establishment of paternity and enforcement and collection of child support is
23 by law the responsibility of local officials, the cabinet shall refer cases to the
24 appropriate official for such action. The cabinet may enter into cooperative
25 arrangements with appropriate courts and law enforcement officials to assist the
26 cabinet in administering the program of child support recovery, including the
27 entering into of financial arrangements with such courts and officials as provided

1 for under the provisions of federal law and regulations. The local county attorney
2 shall be considered the designee of the cabinet for purposes of administering the
3 program of child support recovery within a county, subject to the option of the
4 county attorney to decline such designation. Nothing in this section shall prevent the
5 secretary from taking such action, with prior written notice, as appropriate if the
6 terms and conditions of the cooperative agreement are not met. When a cooperative
7 agreement with a contracting official is canceled for good cause, the cabinet may
8 not offer that cooperative agreement to that official during the official's tenure.

9 (7) Where the local county attorney, friend of the court, domestic relations agent, or
10 other designee of the cabinet has been contracted for the purpose of administering
11 child support enforcement pursuant to Title IV-D of the Social Security Act, the
12 contracting official shall be deemed to be representing the cabinet and as such does
13 not have an attorney-client relationship with the applicant who has requested
14 services pursuant to Title IV-D of the Social Security Act nor with any dependent
15 on behalf of the individuals for whom services are sought.

16 (8) The cabinet shall determine the name of each obligor who owes an arrearage of at
17 least two thousand five hundred dollars (\$2,500). After notification to the obligor
18 owing an arrearage amount of two thousand five hundred dollars (\$2,500), the
19 cabinet shall transmit to the United States secretary of health and human services
20 the certified names of the individuals and supporting documentation for the denial,
21 revocation, or limitation of the obligor's passport. The cabinet shall notify the
22 identified obligor of the determination and the consequences and provide an
23 opportunity to contest the determination.

24 (9) The cabinet shall determine the name of an obligor owing an arrearage and shall
25 indefinitely deny, suspend, or revoke a license or certification that has been issued if
26 the person has a child support arrearage that equals or exceeds the amount that
27 would be owed after six (6) months of nonpayment or fails, after receiving

- 1 appropriate notice, to comply with subpoenas or warrants relating to paternity or
2 child support proceedings as provided by 42 U.S.C. sec. 666(a)(16).
- 3 (10) The cabinet shall forward the name of the individual to a board of licensure or
4 board of certification for the notification of the denial, revocation, or suspension of
5 a driver's license, professional license or certification, occupational license or
6 certification, recreational license, or sporting license.
- 7 (11) The denial or suspension shall remain in effect until the child support arrearage has
8 been eliminated or payments on the child support arrearage are being made in
9 accordance with a court or administrative order, the person complies with the
10 subpoena or warrant relating to paternity or child support proceedings, or the appeal
11 of the denial or suspension is upheld and the license is reinstated.
- 12 (12) Except for cases administered by the cabinet under 42 U.S.C. secs. 651 et seq.
13 which shall be afforded the appeal process set forth by KRS 405.450(3), an
14 individual who has a license or certification denied, revoked, or suspended shall
15 have the right to appeal to the licensing or certifying board.
- 16 (13) A dispute hearing shall be conducted by the cabinet in accordance with KRS
17 405.450. The only basis for a dispute hearing shall be a mistake in fact.
- 18 (14) The cabinet shall in its discretion enter into agreements with financial institutions
19 doing business in the Commonwealth to develop and operate, in coordination with
20 the financial institutions, a data match system as required by KRS 205.772 to
21 205.778.
- 22 (15) The cabinet may issue both intrastate and interstate administrative subpoenas to any
23 individual or entity for financial or other information or documents that are needed
24 to establish, modify, or enforce a child support obligation pursuant to Title IV-D of
25 the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena
26 lawfully issued in another state to an individual or entity in this state shall be
27 honored and enforced in the Circuit Court of the county in which the individual or

1 entity resides.

2 (16) ~~[The Cabinet for Health and Family Services shall forward to the Office of the~~
 3 ~~Attorney General a list of names of delinquent obligors and, in cooperation with the~~
 4 ~~Office of the Attorney General, shall promulgate administrative regulations in~~
 5 ~~accordance with KRS Chapter 13A to implement KRS 15.055.~~

6 ~~(17)~~ The cabinet shall compare a quarterly report provided by the Finance and
 7 Administration Cabinet of all tort claims made against the state by individuals with
 8 the child support database to match individuals who have a child support arrearage
 9 and may receive a settlement from the state.

10 (17)~~(18)~~ The cabinet shall prepare and distribute to the cabinet's designee for the
 11 administration of the child support program information on child support
 12 collections and enforcement. The information shall include a description of how
 13 child support obligations are:

- 14 (a) Established;
- 15 (b) Modified;
- 16 (c) Enforced;
- 17 (d) Collected; and
- 18 (e) Distributed.

19 (18)~~(19)~~ The cabinet's designee for the administration of the child support program
 20 shall distribute, when appropriate, the following:

- 21 (a) Information on child support collections and enforcement; and
- 22 (b) Job listings posted by employment services.

23 ➔Section 9. KRS 205.8465 is amended to read as follows:

24 (1) Any person who knows or has reasonable cause to believe that a violation of this
 25 chapter has been or is being committed by any person, corporation, or entity, shall
 26 report or cause to be reported to the *Office of Medicaid Fraud and Abuse Control*
 27 *in the Office of the Attorney General*~~[state Medicaid Fraud Control Unit]~~, or the

1 Medicaid fraud and abuse hotline, the following information, if known:

- 2 (a) The name and address of the offender;
- 3 (b) The offender's place of employment;
- 4 (c) The nature and extent of the violation;
- 5 (d) The identity of the complainant; and
- 6 (e) Any other information that the receiving person reasonably believes might be
- 7 helpful in investigation of the alleged fraud, abuse, or misappropriation.

8 The ***Office of Medicaid Fraud and Abuse Control***~~[state Medicaid Fraud Control~~
 9 ~~Unit]~~ shall periodically publicize the provisions of this subsection.

10 (2) The identity of any person making a report under this section shall be considered
 11 confidential by the receiving party. Any person making a report under this section
 12 regarding the offenses of another shall not be liable in any civil or criminal action
 13 based on the report if it was made in good faith.

14 (3) No employer shall, without just cause, discharge or in any manner discriminate or
 15 retaliate against any person who in good faith makes a report required or permitted
 16 by KRS 205.8451 to 205.8483, testifies, or is about to testify, in any proceeding
 17 with regard to any report or investigation. Any individual injured by any act in
 18 violation of the provisions of this subsection shall have a civil cause of action in
 19 Circuit Court to enjoin further violations, and to recover the actual damages
 20 sustained, together with the costs of the lawsuit, including a reasonable fee for the
 21 individual's attorney of record.

22 (4) No employee of the ***Office of Medicaid Fraud and Abuse Control***~~[state Medicaid~~
 23 ~~Fraud Control Unit]~~, the Office of the Attorney General, the Office of the Inspector
 24 General, or the Cabinet for Health and Family Services shall notify the alleged
 25 offender of the identity of the person who in good faith makes a report required or
 26 permitted by KRS 205.8451 to 205.8483 nor shall the employee notify the alleged
 27 offender that a report has been made alleging a violation of KRS 205.8451 to

1 205.8483 until such time as civil or criminal proceedings have been initiated or a
2 formal investigation has been initiated. Any information or report concerning an
3 alleged offender shall be considered confidential in accordance with the Kentucky
4 Open Records Law, KRS 61.870 to 61.884.

5 ➔Section 10. KRS 205.8483 is amended to read as follows:

6 (1) The Office of the Inspector General in the Cabinet for Health and Family Services
7 shall establish, maintain, and publicize a twenty-four (24) hour toll-free hotline for
8 the purpose of receiving reports of alleged fraud and abuse by Medical Assistance
9 Program recipients and participating providers.

10 (2) The Office of the Inspector General in the Cabinet for Health and Family Services
11 shall develop and implement procedures for screening alleged fraud and abuse of
12 the Medical Assistance Program to ensure that appropriate written referrals are
13 made to:

14 (a) The *Office of Medicaid Fraud and Abuse Control* ~~in the state Medicaid Fraud~~
15 ~~Control Unit and to~~ the Office of the Attorney General of credible allegations
16 of fraud and abuse by providers participating in the Medical Assistance
17 Program; and

18 (b) Other agencies and licensure boards of all allegations received on the hotline
19 that are relevant to their jurisdiction.

20 (3) The Office of the Inspector General in the Cabinet for Health and Family Services
21 shall provide, upon request, a Medicaid fraud and abuse report that shall include but
22 not be limited to the following information from the prior fiscal year:

23 (a) The number and type of reports received in the Office of the Inspector General
24 in the Cabinet for Health and Family Services, from the Medicaid fraud and
25 abuse hotline categorized by recipient and provider groups; and

26 (b) The number and type of alleged Medicaid recipient fraud and abuse reports
27 which were opened for investigation by the Office of Inspector General and

1 their disposition.

2 ➔Section 11. KRS 217.896 is amended to read as follows:

3 The Office~~[Division]~~ of Consumer Protection of the Office of the Attorney General shall
4 develop and distribute to licensed pharmacies without charge a pamphlet for citizens of
5 the Commonwealth which explains the provisions of KRS 217.815 to 217.826 and
6 217.895. Pharmacists shall display such distributed pamphlets in a prominent place and
7 make them available without charge. Pharmacies shall maintain a sufficient stock of the
8 distributed pamphlets to assure that the supply will not become exhausted for any lengthy
9 time.

10 ➔Section 12. KRS 248.353 is amended to read as follows:

11 (1) Compliance with the provisions of KRS 248.350 shall be monitored by the
12 department with enforcement assistance provided by the Office of Special
13 Prosecutions~~[Unit]~~ of the Office of the Attorney General.

14 (2) The Attorney General at the request of the commissioner:

15 (a) May make such public or private investigations within or outside of this state
16 as he deems necessary to determine if any person has violated or is about to
17 violate KRS 248.350 or any administrative regulation or order thereunder, or
18 to aid in the enforcement of KRS 248.350 or in the prescribing of
19 administrative regulations and forms thereunder;

20 (b) May require or permit any person to file a statement in writing, under oath or
21 otherwise as the Attorney General may determine, as to all the facts and
22 circumstances concerning the matter to be investigated; and

23 (c) May publish information concerning any violation of KRS 248.350 or any
24 administrative regulation or order thereunder.

25 (3) For the purpose of any investigation or proceeding under KRS 248.350, the
26 Attorney General or any officer designated by him may administer oaths and
27 affirmations, subpoena witnesses, compel their attendance, take evidence, and

1 require production of any books, papers, correspondence, memoranda, agreements,
2 or other documents or records which the Attorney General deems relevant or
3 material to the inquiry.

4 (4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any
5 court of competent jurisdiction, upon application by the Attorney General, may
6 issue to that person an order requiring him to appear before the Attorney General, or
7 the officer designated by him, there to produce documentary evidence if so ordered
8 or to give evidence touching the matter under investigation or in question; and any
9 failure to obey the order of the court may be punished by the court as a contempt of
10 court.

