

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) ~~[Child Support Enforcement Commission;~~

15 ~~]Administrative Hearings Division;~~

16 ~~(k) ]Office of Rate Intervention;~~

17 ~~(j)(+)~~ ***Office of*** Administrative Services;

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

19 ***(l) Office of Child Abuse and Human Trafficking Prevention and***

20 ***Prosecution***~~[Division; and~~

21 ~~(m) Financial Integrity Enforcement Division].~~

22 ***(3) The Department of Criminal Investigations shall be headed by a commissioner,***

23 ***who shall be appointed by and serve at the pleasure of the Attorney General. The***

24 ***offices outlined in subsection (2) of this section shall be headed by executive***

25 ***directors, who shall be appointed by and serve at the pleasure of the Attorney***

26 ***General.***

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

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

- 2 (1) "Administrative agency" or "agency" means each state board, bureau, cabinet,  
3 commission, department, authority, officer, or other entity in the executive branch  
4 of state government authorized by law to conduct administrative hearings.
- 5 (2) "Administrative hearing" or "hearing" means any type of formal adjudicatory  
6 proceeding conducted by an agency as required or permitted by statute or regulation  
7 to adjudicate the legal rights, duties, privileges, or immunities of a named person.
- 8 (3) "Party" means:
- 9 (a) The named person whose legal rights, duties, privileges, or immunities are  
10 being adjudicated in the administrative hearing;
- 11 (b) Any other person who is duly granted intervention in an administrative  
12 hearing; and
- 13 (c) Any agency named as a party to the adjudicatory proceeding or entitled or  
14 permitted by the law being enforced to participate fully in the administrative  
15 hearing.
- 16 (4) "Agency head" means the individual or collegial body in an agency that is  
17 responsible for entry of a final order.
- 18 (5) "Recommended order" means the whole or part of a preliminary hearing report to an  
19 agency head for the disposition of an administrative hearing.
- 20 (6) "Final order" means the whole or part of the final disposition of an administrative  
21 hearing, whenever made effective by an agency head, whether affirmative, negative,  
22 injunctive, declaratory, agreed, or imperative in form.
- 23 (7) "Hearing officer" means the individual, duly qualified and employed pursuant to  
24 this chapter, assigned by an agency head as presiding officer for an administrative  
25 hearing or the presiding member of the agency head.
- 26 (8) "~~Office~~~~[Division]~~" means the *Office of Civil and Environmental Law*~~[Division of~~  
27 ~~Administrative Hearings]~~ in the Office of the Attorney General~~[created pursuant to~~

1       ~~KRS 15.111.~~

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

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

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

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

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

- 25           1. The amount to be paid by the agency to the Attorney General's Office  
26           shall be established by vouchers submitted by the Attorney General's  
27           Office to the agency which shall be promptly paid by the agency, at the

- 1 beginning of, at the end of, or at any time during the provision of the  
2 hearing officers by the Attorney General's Office.
- 3 2. The expenses to be paid to the Attorney General's Office shall be  
4 calculated according to the amount of time spent by the salaried hearing  
5 officers of the Attorney General's Office in providing the services. The  
6 charge for time spent shall not exceed twenty-five percent (25%) more  
7 than the amount allowed for a sole practitioner under personal service  
8 contract. The Attorney General may require payment in advance of the  
9 provision of the requested services based on his calculation of the  
10 amount of time that will be spent by the salaried hearing officers of the  
11 Attorney General's Office in providing the services. The agency shall be  
12 reimbursed for any overpayment at the conclusion of the provision of  
13 services by the Attorney General's Office.
- 14 (3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and  
15 the employing agency, with the advice of the office~~[division]~~, may find necessary to  
16 assure competency in the conduct of an administrative hearing. The qualifications in  
17 this subsection shall not, however, apply to a member of a board, commission, or  
18 other collegial body who may serve as a hearing officer in his capacity as a member  
19 of the collegial body.
- 20 (4) All hearing officers, including members of collegial bodies who serve as hearing  
21 officers, shall receive training necessary to prepare them to conduct a competent  
22 administrative hearing. The training shall pertain to the conduct of administrative  
23 hearings generally and to the applications of the provisions of this chapter,  
24 specifically. The office~~[division]~~ shall establish by administrative regulation  
25 minimum standards concerning the length of training, course content, and instructor  
26 qualifications. Required training shall not exceed eighteen (18) classroom hours for  
27 initial training and six (6) classroom hours per year for continuing training. Actual

1 training may be conducted by an agency or any other organization, if the training  
2 program offered has been approved by the office~~[division]~~ as meeting minimum  
3 standards.

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

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

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

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

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

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

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

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

1 ~~(6)~~~~(f)~~ Reporting to the Legislative Research Commission by July 1 of each odd-  
2 numbered year, the status of the administrative hearing process in Kentucky. The  
3 report shall include a compilation of statistical data and other information necessary  
4 to assess the effectiveness and efficiency of hearing procedures and  
5 recommendations for making improvements to the system. Agencies shall provide  
6 the information requested by the Office of Civil and Environmental Law~~[Division~~  
7 ~~of Administrative Hearings]~~ necessary to complete the report.

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

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

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

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

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

24 (1) This section shall apply to:

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

- 1 (2) A person named in subsection (1) of this section who is sued for any act or omission  
2 in the course of his duties and who has a judgment for monetary damages rendered  
3 against him and who personally suffers actual financial loss, unreimbursed from any  
4 source, by the enforcement and satisfaction of the judgment, including any costs or  
5 attorney's fees awarded pursuant thereto, shall be indemnified by the  
6 Commonwealth from funds appropriated to the Finance and Administration Cabinet  
7 for the payment of judgments, to the extent of his actual financial loss.
- 8 (3) The indemnification shall be contingent upon an express determination by the  
9 Prosecutors~~Prosecutor's~~ Advisory Council that the act or omission which resulted  
10 in liability was within the scope and course of the officer's employment and  
11 occurred during the performance of duty and was committed or omitted in the good  
12 faith belief that the act or omission was lawful and proper.
- 13 (4) If the officer seeking indemnification is the Attorney General, the determination  
14 referred to in subsection (3) of this section shall be made by the Governor.
- 15 (5) The indemnification shall not be construed to abrogate or limit any privilege,  
16 immunity, or matter of defense otherwise available to the person claiming  
17 indemnification and shall not constitute a waiver of any privilege, immunity, or  
18 matter or defense including the sovereign immunity of the Commonwealth.
- 19 (6) The indemnification shall not be the subject of comment, directly or indirectly,  
20 before any jury hearing any cause of action in which the Attorney General, a county  
21 or Commonwealth's attorney, or a member of their staff is a party, and any comment  
22 before the jury shall result in an immediate mistrial.
- 23 ➔Section 7. KRS 189A.050 is amended to read as follows:
- 24 (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall  
25 be sentenced to pay a service fee of three hundred seventy-five dollars (\$375),  
26 which shall be in addition to all other penalties authorized by law.
- 27 (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS

1 534.020 relating to the method of imposition and KRS 534.060 as to remedies for  
2 nonpayment of the fee.

3 (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid  
4 into the general fund, and the remainder of the revenue collected from the service  
5 fee imposed by this section shall be utilized as follows:

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

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

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

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

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

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



1                   pursuant to KRS Chapter 13A to implement the services permitted by  
2                   this subparagraph;

3           (e) Any amount specified by a specific statute shall be transferred as provided in  
4           that statute;

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

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

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

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

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

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

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

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

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

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

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

27           (f) Enforce Kentucky child support laws, including collection of court-ordered or

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

1 subpoena lawfully issued in another state to an individual or entity residing in  
2 this state shall be honored and enforced in the Circuit Court where the  
3 individual or entity resides; and

4 (o) May promulgate administrative regulations to implement this section and  
5 adopt forms or implement other requirements of federal law relating to  
6 interstate administrative subpoenas.

7 (3) Effective September 30, 1999, the cabinet shall establish a system to receive and  
8 process all child support payments. The system shall include existing computer  
9 systems to record the payments. The automated system shall include a state case  
10 registry that contains records with respect to each case in which services are being  
11 provided by the cabinet and each child support order established or modified in the  
12 state on or after October 1, 1998.

13 (4) The cabinet shall establish and operate a state disbursement unit for the collection,  
14 disbursement, and recording of payments under support orders for all Title IV-D  
15 cases and for all cases initially issued in the state on or after January 1, 1994, in  
16 which a wage withholding has been court-ordered or administratively ordered,  
17 pursuant to Part D of Title IV of the Social Security Act. Establishment of the state  
18 unit may include the designation and continuation of existing local collection units  
19 to aid efficient and effective collection, disbursement, and recording of child  
20 support payments.

21 (5) After the establishment of the disbursement unit child support collection system, the  
22 cabinet or its designee shall serve as collector of all court-ordered or  
23 administratively ordered child support payments pursuant to Part D of Title IV of  
24 the Social Security Act.

25 (6) Where establishment of paternity and enforcement and collection of child support is  
26 by law the responsibility of local officials, the cabinet shall refer cases to the  
27 appropriate official for such action. The cabinet may enter into cooperative

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

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

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

27 (9) The cabinet shall determine the name of an obligor owing an arrearage and shall

1 indefinitely deny, suspend, or revoke a license or certification that has been issued if  
2 the person has a child support arrearage that equals or exceeds the amount that  
3 would be owed after six (6) months of nonpayment or fails, after receiving  
4 appropriate notice, to comply with subpoenas or warrants relating to paternity or  
5 child support proceedings as provided by 42 U.S.C. sec. 666(a)(16).

6 (10) The cabinet shall forward the name of the individual to a board of licensure or  
7 board of certification for the notification of the denial, revocation, or suspension of  
8 a driver's license, professional license or certification, occupational license or  
9 certification, recreational license, or sporting license.

10 (11) The denial or suspension shall remain in effect until the child support arrearage has  
11 been eliminated or payments on the child support arrearage are being made in  
12 accordance with a court or administrative order, the person complies with the  
13 subpoena or warrant relating to paternity or child support proceedings, or the appeal  
14 of the denial or suspension is upheld and the license is reinstated.

15 (12) Except for cases administered by the cabinet under 42 U.S.C. secs. 651 et seq.  
16 which shall be afforded the appeal process set forth by KRS 405.450(3), an  
17 individual who has a license or certification denied, revoked, or suspended shall  
18 have the right to appeal to the licensing or certifying board.

19 (13) A dispute hearing shall be conducted by the cabinet in accordance with KRS  
20 405.450. The only basis for a dispute hearing shall be a mistake in fact.

21 (14) The cabinet shall in its discretion enter into agreements with financial institutions  
22 doing business in the Commonwealth to develop and operate, in coordination with  
23 the financial institutions, a data match system as required by KRS 205.772 to  
24 205.778.

25 (15) The cabinet may issue both intrastate and interstate administrative subpoenas to any  
26 individual or entity for financial or other information or documents that are needed  
27 to establish, modify, or enforce a child support obligation pursuant to Title IV-D of

1 the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena  
2 lawfully issued in another state to an individual or entity in this state shall be  
3 honored and enforced in the Circuit Court of the county in which the individual or  
4 entity resides.

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

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

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

- 17 (a) Established;
- 18 (b) Modified;
- 19 (c) Enforced;
- 20 (d) Collected; and
- 21 (e) Distributed.

22 (18)~~(19)~~ The cabinet's designee for the administration of the child support program  
23 shall distribute, when appropriate, the following:

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

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

27 (1) Any person who knows or has reasonable cause to believe that a violation of this

1 chapter has been or is being committed by any person, corporation, or entity, shall  
2 report or cause to be reported to the **Office of Medicaid Fraud and Abuse Control**  
3 **in the Office of the Attorney General**~~[state Medicaid Fraud Control Unit]~~, or the  
4 Medicaid fraud and abuse hotline, the following information, if known:

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

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

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

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

25 (4) No employee of the **Office of Medicaid Fraud and Abuse Control**~~[state Medicaid~~  
26 ~~Fraud Control Unit]~~, the Office of the Attorney General, the Office of the Inspector  
27 General, or the Cabinet for Health and Family Services shall notify the alleged

1 offender of the identity of the person who in good faith makes a report required or  
2 permitted by KRS 205.8451 to 205.8483 nor shall the employee notify the alleged  
3 offender that a report has been made alleging a violation of KRS 205.8451 to  
4 205.8483 until such time as civil or criminal proceedings have been initiated or a  
5 formal investigation has been initiated. Any information or report concerning an  
6 alleged offender shall be considered confidential in accordance with the Kentucky  
7 Open Records Law, KRS 61.870 to 61.884.

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

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

13 (2) The Office of the Inspector General in the Cabinet for Health and Family Services  
14 shall prepare a written description of the reported information and immediately  
15 make a written referral to:

16 (a) The ***Office of Medicaid Fraud and Abuse Control in***~~state Medicaid Fraud~~  
17 ~~Control Unit and to~~ the Office of the Attorney General of all reports of  
18 alleged fraud and abuse by providers or recipients participating in the Medical  
19 Assistance Program; and

20 (b) Other agencies and licensure boards of all reports relevant to their jurisdiction.

21 (3) The Office of the Inspector General in the Cabinet for Health and Family Services,  
22 jointly with the ***Office of Medicaid Fraud and Abuse Control in***~~state Medicaid~~  
23 ~~Fraud Control Unit and~~ the Office of the Attorney General, shall prepare a  
24 Medicaid fraud and abuse report, for the prior fiscal year, categorized by types of  
25 fraud and abuse and by recipient and provider group. This report shall be submitted  
26 no later than July 1 of each year to the Legislative Research Commission, the  
27 Interim Joint Committee on Appropriations and Revenue, and the Interim Joint



1 Committee on Health and Welfare and shall identify:

- 2 (a) The number and type of reports received in the Office of the Inspector General  
3 in the Cabinet for Health and Family Services, from the Medicaid fraud and  
4 abuse hotline categorized by recipient and provider groups;
- 5 (b) The number and type of alleged Medicaid fraud and abuse reports which were  
6 discovered by, received by, or referred to the Office of Medicaid Fraud and  
7 Abuse Control in the Office of the Attorney General, ~~the state Medicaid~~  
8 ~~Fraud Control Unit,~~ the Office of the Inspector General, and the Department  
9 for Medicaid Services; the number and type of reports which were opened for  
10 investigation by the Office of Medicaid Fraud and Abuse Control in the  
11 Office of the Attorney General, ~~the state Medicaid Fraud Control Unit,~~ the  
12 Department for Medicaid Services, or the Office of the Inspector General and  
13 their disposition including:
- 14 1. Administrative actions taken;
  - 15 2. Criminal penalties and civil payments received;
  - 16 3. The amount of state and federal funds involved in the alleged fraud and  
17 abuse;
  - 18 4. The cost of administering the hotline; and
  - 19 5. Recommendations for legislative action to prevent, detect, and prosecute  
20 medical assistance abuse and fraud in the Commonwealth.