11 (5) No person is excused from attending and testifying or from producing any
12 document or record before the Attorney General, or in obedience to the subpoena of
13 the Attorney General or any officer designated by him, or in any proceeding
14 instituted by the Attorney General, on the ground that the testimony or evidence
15 (documentary or otherwise) required of him may tend to incriminate him or subject
16 him to a penalty or forfeiture; but no individual may be prosecuted or subjected to
17 any penalty or forfeiture for or on account of any transaction, matter, or thing
18 concerning which he is compelled, after claiming his privilege against self-
19 incrimination, to testify or produce evidence (documentary or otherwise), except
20 that the individual so testifying shall not be exempt from prosecution and
21 punishment for perjury committed in so testifying.

22 ➔Section 13. KRS 304.1-120 is amended to read as follows:

23 No provision of this code shall apply to:

24 (1) Fraternal benefit societies (as identified in Subtitle 29), except as stated in Subtitle
25 29.

26 (2) Nonprofit hospital, medical-surgical, dental, and health service corporations (as
27 identified in Subtitle 32) except as stated in Subtitle 32.

- 1 (3) Burial associations (as identified in KRS Chapter 303), except as stated in Subtitle
2 31.
- 3 (4) Assessment or cooperative insurers (as identified in KRS Chapter 299), except as
4 stated in KRS Chapter 299.
- 5 (5) Insurance premium finance companies (as identified in Subtitle 30), except as stated
6 in Subtitle 30.
- 7 (6) Qualified organizations which issue charitable gift annuities within the
8 Commonwealth of Kentucky. For the purposes of this subsection:
- 9 (a) A "qualified organization" means one which is:
- 10 1. Exempt from taxation under Section 501(c)(3) of the Internal Revenue
11 Code as a charitable organization, if it files a copy of federal form 990
12 with the Office~~Division~~ of Consumer Protection in the Office of the
13 Attorney General; or
- 14 2. Exempt from taxation under Section 501(c)(3) of the Internal Revenue
15 Code as a religious organization; or
- 16 3. Exempt as a publicly owned or nonprofit, privately endowed educational
17 institution approved or licensed by the State Board of Education, the
18 Southern Association of Colleges and Schools, or an equivalent public
19 authority of the jurisdiction where the institution is located; and
- 20 (b) A "charitable gift annuity" means a giving plan or method by which a gift of
21 cash or other property is made to a qualified organization in exchange for its
22 agreement to pay an annuity.
- 23 (7) A religious organization, as identified in this subsection, or its participants, that:
- 24 (a) Is a nonprofit religious organization;
- 25 (b) Is limited to participants who are members of the same denomination or
26 religion;
- 27 (c) Matches its participants who have financial, physical, or medical needs with

1 participants who choose to assist with those needs;

2 (d) 1. Includes the following notice for delivery to all participants, printed in
3 not less than ten (10) point, bold-faced type on or accompanying all
4 applications, guideline materials, or any similar documents:

5 "NOTICE: UNDER KENTUCKY LAW, THE RELIGIOUS
6 ORGANIZATION FACILITATING THE SHARING OF MEDICAL
7 EXPENSES IS NOT AN INSURANCE COMPANY, AND ITS
8 GUIDELINES, PLAN OF OPERATION, OR ANY OTHER
9 DOCUMENT OF THE RELIGIOUS ORGANIZATION DO NOT
10 CONSTITUTE OR CREATE AN INSURANCE POLICY.
11 PARTICIPATION IN THE RELIGIOUS ORGANIZATION OR A
12 SUBSCRIPTION TO ANY OF ITS DOCUMENTS SHALL NOT BE
13 CONSIDERED INSURANCE. ANY ASSISTANCE YOU RECEIVE
14 WITH YOUR MEDICAL BILLS WILL BE TOTALLY VOLUNTARY.
15 NEITHER THE ORGANIZATION OR ANY PARTICIPANT SHALL
16 BE COMPELLED BY LAW TO CONTRIBUTE TOWARD YOUR
17 MEDICAL BILLS. WHETHER OR NOT YOU RECEIVE ANY
18 PAYMENTS FOR MEDICAL EXPENSES, AND WHETHER OR
19 NOT THIS ORGANIZATION CONTINUES TO OPERATE, YOU
20 SHALL BE PERSONALLY RESPONSIBLE FOR THE PAYMENT
21 OF YOUR MEDICAL BILLS."

22 2. A participant shall acknowledge receipt of the "Notice" by signing
23 below the "Notice" on the application;

24 (e) Suggests amounts to give that are voluntary among the participants, with no
25 assumption of risk or promise to pay either among the participants or between
26 the participants and the organization.

27 (8) A public or private ambulance service licensed and regulated by the Cabinet for

1 Health and Family Services to the extent that it solicits membership subscriptions,
2 accepts membership applications, charges membership fees, and furnishes prepaid
3 or discounted ambulance services to subscription members and designated members
4 of their households.

5 (9) A direct primary care agreement established under KRS 311.6201, 311.6202,
6 314.198, and 314.199.

7 ➔Section 14. KRS 367.120 is amended to read as follows:

8 (1) The General Assembly finds that the public health, welfare and interest require a
9 strong and effective consumer protection program to protect the public interest and
10 the well-being of both the consumer public and the ethical sellers of goods and
11 services; toward this end, a Consumers' Advisory Council and an Office~~a~~
12 ~~Division~~ of Consumer Protection of the Office of the Attorney
13 General~~Department of Law~~ are hereby created for the purpose of aiding in the
14 development of preventive and remedial consumer protection programs and
15 enforcing consumer protection statutes.

16 (2) KRS 367.110 to 367.300 may be cited as the "Consumer Protection Act."

17 ➔Section 15. KRS 367.46951 is amended to read as follows:

18 As used in KRS 367.46951 to 367.46999 and 367.990, unless the context otherwise
19 requires:

20 (1) "Telephone solicitation" means:

21 (a) A live or recorded communication sent by a telephone or message sent by a
22 facsimile machine to a residential, mobile, or telephone paging device
23 telephone number, including a call made by an automatic dialing or recorded
24 message device, for the purpose of:

25 1. Soliciting a sale of consumer goods or services, offering an investment,
26 business, or employment opportunity, or offering a consumer loan to the
27 person called;

- 1 2. Obtaining information that will or may be used for the solicitation of a
2 sale of consumer goods or services, the offering of an investment,
3 business, or employment opportunity, or the offering of a consumer loan
4 to the person called;
- 5 3. Offering the person called a prize, gift, or anything else of value, if
6 payment of money or other consideration is required in order to receive
7 the prize or gift, including the purchase of other merchandise or services
8 or the payment of any processing fees, delivery charges, shipping and
9 handling fees, or other fees or charges; or
- 10 4. Offering the person called a prize, gift, or other incentive to attend a
11 sales presentation for consumer goods or services, an investment or
12 business opportunity, or a consumer loan; or
- 13 (b) A live or recorded communication sent by telephone, facsimile machine,
14 mobile telephone, or telephone paging device in response to inquiries
15 generated by unrequested notifications sent by the merchant to persons who
16 have not previously purchased goods or services from the merchant or
17 telemarketer or who have not previously requested credit from the merchant,
18 to a prospective purchaser if the merchant or telemarketer represents or
19 implies to the recipient of the notification that any of the following applies:
 - 20 1. That the recipient has in any manner been specially selected to receive
21 the notification or the offer contained in the notification;
 - 22 2. That the recipient will receive a prize or gift if the recipient calls the
23 merchant or telemarketer; or
 - 24 3. That if the recipient buys one (1) or more items from the merchant or
25 telemarketer, the recipient will also receive additional or other items of
26 the same or a different type at no additional cost or for less than the
27 regular price of the items;

- 1 (2) "Telephone solicitation" does not mean the following:
- 2 (a) A telephone call made in response to an express request of a person called,
- 3 unless the request was made during a prior telephone solicitation;
- 4 (b) A telephone call made to the debtor or a party to the contract in connection
- 5 with the payment or performance of an existing debt or contract, the payment
- 6 or performance of which has not been completed at the time of the call;
- 7 (c) A telephone call to any person with whom the telemarketer or merchant has a
- 8 prior or existing business relationship, including but not limited to the
- 9 solicitation of contracts for the maintenance or repair of items previously
- 10 purchased from the person making the solicitation or on whose behalf the
- 11 solicitation is made;
- 12 (d) A telephone call made by the following:
- 13 1. A merchant or telemarketer located in Kentucky to a location outside of
- 14 the Commonwealth of Kentucky;
- 15 2. A telephone call made by one (1) merchant to another;
- 16 (3) "Consumer goods or services" means goods, services, or interests in real property
- 17 used by natural persons primarily for personal, family, or household purposes;
- 18 (4) "Consumer loan" means any extension of credit, including credit cards and other
- 19 forms of revolving credit, to a natural person primarily for the purposes of
- 20 purchasing consumer goods or services or for paying existing personal, family, or
- 21 household debts;
- 22 (5) "Consumer" means a natural person who receives a telephone solicitation;
- 23 (6) "Legal name of the merchant" means the real name of the merchant, as defined in
- 24 KRS 365.015(1), or the assumed name of the merchant for which all proper
- 25 certificates have been filed pursuant to KRS 365.015;
- 26 (7) "Merchant" means the individual or business entity offering the consumer goods or
- 27 services, an investment, business, or employment opportunity, or a consumer loan;

- 1 (8) "Caller" or "sales person" means the individual making the call or operating the
2 automatic dialing or recorded message device and causing the call to be made;
- 3 (9) "Office~~[Division]~~" means the Office of Consumer Protection~~[Division]~~ of the
4 Office of the Attorney General;
- 5 (10) "Automated calling equipment" means any device or combination of devices used
6 to select or dial telephone numbers and to deliver recorded messages to those
7 numbers without the use of a live operator;
- 8 (11) "Telemarketer" means any person who under contract with a merchant or in
9 connection with a telephone solicitation initiates or receives telephone calls to or
10 from a consumer of goods and services. A telemarketer includes but is not limited
11 to any such person that is an owner, operator, officer, director, or partner to the
12 management activities of a business;
- 13 (12) "Publicly traded corporation" means an issuer or subsidiary of an issuer that has a
14 class of securities which is:
- 15 (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec.
16 78l) and which is registered or exempt from registration under paragraph (A),
17 (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
- 18 (b) Listed on the New York Stock Exchange, the American Stock Exchange, or
19 the NASDAQ National Market System; or
- 20 (c) A reported security within the meaning of subparagraph (4) of Regulation
21 Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A
22 subsidiary of an issuer that qualifies for exemption under this paragraph shall
23 not itself be exempt unless at least sixty percent (60%) of the voting power of
24 its shares is owned by the qualifying issuer;
- 25 (13) "Telemarketing company" means a company whose primary business is to engage in
26 telephone solicitation; and
- 27 (14) "Zero call list" means the national Do Not Call Registry maintained by the United

1 States Federal Trade Commission containing the residential or wireless telephone
2 numbers of the individuals that indicate their preference not to receive telephone
3 solicitations.