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

22 The Office~~Division~~ of Consumer Protection of the Office of the Attorney General shall  
23 develop and distribute to licensed pharmacies without charge a pamphlet for citizens of  
24 the Commonwealth which explains the provisions of KRS 217.815 to 217.826 and  
25 217.895. Pharmacists shall display such distributed pamphlets in a prominent place and  
26 make them available without charge. Pharmacies shall maintain a sufficient stock of the  
27 distributed pamphlets to assure that the supply will not become exhausted for any lengthy

1 time.

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

- 3 (1) Compliance with the provisions of KRS 248.350 shall be monitored by the  
4 department with enforcement assistance provided by the Office of Special  
5 Prosecutions~~[Unit]~~ of the Office of the Attorney General.
- 6 (2) The Attorney General at the request of the commissioner:
- 7 (a) May make such public or private investigations within or outside of this state  
8 as he deems necessary to determine if any person has violated or is about to  
9 violate KRS 248.350 or any administrative regulation or order thereunder, or  
10 to aid in the enforcement of KRS 248.350 or in the prescribing of  
11 administrative regulations and forms thereunder;
- 12 (b) May require or permit any person to file a statement in writing, under oath or  
13 otherwise as the Attorney General may determine, as to all the facts and  
14 circumstances concerning the matter to be investigated; and
- 15 (c) May publish information concerning any violation of KRS 248.350 or any  
16 administrative regulation or order thereunder.
- 17 (3) For the purpose of any investigation or proceeding under KRS 248.350, the  
18 Attorney General or any officer designated by him may administer oaths and  
19 affirmations, subpoena witnesses, compel their attendance, take evidence, and  
20 require production of any books, papers, correspondence, memoranda, agreements,  
21 or other documents or records which the Attorney General deems relevant or  
22 material to the inquiry.
- 23 (4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any  
24 court of competent jurisdiction, upon application by the Attorney General, may  
25 issue to that person an order requiring him to appear before the Attorney General, or  
26 the officer designated by him, there to produce documentary evidence if so ordered  
27 or to give evidence touching the matter under investigation or in question; and any

1 failure to obey the order of the court may be punished by the court as a contempt of  
2 court.

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

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

15 No provision of this code shall apply to:

16 (1) Fraternal benefit societies (as identified in Subtitle 29), except as stated in Subtitle  
17 29.

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

20 (3) Burial associations (as identified in KRS Chapter 303), except as stated in Subtitle  
21 31.

22 (4) Assessment or cooperative insurers (as identified in KRS Chapter 299), except as  
23 stated in KRS Chapter 299.

24 (5) Insurance premium finance companies (as identified in Subtitle 30), except as stated  
25 in Subtitle 30.

26 (6) Qualified organizations which issue charitable gift annuities within the  
27 Commonwealth of Kentucky. For the purposes of this subsection:

- 1 (a) A "qualified organization" means one which is:
- 2 1. Exempt from taxation under Section 501(c)(3) of the Internal Revenue
- 3 Code as a charitable organization, if it files a copy of federal form 990
- 4 with the Office~~[Division]~~ of Consumer Protection in the Office of the
- 5 Attorney General; or
- 6 2. Exempt from taxation under Section 501(c)(3) of the Internal Revenue
- 7 Code as a religious organization; or
- 8 3. Exempt as a publicly owned or nonprofit, privately endowed educational
- 9 institution approved or licensed by the State Board of Education, the
- 10 Southern Association of Colleges and Schools, or an equivalent public
- 11 authority of the jurisdiction where the institution is located; and
- 12 (b) A "charitable gift annuity" means a giving plan or method by which a gift of
- 13 cash or other property is made to a qualified organization in exchange for its
- 14 agreement to pay an annuity.
- 15 (7) A religious organization, as identified in this subsection, or its participants, that:
- 16 (a) Is a nonprofit religious organization;
- 17 (b) Is limited to participants who are members of the same denomination or
- 18 religion;
- 19 (c) Matches its participants who have financial, physical, or medical needs with
- 20 participants who choose to assist with those needs;
- 21 (d) 1. Includes the following notice for delivery to all participants, printed in
- 22 not less than ten (10) point, bold-faced type on or accompanying all
- 23 applications, guideline materials, or any similar documents:
- 24 "NOTICE: UNDER KENTUCKY LAW, THE RELIGIOUS
- 25 ORGANIZATION FACILITATING THE SHARING OF MEDICAL
- 26 EXPENSES IS NOT AN INSURANCE COMPANY, AND ITS
- 27 GUIDELINES, PLAN OF OPERATION, OR ANY OTHER

1 DOCUMENT OF THE RELIGIOUS ORGANIZATION DO NOT  
2 CONSTITUTE OR CREATE AN INSURANCE POLICY.  
3 PARTICIPATION IN THE RELIGIOUS ORGANIZATION OR A  
4 SUBSCRIPTION TO ANY OF ITS DOCUMENTS SHALL NOT BE  
5 CONSIDERED INSURANCE. ANY ASSISTANCE YOU RECEIVE  
6 WITH YOUR MEDICAL BILLS WILL BE TOTALLY VOLUNTARY.  
7 NEITHER THE ORGANIZATION OR ANY PARTICIPANT SHALL  
8 BE COMPELLED BY LAW TO CONTRIBUTE TOWARD YOUR  
9 MEDICAL BILLS. WHETHER OR NOT YOU RECEIVE ANY  
10 PAYMENTS FOR MEDICAL EXPENSES, AND WHETHER OR  
11 NOT THIS ORGANIZATION CONTINUES TO OPERATE, YOU  
12 SHALL BE PERSONALLY RESPONSIBLE FOR THE PAYMENT  
13 OF YOUR MEDICAL BILLS."

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

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

19 (8) A public or private ambulance service licensed and regulated by the Cabinet for  
20 Health and Family Services to the extent that it solicits membership subscriptions,  
21 accepts membership applications, charges membership fees, and furnishes prepaid  
22 or discounted ambulance services to subscription members and designated members  
23 of their households.

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

25 (1) The General Assembly finds that the public health, welfare and interest require a  
26 strong and effective consumer protection program to protect the public interest and  
27 the well-being of both the consumer public and the ethical sellers of goods and

1 services; toward this end, a Consumers' Advisory Council and an Office~~a~~  
2 ~~Division~~ of Consumer Protection of the Office of the Attorney  
3 General~~Department of Law~~ are hereby created for the purpose of aiding in the  
4 development of preventive and remedial consumer protection programs and  
5 enforcing consumer protection statutes.