4 ➔Section 16. KRS 367.46971 is amended to read as follows:

5 (1) At least ten (10) days prior to doing business in this state, a telemarketing company
6 shall register with the office~~[division]~~ by filing the information described below and
7 paying a filing fee of three hundred dollars (\$300). A telemarketing company shall
8 be deemed to do business in this state if the telemarketing company solicits
9 prospective purchasers from locations in this state or solicits prospective purchasers
10 who are located in this state. The information required by this section shall be
11 submitted on a form provided by the Attorney General and shall be verified by a
12 declaration signed by each principal of the telemarketing company, under penalty of
13 perjury. The declaration shall specify the date and location of signing. Information
14 submitted pursuant to KRS 367.46951 to 367.46999 shall be clearly identified and
15 appended to the filing.

16 (2) Registration of a telemarketing company shall be valid for one (1) year from the
17 effective date thereof and may be renewed annually by making the filing required by
18 this section and paying a filing fee of fifty dollars (\$50).

19 (3) If, prior to expiration of a telemarketing company's annual registration, there is a
20 material change in the information required by KRS 367.46951 to 367.46999, the
21 telemarketing company shall, within ten (10) days, file an addendum updating the
22 information with the office~~[division]~~. However, changes in salespersons soliciting
23 on behalf of a telemarketing company shall be updated by filing addenda, if
24 necessary, in quarterly intervals computed from the effective date of registration.
25 The addendum shall include the required information for all salespersons currently
26 soliciting or having solicited on behalf of the telemarketing company at any time
27 during the period between the filing of the registration, or the last addendum, and

1 the current addendum, and shall include information on salespersons no longer
2 soliciting for the telemarketing company as of the date of the filing of the current
3 addendum.

4 (4) Upon receiving the filing and the filing fee pursuant to this section, the
5 ~~office~~[division] shall send the telemarketing company a written confirmation of
6 receipt of the filing. If the telemarketing company has more than one (1) business
7 location, the written confirmation shall be sent to the telemarketing company's
8 principal business location as identified in the telemarketing company's filing in
9 sufficient numbers so that the telemarketing company can meet the requirements of
10 this subsection. Within ten (10) days of receipt of the confirmation, the
11 telemarketing company shall post in a conspicuous place at each of the
12 telemarketing company's business locations within this state a copy of the entire
13 registration statement which has been filed with the ~~office~~[division]. Until
14 confirmation of receipt of filing is received and posted, the telemarketing company
15 shall post in a conspicuous place at each of the telemarketing company's business
16 locations within this state a copy of the first page of the registration form sent to the
17 ~~office~~[department]. The telemarketing company shall also post in close proximity to
18 either the confirmation of receipt of filing or the first page of the submitted
19 registration form the name of the individual in charge of each location from which
20 the telemarketing company does business in this state.

21 ➔Section 17. KRS 367.46981 is amended to read as follows:

22 (1) Every telemarketing company shall maintain a bond issued by a surety company
23 admitted to do business in this state. The bond shall be in the amount of fifty
24 thousand dollars (\$50,000) in favor of the Attorney General for the benefit of any
25 person suffering injury or loss by reason of any violation of KRS 367.46951 to
26 367.46999 to be paid under the terms of any order of a court of competent
27 jurisdiction obtained by the Attorney General, as a result of any violation of KRS

1 367.46951 to 367.46999. A copy of the bond shall be filed with the office~~[division]~~.

2 (2) At least ten (10) days prior to the inception of any promotion offering a premium
3 with an actual market value or advertised value of five hundred dollars (\$500) or
4 more, the telemarketing company shall notify the Attorney General in writing of the
5 details of the promotion, describing the premium and its current market value, the
6 value at which it is advertised or held out to the customer, the date the premium
7 shall be awarded, and the conditions under which the award shall be made. The
8 telemarketing company shall maintain an additional bond for the greater of the
9 current total market value or the advertised value of the premiums held out or
10 advertised to be available to a purchaser or recipient. A copy of the bond shall be
11 filed with the office~~[division]~~. The bond, or a portion of it necessary to cover the
12 cost of the award, shall be forfeited if the premium is not awarded to a bona fide
13 customer within thirty (30) days of the date disclosed as the time of award or the
14 time otherwise required by law. The proceeds of the bond shall be paid to any
15 person suffering injury or loss by reason of any violation of KRS 367.46951 to
16 367.46999 or shall be paid pursuant to the terms of any order of a court of
17 competent jurisdiction obtained by the Attorney General, Commonwealth's attorney,
18 or county attorney as a result of any violation of KRS 367.46951 to 367.46999. The
19 bond shall be maintained until the telemarketing company files with the Attorney
20 General proof that the premium was awarded.

21 ➔Section 18. KRS 367.801 is amended to read as follows:

22 As used in KRS 367.801 to 367.819 and KRS 367.990, unless the context requires
23 otherwise:

24 (1) "Office~~[Division]~~" means the Office~~[Division]~~ of Consumer Protection of the
25 Office of the Attorney General.

26 (2) "Person" means natural persons, corporations, trusts, partnerships, incorporated or
27 unincorporated associations, or any other legal entity.

1 (3) "Offeror" means a person who is engaged in the business of selling business
2 opportunities including any subsidiary business which affiliates with the offeror for
3 goods or services or locations.

4 (4) "Consumer/investor" means a person who has purchased or is solicited for the
5 purchase of a business opportunity.

6 (5) "Business opportunity" means the sale or lease, or offer to sell or lease, of any
7 products, equipment, supplies, or services for the purpose of enabling the consumer
8 investor to start a business when:

9 (a) The offeror obtains an initial required consideration of not less than five
10 hundred dollars (\$500) from the purchase or lease of the business opportunity
11 or inventory associated therewith; and

12 (b) The offeror has represented, directly or indirectly, that the consumer/investor
13 will earn, can earn, or is likely to earn a gross or net profit in excess of the
14 initial required investment paid by the consumer/investor for the business
15 opportunity; or

16 (c) 1. The offeror has represented that he has knowledge of the relevant market
17 and that the market demand will enable the consumer/investor to earn a
18 profit from the business opportunity; or

19 2. The offeror has represented that locations will be provided or assistance
20 will be given directly or indirectly to the consumer/investor in finding
21 locations for the use or operation of the business opportunity including,
22 but not limited to, supplying the consumer/investor with names of
23 locator companies, contracting with the consumer/investor to provide
24 assistance with or supply names of or collect a fee on behalf of or for a
25 locator company; or

26 3. The offeror has represented that there is a guaranteed market or that the
27 offeror will buy back or is likely to buy back any product made,

1 manufactured, produced, fabricated, grown, or bred by the
2 consumer/investor using, in whole or in part, the products, supplies,
3 equipment, or services which were initially sold or offered for sale to the
4 consumer/investor by the offeror.

5 ➔Section 19. KRS 367.805 is amended to read as follows:

- 6 (1) It is unlawful for any person to engage in the sale of business opportunities unless
7 prior to the offering the offeror has registered with the office~~[division]~~ and has
8 furnished a bond pursuant to KRS 367.815(2) and provided all of the following:
- 9 (a) All trade names, assumed names, and all trademarks by which the offeror or
10 the prospective consumer/investor of the business opportunity will be doing
11 business.
- 12 (b) The names, home addresses, and home telephone numbers of the persons and
13 company offering the business opportunity, and the company's directors and
14 chief executive officers, and the names, home addresses, and home telephone
15 numbers of all representatives selling business opportunities in Kentucky.
- 16 (c) A statement as to the length of time the person and company offering the
17 business opportunity has conducted a business of the type being offered both
18 within and without Kentucky.
- 19 (d) A statement as to whether the person or company offering the business
20 opportunity or any of its directors or chief executive officers or sales
21 representatives operating in Kentucky is currently involved in litigation or has
22 been held liable in a civil action by final judgment for having engaged in
23 unfair, false, misleading, or deceptive practices or is currently charged with or
24 has been convicted of or pleaded nolo contendere to a felony involving fraud,
25 embezzlement, fraudulent conversion, or misappropriation of property during
26 the most recent seven (7) year period, or has entered into any agreed
27 settlements or is currently in any bankruptcy proceeding or has been declared

1 bankrupt in any judicial proceeding during the most recent seven (7) year
2 period.

3 (e) A statement as to whether the person or the company offering the business
4 opportunity or its officers, directors, or agents making the offering of the
5 business opportunity has been a party to any legal cause of action brought by a
6 consumer/investor of the business opportunity within the last seven (7) year
7 period and, if so, the name and address of such individual who has brought the
8 legal action.

9 (f) A statement disclosing the names, addresses, and telephone numbers of all
10 persons who have been sold a business opportunity by the offeror within the
11 last two (2) year period.

12 (g) A statement listing the names and addresses of any consumer/investor who
13 has requested within the preceding three (3) years that the offeror return his
14 money.

15 (h) A current audited financial statement of the offeror.

16 (i) A specimen of each contract proposed for use in connection with the business
17 opportunity.

18 (j) A full and detailed description of the actual services that the offeror of the
19 business opportunity undertakes to perform for the consumer/investor.

20 (k) If training is promised by the offeror, a complete description of the training,
21 including length of the training and costs.

22 (2) The offeror shall immediately notify the office~~[division]~~ of any material change in
23 information contained in the application for registration and shall make appropriate
24 amendment of the disclosure statement.

25 (3) The office~~[division]~~ shall collect, from any offeror required to comply with this
26 section, an initial fee of one hundred fifty dollars (\$150), and an annual renewal fee
27 of fifty dollars (\$50), and an update fee of twenty-five dollars (\$25) for the

1 administration and enforcement of KRS 367.801 to 367.819. Funds so collected
2 shall be credited to a trust or agency account for the administrative purpose of the
3 Attorney General's Office~~[office, Division]~~ of Consumer Protection.

4 (4) The Attorney General may promulgate administrative regulations as needed to
5 provide for: a hearing, to be conducted in accordance with KRS Chapter 13B, for
6 any business opportunity which the Attorney General initially determines should not
7 be registered or should have registration revoked or suspended; for the
8 establishment of specific standards for the form and content of the disclosure
9 document; and for registration procedures including fee schedules.

10 ➔Section 20. KRS 367.807 is amended to read as follows:

11 (1) An offeror is exempt from the provisions of KRS 367.801 to 367.819 and KRS
12 367.990 when the offeror:

13 (a) Meets the definition of a franchise as defined in the Federal Trade
14 Commission's Regulation on Disclosure Requirements and Prohibitions
15 Concerning Franchising and Business Opportunity Ventures, as set forth in 16
16 C.F.R. 436 et seq., and has complied with these and filed written notice so
17 stating with the office~~[division]~~; or

18 (b) Offers a security pursuant to KRS 292.313;

19 (c) Offers an ongoing business for sale; or

20 (d) Offers a not-for-profit sale of sales demonstration equipment, materials, or
21 samples for use in making sales and not for resale for a total price of \$500 or
22 less.