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

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

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

10 (1) "Telephone solicitation" means:

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

- 15 1. Soliciting a sale of consumer goods or services, offering an investment,  
16 business, or employment opportunity, or offering a consumer loan to the  
17 person called;
- 18 2. Obtaining information that will or may be used for the solicitation of a  
19 sale of consumer goods or services, the offering of an investment,  
20 business, or employment opportunity, or the offering of a consumer loan  
21 to the person called;
- 22 3. Offering the person called a prize, gift, or anything else of value, if  
23 payment of money or other consideration is required in order to receive  
24 the prize or gift, including the purchase of other merchandise or services  
25 or the payment of any processing fees, delivery charges, shipping and  
26 handling fees, or other fees or charges; or
- 27 4. Offering the person called a prize, gift, or other incentive to attend a

1 sales presentation for consumer goods or services, an investment or  
2 business opportunity, or a consumer loan; or

3 (b) A live or recorded communication sent by telephone, facsimile machine,  
4 mobile telephone, or telephone paging device in response to inquiries  
5 generated by unrequested notifications sent by the merchant to persons who  
6 have not previously purchased goods or services from the merchant or  
7 telemarketer or who have not previously requested credit from the merchant,  
8 to a prospective purchaser if the merchant or telemarketer represents or  
9 implies to the recipient of the notification that any of the following applies:

- 10 1. That the recipient has in any manner been specially selected to receive  
11 the notification or the offer contained in the notification;
- 12 2. That the recipient will receive a prize or gift if the recipient calls the  
13 merchant or telemarketer; or
- 14 3. That if the recipient buys one (1) or more items from the merchant or  
15 telemarketer, the recipient will also receive additional or other items of  
16 the same or a different type at no additional cost or for less than the  
17 regular price of the items;

18 (2) "Telephone solicitation" does not mean the following:

- 19 (a) A telephone call made in response to an express request of a person called,  
20 unless the request was made during a prior telephone solicitation;
- 21 (b) A telephone call made to the debtor or a party to the contract in connection  
22 with the payment or performance of an existing debt or contract, the payment  
23 or performance of which has not been completed at the time of the call;
- 24 (c) A telephone call to any person with whom the telemarketer or merchant has a  
25 prior or existing business relationship, including but not limited to the  
26 solicitation of contracts for the maintenance or repair of items previously  
27 purchased from the person making the solicitation or on whose behalf the

- 1 solicitation is made;
- 2 (d) A telephone call made by the following:
- 3 1. A merchant or telemarketer located in Kentucky to a location outside of
- 4 the Commonwealth of Kentucky;
- 5 2. A telephone call made by one (1) merchant to another;
- 6 (3) "Consumer goods or services" means goods, services, or interests in real property
- 7 used by natural persons primarily for personal, family, or household purposes;
- 8 (4) "Consumer loan" means any extension of credit, including credit cards and other
- 9 forms of revolving credit, to a natural person primarily for the purposes of
- 10 purchasing consumer goods or services or for paying existing personal, family, or
- 11 household debts;
- 12 (5) "Consumer" means a natural person who receives a telephone solicitation;
- 13 (6) "Legal name of the merchant" means the real name of the merchant, as defined in
- 14 KRS 365.015(1), or the assumed name of the merchant for which all proper
- 15 certificates have been filed pursuant to KRS 365.015;
- 16 (7) "Merchant" means the individual or business entity offering the consumer goods or
- 17 services, an investment, business, or employment opportunity, or a consumer loan;
- 18 (8) "Caller" or "sales person" means the individual making the call or operating the
- 19 automatic dialing or recorded message device and causing the call to be made;
- 20 (9) "Office~~[Division]~~" means the Office of Consumer Protection~~[Division]~~ of the
- 21 Office of the Attorney General;
- 22 (10) "Automated calling equipment" means any device or combination of devices used
- 23 to select or dial telephone numbers and to deliver recorded messages to those
- 24 numbers without the use of a live operator;
- 25 (11) "Telemarketer" means any person who under contract with a merchant or in
- 26 connection with a telephone solicitation initiates or receives telephone calls to or
- 27 from a consumer of goods and services. A telemarketer includes but is not limited



1 to any such person that is an owner, operator, officer, director, or partner to the  
2 management activities of a business;

3 (12) "Publicly traded corporation" means an issuer or subsidiary of an issuer that has a  
4 class of securities which is:

5 (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec.  
6 78l) and which is registered or exempt from registration under paragraph (A),  
7 (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;

8 (b) Listed on the New York Stock Exchange, the American Stock Exchange, or  
9 the NASDAQ National Market System; or

10 (c) A reported security within the meaning of subparagraph (4) of Regulation  
11 Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A  
12 subsidiary of an issuer that qualifies for exemption under this paragraph shall  
13 not itself be exempt unless at least sixty percent (60%) of the voting power of  
14 its shares is owned by the qualifying issuer;

15 (13) "Telemarketing company" means a company whose primary business is to engage in  
16 telephone solicitation; and

17 (14) "Zero call list" means the national Do Not Call Registry maintained by the United  
18 States Federal Trade Commission containing the residential or wireless telephone  
19 numbers of the individuals that indicate their preference not to receive telephone  
20 solicitations.

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

22 (1) At least ten (10) days prior to doing business in this state, a telemarketing company  
23 shall register with the office~~[division]~~ by filing the information described below and  
24 paying a filing fee of three hundred dollars (\$300). A telemarketing company shall  
25 be deemed to do business in this state if the telemarketing company solicits  
26 prospective purchasers from locations in this state or solicits prospective purchasers  
27 who are located in this state. The information required by this section shall be

1 submitted on a form provided by the Attorney General and shall be verified by a  
2 declaration signed by each principal of the telemarketing company, under penalty of  
3 perjury. The declaration shall specify the date and location of signing. Information  
4 submitted pursuant to KRS 367.46951 to 367.46999 shall be clearly identified and  
5 appended to the filing.

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

9 (3) If, prior to expiration of a telemarketing company's annual registration, there is a  
10 material change in the information required by KRS 367.46951 to 367.46999, the  
11 telemarketing company shall, within ten (10) days, file an addendum updating the  
12 information with the office~~[division]~~. However, changes in salespersons soliciting  
13 on behalf of a telemarketing company shall be updated by filing addenda, if  
14 necessary, in quarterly intervals computed from the effective date of registration.  
15 The addendum shall include the required information for all salespersons currently  
16 soliciting or having solicited on behalf of the telemarketing company at any time  
17 during the period between the filing of the registration, or the last addendum, and  
18 the current addendum, and shall include information on salespersons no longer  
19 soliciting for the telemarketing company as of the date of the filing of the current  
20 addendum.

21 (4) Upon receiving the filing and the filing fee pursuant to this section, the  
22 office~~[division]~~ shall send the telemarketing company a written confirmation of  
23 receipt of the filing. If the telemarketing company has more than one (1) business  
24 location, the written confirmation shall be sent to the telemarketing company's  
25 principal business location as identified in the telemarketing company's filing in  
26 sufficient numbers so that the telemarketing company can meet the requirements of  
27 this subsection. Within ten (10) days of receipt of the confirmation, the

1 telemarketing company shall post in a conspicuous place at each of the  
2 telemarketing company's business locations within this state a copy of the entire  
3 registration statement which has been filed with the office~~[division]~~. Until  
4 confirmation of receipt of filing is received and posted, the telemarketing company  
5 shall post in a conspicuous place at each of the telemarketing company's business  
6 locations within this state a copy of the first page of the registration form sent to the  
7 office~~[department]~~. The telemarketing company shall also post in close proximity to  
8 either the confirmation of receipt of filing or the first page of the submitted  
9 registration form the name of the individual in charge of each location from which  
10 the telemarketing company does business in this state.

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

- 12 (1) Every telemarketing company shall maintain a bond issued by a surety company  
13 admitted to do business in this state. The bond shall be in the amount of fifty  
14 thousand dollars (\$50,000) in favor of the Attorney General for the benefit of any  
15 person suffering injury or loss by reason of any violation of KRS 367.46951 to  
16 367.46999 to be paid under the terms of any order of a court of competent  
17 jurisdiction obtained by the Attorney General, as a result of any violation of KRS  
18 367.46951 to 367.46999. A copy of the bond shall be filed with the office~~[division]~~.
- 19 (2) At least ten (10) days prior to the inception of any promotion offering a premium  
20 with an actual market value or advertised value of five hundred dollars (\$500) or  
21 more, the telemarketing company shall notify the Attorney General in writing of the  
22 details of the promotion, describing the premium and its current market value, the  
23 value at which it is advertised or held out to the customer, the date the premium  
24 shall be awarded, and the conditions under which the award shall be made. The  
25 telemarketing company shall maintain an additional bond for the greater of the  
26 current total market value or the advertised value of the premiums held out or  
27 advertised to be available to a purchaser or recipient. A copy of the bond shall be

1 filed with the ~~office~~[division]. The bond, or a portion of it necessary to cover the  
2 cost of the award, shall be forfeited if the premium is not awarded to a bona fide  
3 customer within thirty (30) days of the date disclosed as the time of award or the  
4 time otherwise required by law. The proceeds of the bond shall be paid to any  
5 person suffering injury or loss by reason of any violation of KRS 367.46951 to  
6 367.46999 or shall be paid pursuant to the terms of any order of a court of  
7 competent jurisdiction obtained by the Attorney General, Commonwealth's attorney,  
8 or county attorney as a result of any violation of KRS 367.46951 to 367.46999. The  
9 bond shall be maintained until the telemarketing company files with the Attorney  
10 General proof that the premium was awarded.

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

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

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

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

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

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

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

26 (a) The offeror obtains an initial required consideration of not less than five  
27 hundred dollars (\$500) from the purchase or lease of the business opportunity

1 or inventory associated therewith; and

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

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

9 2. The offeror has represented that locations will be provided or assistance  
10 will be given directly or indirectly to the consumer/investor in finding  
11 locations for the use or operation of the business opportunity including,  
12 but not limited to, supplying the consumer/investor with names of  
13 locator companies, contracting with the consumer/investor to provide  
14 assistance with or supply names of or collect a fee on behalf of or for a  
15 locator company; or

16 3. The offeror has represented that there is a guaranteed market or that the  
17 offeror will buy back or is likely to buy back any product made,  
18 manufactured, produced, fabricated, grown, or bred by the  
19 consumer/investor using, in whole or in part, the products, supplies,  
20 equipment, or services which were initially sold or offered for sale to the  
21 consumer/investor by the offeror.

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

23 (1) It is unlawful for any person to engage in the sale of business opportunities unless  
24 prior to the offering the offeror has registered with the office~~[division]~~ and has  
25 furnished a bond pursuant to KRS 367.815(2) and provided all of the following:

26 (a) All trade names, assumed names, and all trademarks by which the offeror or  
27 the prospective consumer/investor of the business opportunity will be doing

1 business.

2 (b) The names, home addresses, and home telephone numbers of the persons and  
3 company offering the business opportunity, and the company's directors and  
4 chief executive officers, and the names, home addresses, and home telephone  
5 numbers of all representatives selling business opportunities in Kentucky.

6 (c) A statement as to the length of time the person and company offering the  
7 business opportunity has conducted a business of the type being offered both  
8 within and without Kentucky.

9 (d) A statement as to whether the person or company offering the business  
10 opportunity or any of its directors or chief executive officers or sales  
11 representatives operating in Kentucky is currently involved in litigation or has  
12 been held liable in a civil action by final judgment for having engaged in  
13 unfair, false, misleading, or deceptive practices or is currently charged with or  
14 has been convicted of or pleaded nolo contendere to a felony involving fraud,  
15 embezzlement, fraudulent conversion, or misappropriation of property during  
16 the most recent seven (7) year period, or has entered into any agreed  
17 settlements or is currently in any bankruptcy proceeding or has been declared  
18 bankrupt in any judicial proceeding during the most recent seven (7) year  
19 period.

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

26 (f) A statement disclosing the names, addresses, and telephone numbers of all  
27 persons who have been sold a business opportunity by the offeror within the

- 1 last two (2) year period.
- 2 (g) A statement listing the names and addresses of any consumer/investor who  
3 has requested within the preceding three (3) years that the offeror return his  
4 money.
- 5 (h) A current audited financial statement of the offeror.
- 6 (i) A specimen of each contract proposed for use in connection with the business  
7 opportunity.
- 8 (j) A full and detailed description of the actual services that the offeror of the  
9 business opportunity undertakes to perform for the consumer/investor.
- 10 (k) If training is promised by the offeror, a complete description of the training,  
11 including length of the training and costs.
- 12 (2) The offeror shall immediately notify the office~~[division]~~ of any material change in  
13 information contained in the application for registration and shall make appropriate  
14 amendment of the disclosure statement.
- 15 (3) The office~~[division]~~ shall collect, from any offeror required to comply with this  
16 section, an initial fee of one hundred fifty dollars (\$150), and an annual renewal fee  
17 of fifty dollars (\$50), and an update fee of twenty-five dollars (\$25) for the  
18 administration and enforcement of KRS 367.801 to 367.819. Funds so collected  
19 shall be credited to a trust or agency account for the administrative purpose of the  
20 Attorney General's Office~~[office, Division]~~ of Consumer Protection.
- 21 (4) The Attorney General may promulgate administrative regulations as needed to  
22 provide for: a hearing, to be conducted in accordance with KRS Chapter 13B, for  
23 any business opportunity which the Attorney General initially determines should not  
24 be registered or should have registration revoked or suspended; for the  
25 establishment of specific standards for the form and content of the disclosure  
26 document; and for registration procedures including fee schedules.
- 27 ➔Section 20. KRS 367.807 is amended to read as follows:

- 1 (1) An offeror is exempt from the provisions of KRS 367.801 to 367.819 and KRS  
2 367.990 when the offeror:
- 3 (a) Meets the definition of a franchise as defined in the Federal Trade  
4 Commission's Regulation on Disclosure Requirements and Prohibitions  
5 Concerning Franchising and Business Opportunity Ventures, as set forth in 16  
6 C.F.R. 436 et seq., and has complied with these and filed written notice so  
7 stating with the office[division]; or
- 8 (b) Offers a security pursuant to KRS 292.313;
- 9 (c) Offers an ongoing business for sale; or
- 10 (d) Offers a not-for-profit sale of sales demonstration equipment, materials, or  
11 samples for use in making sales and not for resale for a total price of \$500 or  
12 less.
- 13 (2) The Attorney General may promulgate administrative regulations as needed to  
14 provide for additional exemptions. Is offering to sell or selling a package franchise  
15 as described in KRS 367.801(7).
- 16 ➔Section 21. KRS 367.809 is amended to read as follows:
- 17 (1) The office[division], after ascertaining that the applicant has complied with KRS  
18 367.805, shall issue a registration number.
- 19 (2) It shall be unlawful for the registrant to fail to include the registration number in any  
20 advertising.
- 21 ➔Section 22. KRS 367.811 is amended to read as follows:
- 22 It shall be unlawful for any offeror to make any oral or written representation, actual or  
23 hypothetical, regarding the business opportunity's potential sales, income, gross or net  
24 profit unless such sales, income, or profits are examples based upon the actual earnings  
25 made by existing consumer/investors of the business opportunity. Upon request by the  
26 office[division], names and addresses of the consumer/investors shall be made available  
27 for verification of the earnings claims. If such actual or hypothetical earnings examples



1 are in excess of the average net earnings realized by all of the consumer/investors of the  
2 business opportunity, then there must be a full and complete disclosure of the average net  
3 earnings actually realized by all of these consumer/investors.

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

- 5 (1) Prior to the solicitation of potential consumer/investors the offeror shall furnish and  
6 display to the potential consumer/investor a copy of the material required to be  
7 furnished the office~~[division]~~ when registering pursuant to KRS 367.805.
- 8 (2) When furnishing the information required by subsection (1) of this section, the  
9 offeror shall furnish the prospective consumer/investor with a notice in at least ten  
10 (10) point bold-face type, stating that registration with the office~~[division]~~ does not  
11 directly or indirectly imply approval by the office~~[division]~~ or the Commonwealth  
12 of Kentucky of the business opportunity or any of the activities of representatives  
13 selling such business opportunities.

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

- 15 (1) Any person who offers a business opportunity and makes representations that are  
16 false, misleading, or deceptive shall be liable to the consumer/investor of such  
17 business opportunity in an amount equal to the sum of his actual damages or fifteen  
18 hundred dollars (\$1,500), whichever is greater, as well as the cost of the action  
19 together with reasonable attorney's fees, as determined by the court.
- 20 (2) (a) All persons registering pursuant to KRS 367.805 shall either furnish a bond by  
21 a surety company authorized to do business in the Commonwealth or establish  
22 a full cash certificate of deposit with a licensed and insured bank or savings  
23 institution located in the Commonwealth to insure the veracity of all  
24 statements contained in the registration. The amount of the bond or certificate  
25 of deposit shall be in an amount equal to the total amount of the initial  
26 payments under all business opportunity agreements the offeror has entered  
27 into in the Commonwealth during the previous year but in no case shall the

1 amount be less than seventy-five thousand dollars (\$75,000). The bond or  
2 certificate of deposit shall be in the favor of the Attorney General of  
3 Kentucky.

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

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

14 (4) Any offeror of a business opportunity who has offered or sold in this state shall  
15 maintain a complete set of books, records, and accounts of its business opportunity  
16 sales. The sale documents shall be maintained on each transaction for a period of  
17 four (4) years after the date of agreement. The offeror shall make the books and  
18 records available to the office~~[division]~~ upon demand at a location within the state.

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

20 (1) Any person, corporation, partnership, association, or group intending to open or  
21 operate a health spa within the Commonwealth, shall:

22 (a) File a registration statement, accompanied by a one hundred dollar (\$100)  
23 initial registration fee, with the Attorney General's Office~~[Division]~~ of  
24 Consumer Protection prior to the sale of any memberships in the  
25 Commonwealth of Kentucky. Such a registration statement shall contain the  
26 name and address of the health spa; the names and addresses of the officers,  
27 directors, and stockholders of the health spa and its parent corporation, if such

1 an entity exists; the type of available facilities; approximate size of the health  
2 spa measured in square feet; whether or not a shower area is provided; the  
3 names and addresses of employees and their respective qualifications for  
4 employment in the health spa field; type of membership plans to be offered  
5 and their cost; and a full and complete disclosure of any completed or pending  
6 litigation initiated against the health spa and any of its officers or directors  
7 within the last three (3) years.

8 (b) Prior to the sale of any memberships in the Commonwealth of Kentucky,  
9 provide the Attorney General's Office~~[Division]~~ of Consumer Protection with  
10 a surety bond meeting the requirements of KRS 367.906.

11 (2) A new registration statement, accompanied by an annual registration fee of fifty  
12 dollars (\$50), shall be filed with the Attorney General's Office~~[Division]~~ of  
13 Consumer Protection on or before July 1 of each year following the opening of the  
14 health spa.

15 (3) Each health spa selling contracts on a prepayment basis shall deposit all funds  
16 received from such contracts in an escrow account until the health spa has remained  
17 open for a period of thirty (30) days. At the end of this thirty (30) day period, such  
18 prepayment funds shall be eligible for withdrawal at the depositor's discretion.

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

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

26 (6) Each separate location where health spa services are offered shall be considered a  
27 separate health spa and shall file a separate registration statement and surety bond,

1 even though the separate locations are owned or operated by the same owner.

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

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

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

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

12	Number of	
13	unexpired contracts	Amount of bond
14	150 or fewer	\$10,000
15	151 to 300	\$25,000
16	301 or more	\$50,000

17 (4) The Attorney General's Office~~[Division]~~ of Consumer Protection shall exempt a spa  
18 from the bonding requirement if all of its unexpired contracts and present  
19 membership plans meet the following criteria:

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

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

24 (5) If, because of an increase in membership or change in membership plans, a spa is  
25 required to file a bond or increase the amount of its bond, it shall notify the  
26 Attorney General's Office~~[Division]~~ of Consumer Protection in writing at least  
27 thirty (30) days prior to the expected change. No contract in excess of the limits

1        stated in subsection (3) of this section or not in compliance with subsection (4) of  
2        this section shall be sold until a new bond in the required amount has been  
3        provided.

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

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

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

11      (1) "Attorney General" means the Office~~[Division]~~ of Consumer Protection in the  
12      Office~~[office]~~ of the Attorney General.

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

15      (3) "Preneed burial contract" means a contract, which has for a purpose the furnishing  
16      or performance of funeral services, or the furnishing or delivery of personal  
17      property, merchandise, or services of any nature in connection with the final  
18      disposition of a dead human body, for future use at a time determinable by the death  
19      of the person whose body is to be disposed of; but does not mean the furnishing of a  
20      cemetery lot or mausoleum.

21      (4) "Agent" means the licensee who is the person, partnership, association or  
22      corporation receiving any payments on a preneed funeral contract.

23      (5) "Trustee" means the financial institution.