23 (2) The Attorney General may promulgate administrative regulations as needed to
24 provide for additional exemptions. Is offering to sell or selling a package franchise
25 as described in KRS 367.801(7).

26 ➔Section 21. KRS 367.809 is amended to read as follows:

27 (1) The office~~[division]~~, after ascertaining that the applicant has complied with KRS

1 367.805, shall issue a registration number.

2 (2) It shall be unlawful for the registrant to fail to include the registration number in any
3 advertising.

4 ➔Section 22. KRS 367.811 is amended to read as follows:

5 It shall be unlawful for any offeror to make any oral or written representation, actual or
6 hypothetical, regarding the business opportunity's potential sales, income, gross or net
7 profit unless such sales, income, or profits are examples based upon the actual earnings
8 made by existing consumer/investors of the business opportunity. Upon request by the
9 office[division], names and addresses of the consumer/investors shall be made available
10 for verification of the earnings claims. If such actual or hypothetical earnings examples
11 are in excess of the average net earnings realized by all of the consumer/investors of the
12 business opportunity, then there must be a full and complete disclosure of the average net
13 earnings actually realized by all of these consumer/investors.

14 ➔Section 23. KRS 367.813 is amended to read as follows:

15 (1) Prior to the solicitation of potential consumer/investors the offeror shall furnish and
16 display to the potential consumer/investor a copy of the material required to be
17 furnished the office[division] when registering pursuant to KRS 367.805.

18 (2) When furnishing the information required by subsection (1) of this section, the
19 offeror shall furnish the prospective consumer/investor with a notice in at least ten
20 (10) point bold-face type, stating that registration with the office[division] does not
21 directly or indirectly imply approval by the office[division] or the Commonwealth
22 of Kentucky of the business opportunity or any of the activities of representatives
23 selling such business opportunities.

24 ➔Section 24. KRS 367.815 is amended to read as follows:

25 (1) Any person who offers a business opportunity and makes representations that are
26 false, misleading, or deceptive shall be liable to the consumer/investor of such
27 business opportunity in an amount equal to the sum of his actual damages or fifteen

1 hundred dollars (\$1,500), whichever is greater, as well as the cost of the action
2 together with reasonable attorney's fees, as determined by the court.

3 (2) (a) All persons registering pursuant to KRS 367.805 shall either furnish a bond by
4 a surety company authorized to do business in the Commonwealth or establish
5 a full cash certificate of deposit with a licensed and insured bank or savings
6 institution located in the Commonwealth to insure the veracity of all
7 statements contained in the registration. The amount of the bond or certificate
8 of deposit shall be in an amount equal to the total amount of the initial
9 payments under all business opportunity agreements the offeror has entered
10 into in the Commonwealth during the previous year but in no case shall the
11 amount be less than seventy-five thousand dollars (\$75,000). The bond or
12 certificate of deposit shall be in the favor of the Attorney General of
13 Kentucky.

14 (b) Any person who is damaged by any violation of KRS 367.801 to 367.819, or
15 by the offeror's breach of contract for the business opportunity sale, or of any
16 obligation arising therefrom may bring an action against the bond or
17 certificate of deposit to recover damages suffered, provided that the aggregate
18 liability of the surety or trustee shall be only for the actual damages and shall
19 not exceed the amount of the bond or trust account.

20 (3) A person who has furnished a bond described in subsection (2) of this section may
21 petition the office~~[division]~~ for release of the bond by submitting a verified
22 statement that such person has not offered business opportunities in the state for the
23 last five (5) years.

24 (4) Any offeror of a business opportunity who has offered or sold in this state shall
25 maintain a complete set of books, records, and accounts of its business opportunity
26 sales. The sale documents shall be maintained on each transaction for a period of
27 four (4) years after the date of agreement. The offeror shall make the books and

1 records available to the office~~[division]~~ upon demand at a location within the state.

2 ➔Section 25. KRS 367.905 is amended to read as follows:

- 3 (1) Any person, corporation, partnership, association, or group intending to open or
4 operate a health spa within the Commonwealth, shall:
- 5 (a) File a registration statement, accompanied by a one hundred dollar (\$100)
6 initial registration fee, with the Attorney General's Office~~[Division]~~ of
7 Consumer Protection prior to the sale of any memberships in the
8 Commonwealth of Kentucky. Such a registration statement shall contain the
9 name and address of the health spa; the names and addresses of the officers,
10 directors, and stockholders of the health spa and its parent corporation, if such
11 an entity exists; the type of available facilities; approximate size of the health
12 spa measured in square feet; whether or not a shower area is provided; the
13 names and addresses of employees and their respective qualifications for
14 employment in the health spa field; type of membership plans to be offered
15 and their cost; and a full and complete disclosure of any completed or pending
16 litigation initiated against the health spa and any of its officers or directors
17 within the last three (3) years.
- 18 (b) Prior to the sale of any memberships in the Commonwealth of Kentucky,
19 provide the Attorney General's Office~~[Division]~~ of Consumer Protection with
20 a surety bond meeting the requirements of KRS 367.906.
- 21 (2) A new registration statement, accompanied by an annual registration fee of fifty
22 dollars (\$50), shall be filed with the Attorney General's Office~~[Division]~~ of
23 Consumer Protection on or before July 1 of each year following the opening of the
24 health spa.
- 25 (3) Each health spa selling contracts on a prepayment basis shall deposit all funds
26 received from such contracts in an escrow account until the health spa has remained
27 open for a period of thirty (30) days. At the end of this thirty (30) day period, such

1 prepayment funds shall be eligible for withdrawal at the depositor's discretion.

2 (4) Each health spa registering pursuant to this statute shall maintain in the files of the
3 health spa, a copy of its registration statement filed pursuant to this section. This
4 registration statement shall be made available for inspection by current health spa
5 members or prospective purchasers of health spa memberships.

6 (5) The registration fees required by this section shall be credited to a trust or agency
7 account for the administrative purposes of the Attorney General's Office~~[Division]~~
8 of Consumer Protection, as set forth in KRS 367.900 to 367.930.

9 (6) Each separate location where health spa services are offered shall be considered a
10 separate health spa and shall file a separate registration statement and surety bond,
11 even though the separate locations are owned or operated by the same owner.

12 ➔Section 26. KRS 367.906 is amended to read as follows:

13 (1) The surety bond required by KRS 367.905(1)(b) shall be in favor of the Attorney
14 General's Office~~[Division]~~ of Consumer Protection and shall be held for
15 compensation to any member who suffers loss of money paid due to the insolvency
16 of the health spa, cessation of operation of the health spa, or failure of the health spa
17 to open for business within ninety (90) days from the sale of the first contract.

18 (2) The bond shall be in a form prescribed by the Attorney General's Office~~[Division]~~
19 of Consumer Protection and shall be issued by a company authorized to transact
20 business in the Commonwealth of Kentucky.

21 (3) The amount of the bond shall be computed as follows:

Number of	Amount of bond
unexpired contracts	
150 or fewer	\$10,000
151 to 300	\$25,000
301 or more	\$50,000

27 (4) The Attorney General's Office~~[Division]~~ of Consumer Protection shall exempt a spa

1 from the bonding requirement if all of its unexpired contracts and present
2 membership plans meet the following criteria:

3 (a) No initiation fee, or similar nonrecurring fee, is charged at or near the
4 beginning of the contract term or renewal period, and

5 (b) At no time is any member charged for use of facilities or services more than
6 thirty-one (31) days in advance.

7 (5) If, because of an increase in membership or change in membership plans, a spa is
8 required to file a bond or increase the amount of its bond, it shall notify the
9 Attorney General's Office~~Division~~ of Consumer Protection in writing at least
10 thirty (30) days prior to the expected change. No contract in excess of the limits
11 stated in subsection (3) of this section or not in compliance with subsection (4) of
12 this section shall be sold until a new bond in the required amount has been
13 provided.

14 (6) A change in ownership shall not release, cancel or terminate liability under any
15 bond previously filed unless the Attorney General's Office of Consumer Protection~~Division~~
16 ~~Division~~ agrees in writing to the release, cancellation or termination because the
17 new owner has filed a new bond for the benefit of the previous owner's members, or
18 because the former owner has paid the required refunds to its members.

19 ➔Section 27. KRS 367.932 is amended to read as follows:

20 As used in KRS 367.934 to 367.974 and 367.991, unless the context requires otherwise:

21 (1) "Attorney General" means the Office~~Division~~ of Consumer Protection in the
22 Office of the Attorney General.

23 (2) "Financial institution" means a bank, trust company, federally chartered credit
24 union, or savings and loan association authorized by law to do business in this state.

25 (3) "Preneed burial contract" means a contract, which has for a purpose the furnishing
26 or performance of funeral services, or the furnishing or delivery of personal
27 property, merchandise, or services of any nature in connection with the final

- 1 disposition of a dead human body, for future use at a time determinable by the death
2 of the person whose body is to be disposed of; but does not mean the furnishing of a
3 cemetery lot or mausoleum.
- 4 (4) "Agent" means the licensee who is the person, partnership, association or
5 corporation receiving any payments on a preneed funeral contract.
- 6 (5) "Trustee" means the financial institution.
- 7 (6) "Person" means an individual, corporation, partnership, joint venture, association,
8 business trust, or any other form of business organization; provided, however, that
9 an individual employee of an entity registered pursuant to KRS 367.934 to 367.974
10 and 367.991 shall not be required to comply with the registration requirement
11 herein.
- 12 (7) "Remains" means the bodies of deceased persons, in whatever stage of
13 decomposition, and cremated remains.
- 14 (8) "Cemetery" means any one (1) or combination of more than one (1) of the following
15 in a place used or to be used and dedicated or designated for such purposes:
- 16 (a) A burial park, for earth interment.
- 17 (b) A mausoleum, for entombment.
- 18 (c) A columbarium, for inurnment.
- 19 (9) "Mausoleum" means a building or structure substantially exposed above ground
20 used or intended to be used for the entombment of human remains, which is sold or
21 offered for sale to the public.
- 22 (10) "Columbarium" means a structure or building substantially exposed above ground
23 intended to be used for the inurnment of cremated remains and sold or offered for
24 sale to the public.
- 25 (11) "Columbarium niche" means an inurnment space in a columbarium as defined
26 herein.
- 27 (12) "Cemetery company" means any person who conducts the business of a cemetery.

1 Excepted are small community cemeteries, their agents, lessees and otherwise that
2 operate nonprofit; have no salaried employees, directors, officers or managers other
3 than maintenance caretakers; are owned, controlled by lot owners; and do not sell
4 any preneed merchandise or services.

5 (13) "Grave space" means a space of ground in a cemetery intended to be used for the
6 interment in the ground of the remains of one (1) human being.

7 (14) "Underground crypt" means a single unit entombment space in preplaced chambers
8 below ground and also known as lawn crypt, westminister turftop mausoleum or
9 below ground crypt.

10 (15) "Bank of underground crypts" means any construction unit of twenty (20) or more
11 underground crypts designed as a part of a below ground crypt program, whether
12 physically connected or not, having a common drainage system.

13 (16) "Mausoleum crypt" means an entombment space in a mausoleum as defined herein.

14 (17) "Cemetery merchandise" means urns, memorials, monuments, markers, vases,
15 foundations, memorial bases, and other similar personal property commonly sold by
16 or used in cemeteries.

17 (18) "Preneed cemetery merchandise contract" means any agreement or contract, or any
18 series or combination of agreements or contracts, which has for a purpose the
19 furnishing or delivery of cemetery merchandise, which within six (6) months of the
20 date of the contract is not attached to the realty and permanently installed or which
21 is not stored in a bonded warehouse with the receipt of ownership issued by the
22 manufacturer in the name of the purchaser and transmitted to the purchaser.

23 ➔Section 28. KRS 367.954 is amended to read as follows:

24 (1) Forty percent (40%), not including interest or finance charges, of all payments of
25 money made to any person, partnership, association, or corporation upon any
26 agreement or contract, or any series or combination of agreements or contracts,
27 which has for a purpose the furnishing or delivery of cemetery merchandise, which

1 within six (6) months of the date of the contract is not delivered by attachment to
2 the realty and permanent installation or which is not stored in a bonded warehouse
3 with the receipt of ownership issued by the manufacturer in the name of the
4 purchaser and transmitted to the purchaser are held to be trust funds. The person,
5 partnership, association, or corporation receiving the payments shall deposit forty
6 percent (40%) of all payments received on a preneed cemetery merchandise contract
7 in a trust fund account within six (6) months of the date of contract, and forty
8 percent (40%) of all payments received thereafter on said contract shall be deposited
9 in the trust fund account within thirty (30) days after each calendar quarter of
10 operation. The trustee shall be the financial institution holding said funds. All of the
11 interest, dividends, increases, or accretions of whatever nature earned by the funds
12 deposited in a trust account shall remain with the principal of such account and
13 become a part thereof, subject to all of the regulations concerning the principal of
14 said fund herein contained.

15 (2) All trust funds mentioned in this section shall be deposited in the name of the
16 person making said deposits, with the financial institution as trustee, and shall be
17 held together with the interest, dividends, or accretions thereon, in trust, subject to
18 the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of
19 making deposit or investment shall furnish to the financial institution the name of
20 each payor, and the amount of payment on each account for which the deposit or
21 investment is being made.

22 (3) Forty percent (40%) of all payments, not including interest or finance charges, made
23 under the agreement, contract, or plan are and shall remain trust funds with the
24 financial institution, until the financial institution receives a sworn affidavit from
25 the depositor stating one of the following:

26 (a) That the delivery of all merchandise by attachment to the realty, or permanent
27 installation of the merchandise has been completed and that there has been full

1 performance of all services called for by the agreement, contract or plan; or

2 (b) That there has been delivery of all of the merchandise called for by the
3 agreement by storing the same in a bonded warehouse with the receipt of
4 ownership issued by the manufacturer in the name of the purchaser and
5 transmitted to the purchaser.

6 Upon receiving said affidavit, the financial institution shall remit the funds on
7 deposit for the performed contract, plus interest, to the depositor. Release of funds
8 may also be made pursuant to a request for a refund or cancellation under KRS
9 367.932 to 367.974 and 367.991.

10 (4) In the event that a purchaser is in default of a preneed cemetery merchandise
11 contract, the financial institution shall release to the depositor the funds, plus
12 interest, deposited on behalf of the defaulted contract upon receiving from the
13 depositor a sworn affidavit stating that the purchaser is in default of the preneed
14 cemetery merchandise agreement, the date of the default, an explanation of the
15 default, and that the depositor has mailed a copy of the affidavit to the purchaser's
16 last known address at least thirty (30) days prior to said request for release.

17 (5) Deposits to such funds and the amounts deposited may be commingled, but the
18 accounting records shall establish a separate account for each prepaid contract and
19 shall show amounts deposited and the income and loss occurring thereon with
20 respect to each contract.

21 (6) The trustee may rely upon all certifications and affidavits made pursuant to or
22 required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not
23 be liable to any person for such reliance.

24 (7) In lieu of the trust fund deposits required herein, the person may post with the
25 Attorney General, Office~~[Division]~~ of Consumer Protection, a good and sufficient
26 bond by a surety company licensed to do business in Kentucky and in an amount
27 sufficient to cover all payments made by or on account of purchasers who have not

1 received the purchased property and services. This bond shall be held for the benefit
2 of a purchaser, or his or her heir or assign or duly authorized representative, who
3 suffers a loss of money paid pursuant to a preneed cemetery merchandise contract
4 entered into after July 13, 1984, due to the insolvency of the registrant, or failure to
5 provide the cemetery merchandise called for by contract that has been paid in full
6 and not provided after a ninety (90) day request in writing to do so. If a bond is
7 posted, the Attorney General's office shall receive sixty (60) days' written notice in
8 the event of cancellation. On or before the cancellation date, the person shall
9 comply with the trust fund requirements herein or post another good and sufficient
10 bond.

11 (8) Any person selling a preneed cemetery merchandise contract shall pay to the
12 Attorney General five dollars (\$5), for each said contract entered into and all of
13 which fees shall be remitted by the person collecting them to the Attorney General
14 at least once each month, and such funds shall be used by the Attorney General in
15 administering this chapter.

16 ➔Section 29. KRS 367.958 is amended to read as follows:

17 (1) Every person before engaging in a sale, contract for sale, reservation for sale or
18 agreement for sale of a mausoleum crypt within a mausoleum, underground crypt
19 within a crypt section, or columbarium niche within a mausoleum prior to the
20 completion of the construction thereof, shall give notice in writing to the Attorney
21 General of the commencement of such sale at least thirty (30) days prior thereto and
22 register with the Attorney General. Such registration shall be on forms provided by
23 the Attorney General.

24 (2) Every person engaged in the sale of a mausoleum crypt, underground crypt or
25 columbarium niche shall commence construction thereof within twenty-four (24)
26 months of the date of such sale and shall complete such construction within sixty
27 (60) months of the date of such sale. A delay caused by strike, national emergency,

1 shortage of materials, civil disorder, natural disaster or any like occurrence beyond
2 the control of such person shall extend the time of such commencement and
3 completion by the length of such delay. This subsection shall not apply to the sale of
4 mausoleum crypts, underground crypts or columbarium niches if there has been any
5 sale in the same project prior to July 13, 1984. Prior projects shall have commenced
6 construction thereof within thirty-six (36) months of the date of such sale and shall
7 complete construction within seventy-two (72) months of the date of such sale.

8 (3) Every person who plans to offer for sale space in a section of a mausoleum or bank
9 of underground crypts prior to its construction shall establish a preconstruction trust
10 account. The trust account shall be administered and operated in the same manner
11 as the merchandise trust account provided for in this chapter and shall be exclusive
12 of the merchandise trust account or such other trust accounts or funds that may be
13 required by law.

14 (4) Every person shall place thirty-six percent (36%), not including interest or finance
15 charges, of all payments of money made to any person pursuant to any agreement,
16 contract or any series or combination of agreements or contracts which are for the
17 purchase of sections in a mausoleum, columbarium, or any kind of underground
18 crypt which at the time of the payment of money have not been completely and
19 totally constructed, in a trust fund account in a financial institution within thirty (30)
20 days after each calendar quarter of operations. Excepted therefrom, however, are
21 persons who have constructed in the past their own mausoleum using primarily
22 equipment owned by the self-constructing person and their own personnel with a
23 minimum of subcontracting, and in that event there shall be deposited a minimum
24 of twenty percent (20%) of all payments of money, subject, however, to the actual
25 cost. If, from project to project, their actual cost is in excess of twenty percent
26 (20%), the full cost percentage shall be deposited from project to project, not to
27 exceed thirty-six percent (36%). At the time of notification to the Attorney

1 General's office the self-constructing mausoleum person shall also notify the
2 Attorney General that he intends to self-construct and the percentage of contribution
3 of trust that is required.

4 (5) All trust funds mentioned in this section shall be deposited in the name of the
5 person depositing said funds, with the financial institution as trustee, and shall be
6 held together with the interest, dividends, or accretions thereon, in trust, subject to
7 the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of
8 making deposit or investment shall furnish to the financial institution the name of
9 each payor, and the amount of payment on each account for which the deposit or
10 investment is being made.

11 (6) Deposits to such funds and the amounts deposited may be commingled, but the
12 accounting records shall establish a separate account for each prepaid contract and
13 shall show amounts deposited and the income and loss occurring thereon with
14 respect to each contract.

15 (7) All payments made to the preconstruction trust fund account shall remain in the
16 trust fund with the financial institution until the financial institution receives a
17 certified statement from the depositor stating that the particular project for which
18 the preconstruction trust fund has been established is totally completed. During the
19 construction stage, trust funds may be withdrawn by presenting the trustee with
20 appropriate evidence of expenditure for construction cost. The trustee shall
21 thereupon disburse moneys from the trust fund to pay for the expenses of
22 construction presented for payment.

23 (8) A trustee may rely upon all certifications and affidavits made pursuant to or
24 required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not
25 be liable to any person for such reliance.

26 (9) If a mausoleum section or bank of underground crypts is not completed within the
27 time limits set out in KRS 367.932 to 367.974 and 367.991, the financial institution

1 acting as trustee, if any, may contract for and cause said project to be completed and
2 paid therefor from the trust account funds deposited to the project's account, paying
3 any balance, less cost and expenses, to the depositor. In the event there is no
4 corporate trustee, or the trustee chooses not to serve in the capacity to complete
5 construction, the Attorney General shall appoint a committee to serve as trustees to
6 trust account funds deposited to the project's account, paying any balance, less cost
7 and expenses, to the cemetery company.

8 (10) If it is determined by the trustee after the expiration of the time of construction set
9 out above that there is not enough money in the trust fund account to complete the
10 project, the trustee shall make a refund of all moneys held to all purchasers, or his
11 heirs or assigns, in the amount of the deposit to the credit of their particular contract
12 and all income those funds have earned. The purchasers shall be entitled to receive
13 any remainder of the purchase price paid from the depositor. However, nothing
14 herein contained shall relieve any person from any liability for nonperformance of
15 the contract terms.

16 (11) If temporary entombment or inurnment is not used, upon written notification to the
17 seller, the personal representative or any purchaser of such space who dies before
18 completion of construction shall be entitled to a refund of all moneys paid into the
19 preconstruction trust fund for such space, including any income earned thereon, and
20 from the seller, the remainder of the purchase price paid.

21 (12) In lieu of the trust fund deposits required herein, the person may post with the
22 Attorney General, Office~~[Division]~~ of Consumer Protection, a good and sufficient
23 bond by a surety company licensed to do business in Kentucky and in an amount
24 sufficient to cover all payments made by or on account of purchasers who have not
25 received the purchased property and services. This bond shall be held for the benefit
26 of any purchaser, or his or her heir or assign or duly authorized representative, who
27 suffers a loss of money paid for a preconstructed mausoleum crypt or niche or

1 underground crypt after July 13, 1984, due to the insolvency of the registrant, or
 2 failure to construct within the time limits set out herein. If a bond is posted, the
 3 Attorney General's office shall receive sixty (60) days' written notice in the event of
 4 cancellation. On or before the cancellation date, the person shall comply with the
 5 trust fund requirements herein or post another good and sufficient bond.