24      (6) "Person" means an individual, corporation, partnership, joint venture, association,  
25      business trust, or any other form of business organization; provided, however, that  
26      an individual employee of an entity registered pursuant to KRS 367.934 to 367.974  
27      and 367.991 shall not be required to comply with the registration requirement

- 1        herein.
- 2        (7) "Remains" means the bodies of deceased persons, in whatever stage of  
3        decomposition, and cremated remains.
- 4        (8) "Cemetery" means any one (1) or combination of more than one (1) of the following  
5        in a place used or to be used and dedicated or designated for such purposes:
- 6        (a) A burial park, for earth interment.
- 7        (b) A mausoleum, for entombment.
- 8        (c) A columbarium, for inurnment.
- 9        (9) "Mausoleum" means a building or structure substantially exposed above ground  
10       used or intended to be used for the entombment of human remains, which is sold or  
11       offered for sale to the public.
- 12       (10) "Columbarium" means a structure or building substantially exposed above ground  
13       intended to be used for the inurnment of cremated remains and sold or offered for  
14       sale to the public.
- 15       (11) "Columbarium niche" means an inurnment space in a columbarium as defined  
16       herein.
- 17       (12) "Cemetery company" means any person who conducts the business of a cemetery.  
18       Excepted are small community cemeteries, their agents, lessees and otherwise that  
19       operate nonprofit; have no salaried employees, directors, officers or managers other  
20       than maintenance caretakers; are owned, controlled by lot owners; and do not sell  
21       any preneed merchandise or services.
- 22       (13) "Grave space" means a space of ground in a cemetery intended to be used for the  
23       interment in the ground of the remains of one (1) human being.
- 24       (14) "Underground crypt" means a single unit entombment space in preplaced chambers  
25       below ground and also known as lawn crypt, westminister turftop mausoleum or  
26       below ground crypt.
- 27       (15) "Bank of underground crypts" means any construction unit of twenty (20) or more

1 underground crypts designed as a part of a below ground crypt program, whether  
2 physically connected or not, having a common drainage system.

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

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

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

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

14 (1) Forty percent (40%), not including interest or finance charges, of all payments of  
15 money made to any person, partnership, association, or corporation upon any  
16 agreement or contract, or any series or combination of agreements or contracts,  
17 which has for a purpose the furnishing or delivery of cemetery merchandise, which  
18 within six (6) months of the date of the contract is not delivered by attachment to  
19 the realty and permanent installation or which is not stored in a bonded warehouse  
20 with the receipt of ownership issued by the manufacturer in the name of the  
21 purchaser and transmitted to the purchaser are held to be trust funds. The person,  
22 partnership, association, or corporation receiving the payments shall deposit forty  
23 percent (40%) of all payments received on a preneed cemetery merchandise contract  
24 in a trust fund account within six (6) months of the date of contract, and forty  
25 percent (40%) of all payments received thereafter on said contract shall be deposited  
26 in the trust fund account within thirty (30) days after each calendar quarter of  
27 operation. The trustee shall be the financial institution holding said funds. All of the

1 interest, dividends, increases, or accretions of whatever nature earned by the funds  
2 deposited in a trust account shall remain with the principal of such account and  
3 become a part thereof, subject to all of the regulations concerning the principal of  
4 said fund herein contained.

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

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

16 (a) That the delivery of all merchandise by attachment to the realty, or permanent  
17 installation of the merchandise has been completed and that there has been full  
18 performance of all services called for by the agreement, contract or plan; or

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

23 Upon receiving said affidavit, the financial institution shall remit the funds on  
24 deposit for the performed contract, plus interest, to the depositor. Release of funds  
25 may also be made pursuant to a request for a refund or cancellation under KRS  
26 367.932 to 367.974 and 367.991.

27 (4) In the event that a purchaser is in default of a preneed cemetery merchandise



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

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

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

14 (7) In lieu of the trust fund deposits required herein, the person may post with the  
15 Attorney General, Office~~[Division]~~ of Consumer Protection, a good and sufficient  
16 bond by a surety company licensed to do business in Kentucky and in an amount  
17 sufficient to cover all payments made by or on account of purchasers who have not  
18 received the purchased property and services. This bond shall be held for the benefit  
19 of a purchaser, or his or her heir or assign or duly authorized representative, who  
20 suffers a loss of money paid pursuant to a preneed cemetery merchandise contract  
21 entered into after July 13, 1984, due to the insolvency of the registrant, or failure to  
22 provide the cemetery merchandise called for by contract that has been paid in full  
23 and not provided after a ninety (90) day request in writing to do so. If a bond is  
24 posted, the Attorney General's office shall receive sixty (60) days' written notice in  
25 the event of cancellation. On or before the cancellation date, the person shall  
26 comply with the trust fund requirements herein or post another good and sufficient  
27 bond.

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

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

7 (1) Every person before engaging in a sale, contract for sale, reservation for sale or  
8 agreement for sale of a mausoleum crypt within a mausoleum, underground crypt  
9 within a crypt section, or columbarium niche within a mausoleum prior to the  
10 completion of the construction thereof, shall give notice in writing to the Attorney  
11 General of the commencement of such sale at least thirty (30) days prior thereto and  
12 register with the Attorney General. Such registration shall be on forms provided by  
13 the Attorney General.

14 (2) Every person engaged in the sale of a mausoleum crypt, underground crypt or  
15 columbarium niche shall commence construction thereof within twenty-four (24)  
16 months of the date of such sale and shall complete such construction within sixty  
17 (60) months of the date of such sale. A delay caused by strike, national emergency,  
18 shortage of materials, civil disorder, natural disaster or any like occurrence beyond  
19 the control of such person shall extend the time of such commencement and  
20 completion by the length of such delay. This subsection shall not apply to the sale of  
21 mausoleum crypts, underground crypts or columbarium niches if there has been any  
22 sale in the same project prior to July 13, 1984. Prior projects shall have commenced  
23 construction thereof within thirty-six (36) months of the date of such sale and shall  
24 complete construction within seventy-two (72) months of the date of such sale.

25 (3) Every person who plans to offer for sale space in a section of a mausoleum or bank  
26 of underground crypts prior to its construction shall establish a preconstruction trust  
27 account. The trust account shall be administered and operated in the same manner

1 as the merchandise trust account provided for in this chapter and shall be exclusive  
2 of the merchandise trust account or such other trust accounts or funds that may be  
3 required by law.

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

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

- 1 (6) Deposits to such funds and the amounts deposited may be commingled, but the  
2 accounting records shall establish a separate account for each prepaid contract and  
3 shall show amounts deposited and the income and loss occurring thereon with  
4 respect to each contract.
- 5 (7) All payments made to the preconstruction trust fund account shall remain in the  
6 trust fund with the financial institution until the financial institution receives a  
7 certified statement from the depositor stating that the particular project for which  
8 the preconstruction trust fund has been established is totally completed. During the  
9 construction stage, trust funds may be withdrawn by presenting the trustee with  
10 appropriate evidence of expenditure for construction cost. The trustee shall  
11 thereupon disburse moneys from the trust fund to pay for the expenses of  
12 construction presented for payment.
- 13 (8) A trustee may rely upon all certifications and affidavits made pursuant to or  
14 required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not  
15 be liable to any person for such reliance.
- 16 (9) If a mausoleum section or bank of underground crypts is not completed within the  
17 time limits set out in KRS 367.932 to 367.974 and 367.991, the financial institution  
18 acting as trustee, if any, may contract for and cause said project to be completed and  
19 paid therefor from the trust account funds deposited to the project's account, paying  
20 any balance, less cost and expenses, to the depositor. In the event there is no  
21 corporate trustee, or the trustee chooses not to serve in the capacity to complete  
22 construction, the Attorney General shall appoint a committee to serve as trustees to  
23 trust account funds deposited to the project's account, paying any balance, less cost  
24 and expenses, to the cemetery company.
- 25 (10) If it is determined by the trustee after the expiration of the time of construction set  
26 out above that there is not enough money in the trust fund account to complete the  
27 project, the trustee shall make a refund of all moneys held to all purchasers, or his

1 heirs or assigns, in the amount of the deposit to the credit of their particular contract  
2 and all income those funds have earned. The purchasers shall be entitled to receive  
3 any remainder of the purchase price paid from the depositor. However, nothing  
4 herein contained shall relieve any person from any liability for nonperformance of  
5 the contract terms.