6 (13) Any person selling preconstruction mausoleum, columbarium or underground crypt
 7 contracts shall pay to the Attorney General five dollars (\$5) for each sale of said
 8 contract and all of which fees shall be remitted by the person collecting them to the
 9 Attorney General at least once each month, and such funds shall be used by the
 10 Attorney General in administering this chapter.

11 ➔Section 30. KRS 367.976 is amended to read as follows:

12 As used in KRS 367.976 to 367.985, unless the context otherwise requires:

13 (1) "Advertisement" means a commercial message in any medium that aids, promotes,
 14 or assists directly or indirectly a rental-purchase agreement, excluding in-store
 15 merchandising aids.

16 (2) "Cash price" means the price at which the lessor would have sold the property to the
 17 consumer for cash on the date of the rental-purchase agreement.

18 (3) "Consumer" means a natural person who rents personal property under a rental-
 19 purchase agreement.

20 (4) "Consummation" means the time a consumer becomes contractually obligated on a
 21 rental-purchase agreement.

22 (5) ~~["Division" means the Division of Consumer Protection in the Office of the~~
 23 ~~Attorney General.~~

24 ~~(6)~~ "Lessor" means a person who, in the ordinary course of business, regularly leases,
 25 offers to lease, or arranges for the leasing of property under a rental-purchase
 26 agreement.

27 **(6) "Office" means the Office of Consumer Protection in the Office of the Attorney**

1 **General.**

2 (7) "Rental-purchase agreement" means an agreement for the use of personal property
3 by a natural person primarily for personal, family, or household purposes, for an
4 initial period of four (4) months or less, whether or not there is any obligation
5 beyond the initial period, that is automatically renewable with each payment and
6 that permits the consumer to become the owner of the property. The term rental-
7 purchase agreement shall not be construed to be, nor be governed by, any of the
8 following:

- 9 (a) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R.
10 part 226.2(a)(16) and Section 1602(g) of the Truth in Lending Act, 15 U.S.C.
11 secs. 1601 et seq.;
- 12 (b) A lease which constitutes a consumer lease as defined in 12 C.F.R. part
13 213.2(a)(6);
- 14 (c) Any lease for agricultural, business, or commercial purposes;
- 15 (d) Any lease made to an organization;
- 16 (e) A lease or agreement which constitutes a retail installment transaction or retail
17 installment contract as defined in KRS 371.210;
- 18 (f) A security interest as defined in KRS 355.1-201(37); or
- 19 (g) A home solicitation sale as that term is defined in KRS 367.410.

20 ➔Section 31. KRS 367.981 is amended to read as follows:

21 (1) A renegotiation shall occur when an existing rental-purchase agreement is satisfied
22 and replaced by a new lease agreement undertaken by the same consumer. A
23 renegotiation shall be a new agreement covered by KRS 367.976 to 367.985.
24 However, events such as the following shall not be treated as a renegotiation:

- 25 (a) The addition or return of property in a multiple item agreement or the
26 substitution of lease property, if in either case the average payment allocable
27 to a payment period is not changed by more than twenty-five percent (25%);

- 1 (b) A deferral or extension of one (1) or more periodic payments, or portions of a
2 periodic payment;
- 3 (c) A reduction in charges in the agreement;
- 4 (d) An agreement involving a court proceeding; or
- 5 (e) Any other event described in administrative regulations prescribed by the
6 office[division].

7 (2) No disclosures shall be required for any extension of a rental-purchase agreement.

8 ➔Section 32. KRS 367.985 is amended to read as follows:

9 (1) A lessor shall not be liable under KRS 367.983 for a violation of KRS 367.976 to
10 367.985 if the lessor shows by a preponderance of the evidence that the violation
11 was not intentional and resulted from a bona fide error, such as a clerical
12 miscalculation, computer malfunctions, programming error, or printing error, even
13 though the lessor maintained procedures reasonably adapted to avoid such an error.
14 An error of legal judgment with respect to requirements of this title shall not be
15 considered a bona fide error.

16 (2) A lessor shall not be liable under KRS 367.983 for any act done or omitted in good
17 faith in conformity with any administrative regulation or interpretation promulgated
18 by the Attorney General or by the office[division] or by an official duly authorized
19 by the Attorney General or by the office[division]. This rule shall apply even if,
20 after the act or omission has occurred, the regulation or interpretation is amended,
21 rescinded, or determined by judicial or other authority to be invalid for any reason.

22 (3) A lessor shall not be liable under KRS 367.983 for any error if, before the thirty-
23 first day after the date the merchant discovers the error and before an action against
24 the lessor has been filed or written notice of the error received by the lessor, the
25 lessor gives the consumer written notice of the error and makes adjustments in the
26 consumer's account as necessary to assure that the consumer will not be required to
27 pay an amount in excess of the amount disclosed and that the agreement otherwise

1 complies with KRS 367.976 to 367.985.

2 ➔Section 33. KRS 367.990 is amended to read as follows:

- 3 (1) Any person who violates the terms of a temporary or permanent injunction issued
4 under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of
5 not more than twenty-five thousand dollars (\$25,000) per violation. For the
6 purposes of this section, the Circuit Court issuing an injunction shall retain
7 jurisdiction, and the cause shall be continued, and in such cases the Attorney
8 General acting in the name of the Commonwealth may petition for recovery of civil
9 penalties.
- 10 (2) In any action brought under KRS 367.190, if the court finds that a person is
11 willfully using or has willfully used a method, act, or practice declared unlawful by
12 KRS 367.170, the Attorney General, upon petition to the court, may recover, on
13 behalf of the Commonwealth, a civil penalty of not more than two thousand dollars
14 (\$2,000) per violation, or where the defendant's conduct is directed at a person aged
15 sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)
16 per violation, if the trier of fact determines that the defendant knew or should have
17 known that the person aged sixty (60) or older is substantially more vulnerable than
18 other members of the public.
- 19 (3) Any person with actual notice that an investigation has begun or is about to begin
20 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,
21 or falsifies documentary material is guilty of a Class A misdemeanor.
- 22 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240
23 or 367.250, intentionally falsifies or withholds documents, records, or pertinent
24 materials that are not privileged shall be subject to a fine as provided in subsection
25 (3) of this section.
- 26 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is
27 proposed, operated, or promoted may grant an injunction without bond, upon

1 complaint filed by the Attorney General to enjoin the further operation thereof, and
2 the Attorney General may ask for and the court may assess civil penalties against
3 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)
4 which shall be for the benefit of the Commonwealth of Kentucky.

5 (6) Any person, business, or corporation who knowingly violates the provisions of KRS
6 367.540 shall be guilty of a violation. It shall be considered a separate offense each
7 time a magazine is mailed into the state; but it shall be considered only one (1)
8 offense for any quantity of the same issue of a magazine mailed into Kentucky.

9 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty
10 of a Class A misdemeanor.

11 (8) In addition to the penalties contained in this section, the Attorney General, upon
12 petition to the court, may recover, on behalf of the Commonwealth a civil penalty of
13 not more than the greater of five thousand dollars (\$5,000) or two hundred dollars
14 (\$200) per day for each and every violation of KRS 367.175.

15 (9) Any person who shall willfully and intentionally violate any provision of KRS
16 367.976 to 367.985 shall be guilty of a Class B misdemeanor.

17 (10) (a) Any person who violates the terms of a temporary or permanent injunction
18 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a
19 penalty of not more than five thousand dollars (\$5,000) per violation. For the
20 purposes of this section, the Circuit Court issuing an injunction shall retain
21 jurisdiction, and the cause shall be continued, and in such cases the Attorney
22 General acting in the name of the Commonwealth may petition for recovery of
23 civil penalties;

24 (b) The Attorney General may, upon petition to a court having jurisdiction under
25 KRS 367.190, recover on behalf of the Commonwealth from any person
26 found to have willfully committed an act declared unlawful by KRS 367.667 a
27 penalty of not more than two thousand dollars (\$2,000) per violation; and

- 1 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,
2 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false
3 or incorrect information to the Attorney General in filing statements or reports
4 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- 5 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under
6 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per
7 violation to be collected in the name of the Commonwealth upon action of the
8 Attorney General.
- 9 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be
10 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in
11 the name of the Commonwealth upon action by the Attorney General.
- 12 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or
13 367.816 shall be guilty of a Class C felony.
- 14 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have
15 authority to prosecute violations of KRS 367.801 to 367.819.
- 16 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the
17 Attorney General or the appropriate Commonwealth's attorney shall have authority
18 to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- 19 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 20 (17) Any person, partnership, or corporation who violates the provisions of KRS
21 367.850 shall be guilty of a Class A misdemeanor.
- 22 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets
23 back, disconnects, fails to connect, or causes to be changed, set back, or
24 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale
25 of the motor vehicle shall be guilty of a Class D felony.
- 26 (19) Any person who negotiates a contract of membership on behalf of a club without
27 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty

- 1 of a Class D felony.
- 2 (20) Any person or corporation who operates or attempts to operate a health spa in
3 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 4 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
5 (b) The appropriate Commonwealth's attorney shall have authority to prosecute
6 felony violations of KRS 367.832.
- 7 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be
8 guilty of a violation. Either the Attorney General or the appropriate county
9 health department may prosecute violators of KRS 367.855 or 367.857.
- 10 (b) The provisions of this subsection shall not apply to any retail establishment if
11 the wholesaler, distributor, or processor fails to comply with the provisions of
12 KRS 367.857.
- 13 (23) Notwithstanding any other provision of law, any telemarketing company,
14 telemarketer, caller, or merchant shall be guilty of a Class D felony when that
15 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)
16 calendar year knowingly and willfully violates KRS 367.46955(15) by making or
17 causing to be made an unsolicited telephone solicitation call to a telephone number
18 that appears in the current publication of the zero call list maintained by the Office
19 of Consumer Protection in the Office of the Attorney General~~, Division of~~
20 ~~Consumer Protection~~.
- 21 (24) Notwithstanding any other provision of law, any telemarketing company,
22 telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when
23 that telemarketing company, telemarketer, caller, or merchant uses a zero call list
24 identified in KRS 367.46955(15) for any purpose other than complying with the
25 provisions of KRS 367.46951 to 367.46999.
- 26 (25) (a) Notwithstanding any other provision of law, any telemarketing company,
27 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999

1 shall be assessed a civil penalty of not more than five thousand dollars
2 (\$5,000) for each offense.

3 (b) The Attorney General, or any person authorized to act in his or her behalf,
4 shall initiate enforcement of a civil penalty imposed under paragraph (a) of
5 this subsection.

6 (c) Any civil penalty imposed under paragraph (a) of this subsection may be
7 compromised by the Attorney General or his or her designated representative.
8 In determining the amount of the penalty or the amount agreed upon in
9 compromise, the Attorney General, or his or her designated representative,
10 shall consider the appropriateness of the penalty to the financial resources of
11 the telemarketing company, telemarketer, caller, or merchant charged, the
12 gravity of the violation, the number of times the telemarketing company,
13 telemarketer, caller, or merchant charged has been cited, and the good faith of
14 the telemarketing company, telemarketer, caller, or merchant charged in
15 attempting to achieve compliance, after notification of the violation.

16 (d) If a civil penalty is imposed under this subsection, a citation shall be issued
17 which describes the violation which has occurred and states the penalty for the
18 violation. If, within fifteen (15) working days from the receipt of the citation,
19 the affected party fails to pay the penalty imposed, the Attorney General, or
20 any person authorized to act in his or her behalf, shall initiate a civil action to
21 collect the penalty. The civil action shall be taken in the court which has
22 jurisdiction over the location in which the violation occurred.

23 (26) Any person who violates KRS 367.500 shall be liable for a penalty of two thousand
24 five hundred dollars (\$2,500) per violation. Either the Attorney General or the
25 appropriate Commonwealth's attorney may prosecute violations of KRS 367.500.

26 ➔Section 34. KRS 380.040 is amended to read as follows:

27 (1) Subject to subsection (3) of this section, a person, whether or not located in this

1 state, who is engaged in debt adjusting and actually or constructively receives any
2 money or other thing of value, other than the fees permitted by this chapter, for the
3 purpose of disbursing the money or thing of value to the debtor's creditors, shall do
4 both of the following:

5 (a) Unless specifically instructed otherwise by a debtor, disburse to the
6 appropriate creditors all funds received from the debtor, less any contributions
7 or fees not prohibited by subsection (2) of this section, within thirty (30) days
8 of receipt of the funds from the debtor; and

9 (b) Maintain a separate trust account for the receipt of any funds from debtors and
10 the disbursement of the funds to creditors on behalf of the debtors.

11 (2) If a fee, contribution, or other consideration for engaging in debt adjusting is
12 accepted, directly or indirectly, a person engaged in debt adjusting shall not do any
13 of the following:

14 (a) Accept a fee, contribution, or other consideration exceeding seventy-five
15 dollars (\$75) from a debtor residing in this state for an initial set up;

16 (b) Accept a fee, contribution, or other consideration exceeding fifty dollars (\$50)
17 per calendar year from a debtor residing in this state for consultation;

18 (c) If money or anything else of value is received and held by the person engaged
19 in debt adjusting for the purpose of disbursing the money or thing of value to
20 the debtor's unsecured creditors, accept a periodic fee, contribution, or other
21 consideration from a debtor who resides in this state that exceeds the greater
22 of eight and one-half percent (8.5%) of the amount paid by the debtor each
23 month for distribution to the debtor's creditors or thirty dollars (\$30); or

24 (d) Accept any other fee, contribution, or other consideration in advance of the
25 complete performance of all promised services in relation to secured debt.
26 Acceptance of a fee, contribution, or other consideration in advance of the
27 complete performance of all promised services in relation to secured debt,

1 including the placement of the fee, contribution, or other consideration into an
2 escrow account to be paid upon completion of the services, is specifically
3 prohibited. For purposes of this paragraph, "secured debt" means any debt
4 primarily for personal, family, or household use that is secured by a mortgage,
5 deed of trust, other equivalent consensual security interest on residential real
6 property, or collateral that has a mortgage lien interest in residential real
7 property.

8 (3) Subsections (1) and (2) of this section shall not prohibit a person engaged in debt
9 adjusting for a debtor who resides in this state from charging the debtor a bad check
10 charge of twenty dollars (\$20) or the amount passed on from the debt adjuster's
11 bank, whichever is greater, in addition to fees, contributions, or other consideration
12 not prohibited by subsection (2) of this section.

13 (4) Fees, contributions, or other consideration permitted in subsections (1), (2), and (3)
14 of this section may be adjusted on an annual basis by the amount equivalent to any
15 increase in the consumer price index, published by the United States Department of
16 Labor, Bureau of Labor Statistics.

17 (5) Any person that engages in debt adjusting shall file an initial registration form,
18 accompanied by an initial registration fee of two hundred fifty dollars (\$250), and
19 the registration shall be renewed each year thereafter for a fee of two hundred fifty
20 dollars (\$250) to cover the actual cost of filing the registration, in accordance with
21 administrative regulations promulgated by the Attorney General.

22 (6) Any person that engages in debt adjusting shall arrange for and undergo an annual
23 audit of the person's business, including any trust funds deposited and distributed to
24 creditors on behalf of debtors, which shall be conducted by an independent, third-
25 party certified public accountant. Both of the following shall apply to an audit
26 performed under this subsection:

27 (a) The person shall file the results of the audit and the auditor's opinion with the

1 Office of Consumer Protection~~[-Division]~~ of the Office of the Attorney
2 General within thirty (30) days of the anniversary date of filing the initial
3 registration; and

4 (b) The Attorney General shall make available a summary of the results of the
5 audit and the auditor's opinion upon written request of any person and
6 payment of a fee not to exceed the cost of copying the summary and opinion.

7 (7) (a) A person engaged in debt adjusting shall obtain and at all times maintain
8 insurance coverage for errors and omissions, employee dishonesty, depositor's
9 forgery, computer fraud, and violations of this chapter in the amount of ten
10 percent (10%) of the monthly average for the immediately preceding six (6)
11 months of the aggregate amount of all deposits made with the person by all
12 debtors. The insurance coverage shall comply with all of the following:

13 1. The minimum limit of the insurance coverage shall not be less than one
14 hundred thousand dollars (\$100,000), and the maximum limit of the
15 insurance coverage shall not be more than two hundred fifty thousand
16 dollars (\$250,000);

17 2. The insurance coverage shall not include a deductible in excess of ten
18 percent (10%) of the face amount of the policy coverage;

19 3. The insurance coverage shall be issued by an insurer and rated at least
20 A-, or its equivalent, by a nationally recognized rating organization; and

21 4. The insurance coverage shall provide that the Office of Consumer
22 Protection~~[-Division]~~ of the Office of the Attorney General shall be
23 named as an additional interested party.

24 (b) If the debt adjuster engages in debt adjusting in relation to any debt that is
25 primarily for personal, family, or household use that is secured by a mortgage,
26 deed of trust, other equivalent consensual security interest on residential real
27 property, or collateral that has a mortgage lien interest in residential real

1 property, the amount of insurance coverage required in paragraph (a) of this
2 subsection shall be increased by two hundred fifty thousand dollars
3 (\$250,000).

- 4 (8) (a) A debt adjuster shall maintain a bond issued by a surety company admitted to
5 do business in this Commonwealth. The bond shall be in the amount of
6 twenty-five thousand dollars (\$25,000) in favor of the Attorney General for
7 the benefit of the Commonwealth for any violation of this chapter or any
8 person suffering injury or loss by reason of any violation of this chapter. A
9 copy of the bond shall be filed with the Attorney General.
- 10 (b) The bond required by paragraph (a) of this subsection shall be in effect during
11 the period of the debt adjuster's registration as well as for two (2) years after
12 the debt adjuster ceases to provide debt-adjusting services to debtors.
- 13 (c) A change in ownership of a debt adjuster shall not release, cancel, or terminate
14 liability under any bond previously filed unless the Attorney General agrees in
15 writing to the release, cancellation, or termination because the debt adjuster
16 has filed a new bond meeting the requirements of paragraph (a) of this
17 subsection.
- 18 (d) The proceeds of the bond required by paragraph (a) of this subsection shall be
19 paid to any person suffering injury or loss by reason of any violation of this
20 chapter or to the Attorney General for any violation of this chapter or shall be
21 paid pursuant to the terms of any order of a court of competent jurisdiction.
22 Any person who is damaged by any violation of this chapter may bring an
23 action against the bond to recover damages pursuant to this paragraph,
24 provided the aggregate liability of the surety shall not exceed the amount of
25 the bond.
- 26 (e) In lieu of the bond required by paragraph (a) of this subsection, a debt adjuster
27 may, with the written approval of the Attorney General, deliver to the

1 Attorney General an irrevocable letter of credit issued or confirmed by a
2 financial institution authorized by law to transact business in the
3 Commonwealth. The irrevocable letter of credit shall be in the amount of
4 twenty-five thousand dollars (\$25,000) in favor of the Attorney General for
5 the benefit of the Commonwealth or any person suffering injury or loss by
6 reason of any violation of this chapter.

7 (f) If the debt adjuster engages in debt adjusting in relation to any debt that is
8 primarily for personal, family, or household use that is secured by a mortgage,
9 deed of trust, other equivalent consensual security interest on residential real
10 property, or collateral that has a mortgage lien interest in residential real
11 property, the amount of the bond required in paragraph (a) of this subsection
12 or the irrevocable letter of credit approved pursuant to paragraph (e) of this
13 subsection shall be increased by fifty thousand dollars (\$50,000).

14 (9) A debt adjuster may not, directly or indirectly:

15 (a) Misappropriate or misapply money held in trust;

16 (b) Settle a debtor's debt if the amount the debtor will owe after settlement is
17 equal to or more than fifty percent (50%) of the amount of the debt prior to
18 settlement unless, after the creditor has assented, the debtor assents to a
19 settlement for which the amount the debtor will owe after settlement is equal
20 to or more than fifty percent (50%) of the amount of the debt prior to
21 settlement;

22 (c) Take a power of attorney that authorizes the debt adjuster to settle a debt,
23 unless the power of attorney is expressly limited to the debtor's debts and
24 grants authority to settle debts only if the amount the debtor will owe after
25 settlement is less than fifty percent (50%) of the amount of the debt prior to
26 settlement. However, in no event shall an agreement confer on a debt adjuster
27 a power of attorney to negotiate or settle any of the debtor's debt that is

- 1 primarily for personal, family, or household use that is secured by a mortgage,
2 deed of trust, other equivalent consensual security interest on residential real
3 property, or collateral that has a mortgage lien interest in residential real
4 property;
- 5 (d) Exercise or attempt to exercise a power of attorney after a debtor has
6 terminated an agreement;
- 7 (e) Initiate a transfer from a debtor's account at a bank or with another person
8 unless the transfer is:
- 9 1. A return of money to the debtor; or
10 2. Before termination of an agreement, properly authorized by the
11 agreement and this chapter, and for payment to one (1) or more creditors
12 pursuant to a plan or payment of a fee;
- 13 (f) Structure a plan in a manner that would result in a negative amortization of
14 any of a debtor's debts, unless a creditor that is owed a negatively amortizing
15 debt agrees to refund or waive the finance charge upon payment of the
16 principal amount of the debt;
- 17 (g) Settle a debt or lead a debtor to believe that a payment to a creditor is in
18 settlement of a debt to the creditor unless, at the time of settlement, the debtor
19 receives a certification by the creditor that the payment is in full settlement of
20 the debt or is part of a payment plan, the terms of which are included in the
21 certification, that upon completion will lead to full settlement of the debt;
- 22 (h) Make a representation that:
- 23 1. The debt adjuster will furnish money to pay bills or prevent attachments;
24 2. Payment of a certain amount will permit satisfaction of a certain amount
25 or range of indebtedness;
26 3. Participation in a plan will or may prevent litigation, garnishment,
27 attachment, repossession, foreclosure, eviction, or loss of employment,

- 1 and will or may stop efforts to collect a debt from the debtor;
- 2 4. Failure to make required minimum payments to creditors will not or may
- 3 not break the terms of agreements with creditors, will not or may not
- 4 lead creditors to increase finance charges and pursue litigation, will not
- 5 or may not be reported to consumer reporting agencies, or will not or
- 6 may not have an adverse effect on the debtor's credit report and credit
- 7 score; or
- 8 5. Fees paid to a debt adjuster will be used to pay creditors;
- 9 (i) Misrepresent that it is authorized or competent to furnish legal advice or
- 10 perform legal services;
- 11 (j) Take a confession of judgment or power of attorney to confess judgment
- 12 against a debtor;
- 13 (k) Purchase a debt or obligation of the debtor;
- 14 (l) Receive from or on behalf of the debtor:
- 15 1. A promissory note or other negotiable instrument other than a check or a
- 16 demand draft; or
- 17 2. A postdated check or demand draft;
- 18 (m) Lend money or provide credit to the debtor, except as a deferral of a
- 19 settlement fee at no additional expense to the debtor;
- 20 (n) Obtain a mortgage or other security interest from any person in connection
- 21 with the services provided to the debtor;
- 22 (o) Provide the debtor less than the full benefit of a compromise of a debt
- 23 arranged by the debt adjuster; or
- 24 (p) Charge the debtor for or provide credit or other insurance, coupons for goods
- 25 or services, membership in a club, access to computers or the Internet, or any
- 26 other matter not directly related to debt adjusting services or educational
- 27 services concerning personal finance.

1 (10) Any unfair, false, misleading, or deceptive act or practice in the conduct of debt
2 adjusting is prohibited. For purposes of this subsection, "unfair" shall be construed
3 to mean unconscionable.

4 ➔Section 35. KRS 403.707 is amended to read as follows:

5 (1) The Sexual Assault Response Team Advisory Committee is established.

6 (2) The Sexual Assault Response Team Advisory Committee shall be co-chaired by the
7 executive director of the Kentucky Association of Sexual Assault Programs and the
8 commissioner of the Department of Kentucky State Police or the commissioner's
9 designee.

10 (3) The membership of the Sexual Assault Response Team Advisory Committee shall
11 consist of the following:

12 (a) The executive director of the Kentucky Board of Nursing or the executive
13 director's designee;

14 (b) The executive director of the Kentucky Nurses Association or the executive
15 director's designee;

16 (c) The executive director of the Kentucky Hospital Association or the executive
17 director's designee;

18 (d) The executive director of the Kentucky Association of Children's Advocacy
19 Centers;

20 (e) The director of the Department of Kentucky State Police Crime Lab;

21 (f) The commissioner of the Department for Community Based Services or the
22 commissioner's designee;

23 (g) The executive director of the Office of Victims~~[Victims]~~ Advocacy ~~[Division]~~
24 of the Office of the Attorney General or the director's designee;

25 (h) A sexual assault nurse examiner appointed by the secretary of the Cabinet for
26 Health and Family Services;

27 (i) A representative from a sexual assault response team appointed by the

- 1 executive director of the Kentucky Association of Sexual Assault Programs;
- 2 (j) A physician appointed by the secretary of the Cabinet for Health and Family
3 Services; and
- 4 (k) A Commonwealth's attorney or an assistant Commonwealth's attorney
5 appointed by the Attorney General.
- 6 (4) Members appointed under subsection (3)(h) to (k) of this section shall serve at the
7 pleasure of the appointing authority and shall not serve longer than four (4) years
8 without reappointment.
- 9 (5) The Sexual Assault Response Team Advisory Committee shall:
- 10 (a) Serve in an advisory capacity to the Kentucky Board of Nursing in
11 accomplishing the duties set forth under KRS 314.142;
- 12 (b) Serve in an advisory capacity to the Justice and Public Safety Cabinet in the
13 development of the statewide sexual assault protocol required under KRS
14 216B.400(4);
- 15 (c) Develop a model protocol for the operation of sexual assault response teams
16 which shall include the roles of sexual assault nurse examiners, physicians,
17 law enforcement, prosecutors, and victim advocates;
- 18 (d) Provide assistance to each regional rape crisis center, as designated by the
19 Cabinet for Health and Family Services, in establishing a regional sexual
20 assault response team;
- 21 (e) Develop model policies for law enforcement agencies related to handling
22 sexual assault examination kits and investigating sexual assaults with a
23 victim-centered, evidence-based approach;
- 24 (f) By January 1, 2018, report to the General Assembly on the results of the
25 analysis of previously untested sexual assault examination kits submitted to
26 the Department of Kentucky State Police forensic laboratory pursuant to 2016
27 Ky. Acts ch. 58, sec. 1, including whether analysis of those kits led to the

1 identification and prosecution of suspects and the cost to society of the
2 offenses committed by the suspects identified;

3 (g) By July 1, 2018, and by each July 1 thereafter, report to the General Assembly
4 and to the secretary of the Justice and Public Safety Cabinet on the number of
5 sexual assaults reported, the number of sexual assault examination kits
6 submitted to the Department of Kentucky State Police forensic laboratory, the
7 number of kits tested, and the number of charges filed and convictions
8 obtained in sexual assault cases in the previous calendar year;

9 (h) Provide information and recommendations concerning the activities of the
10 agency or organization represented by each individual committee member as
11 related to sexual assault issues and programs within the purview of the agency
12 or organization; and

13 (i) Recommend to the appropriate state agency any changes in statute,
14 administrative regulation, training, policy, and budget to promote a
15 multidisciplinary response to sexual assault.

16 ➔Section 36. KRS 405.430 is amended to read as follows:

17 (1) When a parent presents himself to the cabinet for the voluntary establishment of
18 paternity and clear evidence of parentage is not present, the cabinet shall pay when
19 administratively ordered the cost of genetic testing to establish paternity, subject to
20 recoupment from the alleged father when paternity is established.

21 (2) The cabinet shall obtain additional testing in any case if an original test is contested,
22 upon request and advance payment by the contestant.

23 (3) In a contested paternity case, the child, the mother, and the putative father shall
24 submit to genetic testing upon a request of any of the parties, unless the person or
25 guardian of the person who is requested to submit to genetic testing shows good
26 cause, taking into account the best interests of the child, why the genetic tests
27 cannot be performed. The request shall be supported by a sworn statement of the

1 party, requesting that the test be performed, which shall include the information
2 required by 42 U.S.C. sec. 666(a)(5)(B)(i) or (ii).

3 (4) When a parent who fails to support a child is not obligated to provide child support
4 by court order, the cabinet may administratively establish a child support obligation
5 based upon a voluntary acknowledgment of paternity as set forth in KRS Chapter
6 406, the parent's minimum monthly child support obligation and proportionate share
7 of child care costs incurred due to employment or job search of either parent, or
8 incurred while receiving elementary or secondary education, or higher education or
9 vocational training which will lead to employment. The monthly child support
10 obligation shall be determined pursuant to the Kentucky child support guidelines set
11 forth in KRS 403.212. The actual cost of child care shall be reasonable and shall be
12 allocated between the parents in the same proportion as each parent's gross income,
13 as determined under the guidelines, bears to the total family gross income.

14 (5) The cabinet shall recognize a voluntary acknowledgment of paternity as a basis for
15 seeking a support order, irrespective of the alleged father's willingness to consent to
16 a support order.

17 (6) When in the best interest of the child, the cabinet may review and adjust a parent's
18 child support obligation or child care obligation as established by the cabinet, upon
19 a request of the cabinet when an assignment has been made, or upon either parent's
20 petition if the amount of the child support awarded under the order differs from the
21 amount that would be awarded in accordance with KRS 403.212. The cabinet shall
22 notify parents at least once every three (3) years of the right to a review.

23 (7) In establishing or modifying a parent's monthly child support obligation, the cabinet
24 may use automated methods to identify orders eligible for review, conduct the
25 review, identify orders eligible for adjustment, and apply the adjustment to eligible
26 orders in accordance with KRS 403.212. The cabinet shall utilize information,
27 including financial records, about the parent and child which it has good reason to

- 1 believe is reliable and may require the parents to provide income verification.
- 2 (8) In cases in which past-due support is owed for a child receiving public assistance
3 under Title IV-A of the Federal Social Security Act, the cabinet shall issue an
4 administrative order, or seek a judicial order, requiring the obligated parent to
5 participate in work activities, or educational or vocational training activities for at
6 least twenty (20) hours per week, unless the parent is incapacitated as defined by 42
7 U.S.C. sec. 607.
- 8 (9) The cabinet may disclose financial records only for the purpose of establishing,
9 modifying, or enforcing a child support obligation of an individual. A financial
10 institution shall not be liable to any individual for disclosing any financial record of
11 the individual to the cabinet attempting to establish, modify, or enforce a child
12 support obligation.
- 13 (10) The cabinet may issue both intrastate and interstate administrative subpoenas to any
14 individual or entity for financial or other information or documents which are
15 needed to establish, modify, or enforce a child support obligation pursuant to Title
16 IV-D of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative
17 subpoena lawfully issued in another state to an individual or entity residing in this
18 state shall be honored and enforced in the Circuit Court of the county in which the
19 individual or entity resides.
- 20 (11) In any case where a person or entity fails to respond to a subpoena within the
21 specified time frame, the cabinet shall impose a penalty.
- 22 (12) No person shall knowingly make, present, or cause to be made or presented to an
23 employee or officer of the cabinet any false, fictitious, or fraudulent statement,
24 representation, or entry in any application, report, document, or financial record
25 used in determining child support or child care obligations.
- 26 (13) If a person knowingly or by reason of negligence discloses a financial record of an
27 individual, that individual may pursue civil action for damages in a federal District

1 Court or appropriate state court. No liability shall arise with respect to any
2 disclosure which results from a good faith, but erroneous, interpretation. In any civil
3 action brought for reason of negligence of disclosure of financial records, upon
4 finding of liability on the part of the defendant, the defendant shall be liable to the
5 plaintiff in an amount equal to:

- 6 (a) The sum of the greater of one thousand dollars (\$1,000) for each act of
7 unauthorized disclosure of financial records; or
8 (b) The sum of the actual damages sustained by the plaintiff resulting from the
9 unauthorized disclosure; plus
10 (c) If willful disclosure or disclosure was a result of gross negligence, punitive
11 damages, plus the costs, including attorney fees, of the action.

12 ~~[(14) The cabinet shall issue an administrative order or seek a judicial order requiring a
13 parent with a delinquent child support obligation, as defined by administrative
14 regulation promulgated under KRS 15.055, to participate in the program described
15 in KRS 205.732 to help low income, noncustodial parents find and keep
16 employment unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.]~~

17 ➔Section 37. The General Assembly hereby confirms the Attorney General's
18 Executive Order, OAG EO 17-01, dated June 15, 2017, relating to the organization of the
19 Office of the Attorney General, to the extent that it is not otherwise confirmed or
20 superseded by this Act.