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

11 (12) In lieu of the trust fund deposits required herein, the person may post with the  
12 Attorney General, Office~~[Division]~~ of Consumer Protection, a good and sufficient  
13 bond by a surety company licensed to do business in Kentucky and in an amount  
14 sufficient to cover all payments made by or on account of purchasers who have not  
15 received the purchased property and services. This bond shall be held for the benefit  
16 of any purchaser, or his or her heir or assign or duly authorized representative, who  
17 suffers a loss of money paid for a preconstructed mausoleum crypt or niche or  
18 underground crypt after July 13, 1984, due to the insolvency of the registrant, or  
19 failure to construct within the time limits set out herein. If a bond is posted, the  
20 Attorney General's office shall receive sixty (60) days' written notice in the event of  
21 cancellation. On or before the cancellation date, the person shall comply with the  
22 trust fund requirements herein or post another good and sufficient bond.

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

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

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

- 3       (1) "Advertisement" means a commercial message in any medium that aids, promotes,  
4           or assists directly or indirectly a rental-purchase agreement, excluding in-store  
5           merchandising aids.
- 6       (2) "Cash price" means the price at which the lessor would have sold the property to the  
7           consumer for cash on the date of the rental-purchase agreement.
- 8       (3) "Consumer" means a natural person who rents personal property under a rental-  
9           purchase agreement.
- 10       (4) "Consummation" means the time a consumer becomes contractually obligated on a  
11           rental-purchase agreement.
- 12       (5) ~~["Division" means the Division of Consumer Protection in the Office of the~~  
13           ~~Attorney General.~~
- 14       ~~(6)~~ "Lessor" means a person who, in the ordinary course of business, regularly leases,  
15           offers to lease, or arranges for the leasing of property under a rental-purchase  
16           agreement.
- 17       **(6) "Office" means the Office of Consumer Protection in the Office of the Attorney**  
18           **General.**
- 19       (7) "Rental-purchase agreement" means an agreement for the use of personal property  
20           by a natural person primarily for personal, family, or household purposes, for an  
21           initial period of four (4) months or less, whether or not there is any obligation  
22           beyond the initial period, that is automatically renewable with each payment and  
23           that permits the consumer to become the owner of the property. The term rental-  
24           purchase agreement shall not be construed to be, nor be governed by, any of the  
25           following:
- 26           (a) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R.  
27           part 226.2(a)(16) and Section 1602(g) of the Truth in Lending Act, 15 U.S.C.

1           secs. 1601 et seq.;

2           (b) A lease which constitutes a consumer lease as defined in 12 C.F.R. part  
3           213.2(a)(6);

4           (c) Any lease for agricultural, business, or commercial purposes;

5           (d) Any lease made to an organization;

6           (e) A lease or agreement which constitutes a retail installment transaction or retail  
7           installment contract as defined in KRS 371.210;

8           (f) A security interest as defined in KRS 355.1-201(37); or

9           (g) A home solicitation sale as that term is defined in KRS 367.410.

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

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

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

18       (b) A deferral or extension of one (1) or more periodic payments, or portions of a  
19       periodic payment;

20       (c) A reduction in charges in the agreement;

21       (d) An agreement involving a court proceeding; or

22       (e) Any other event described in administrative regulations prescribed by the  
23       office~~[division]~~.

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

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

26       (1) A lessor shall not be liable under KRS 367.983 for a violation of KRS 367.976 to  
27       367.985 if the lessor shows by a preponderance of the evidence that the violation

1 was not intentional and resulted from a bona fide error, such as a clerical  
2 miscalculation, computer malfunctions, programming error, or printing error, even  
3 though the lessor maintained procedures reasonably adapted to avoid such an error.  
4 An error of legal judgment with respect to requirements of this title shall not be  
5 considered a bona fide error.

6 (2) A lessor shall not be liable under KRS 367.983 for any act done or omitted in good  
7 faith in conformity with any administrative regulation or interpretation promulgated  
8 by the Attorney General or by the ~~office~~<sup>division</sup> or by an official duly authorized  
9 by the Attorney General or by the ~~office~~<sup>division</sup>. This rule shall apply even if,  
10 after the act or omission has occurred, the regulation or interpretation is amended,  
11 rescinded, or determined by judicial or other authority to be invalid for any reason.

12 (3) A lessor shall not be liable under KRS 367.983 for any error if, before the thirty-  
13 first day after the date the merchant discovers the error and before an action against  
14 the lessor has been filed or written notice of the error received by the lessor, the  
15 lessor gives the consumer written notice of the error and makes adjustments in the  
16 consumer's account as necessary to assure that the consumer will not be required to  
17 pay an amount in excess of the amount disclosed and that the agreement otherwise  
18 complies with KRS 367.976 to 367.985.

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

20 (1) Any person who violates the terms of a temporary or permanent injunction issued  
21 under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of  
22 not more than twenty-five thousand dollars (\$25,000) per violation. For the  
23 purposes of this section, the Circuit Court issuing an injunction shall retain  
24 jurisdiction, and the cause shall be continued, and in such cases the Attorney  
25 General acting in the name of the Commonwealth may petition for recovery of civil  
26 penalties.

27 (2) In any action brought under KRS 367.190, if the court finds that a person is



- 1 willfully using or has willfully used a method, act, or practice declared unlawful by  
2 KRS 367.170, the Attorney General, upon petition to the court, may recover, on  
3 behalf of the Commonwealth, a civil penalty of not more than two thousand dollars  
4 (\$2,000) per violation, or where the defendant's conduct is directed at a person aged  
5 sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)  
6 per violation, if the trier of fact determines that the defendant knew or should have  
7 known that the person aged sixty (60) or older is substantially more vulnerable than  
8 other members of the public.
- 9 (3) Any person with actual notice that an investigation has begun or is about to begin  
10 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,  
11 or falsifies documentary material is guilty of a Class A misdemeanor.
- 12 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240  
13 or 367.250, intentionally falsifies or withholds documents, records, or pertinent  
14 materials that are not privileged shall be subject to a fine as provided in subsection  
15 (3) of this section.
- 16 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is  
17 proposed, operated, or promoted may grant an injunction without bond, upon  
18 complaint filed by the Attorney General to enjoin the further operation thereof, and  
19 the Attorney General may ask for and the court may assess civil penalties against  
20 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)  
21 which shall be for the benefit of the Commonwealth of Kentucky.
- 22 (6) Any person, business, or corporation who knowingly violates the provisions of KRS  
23 367.540 shall be guilty of a violation. It shall be considered a separate offense each  
24 time a magazine is mailed into the state; but it shall be considered only one (1)  
25 offense for any quantity of the same issue of a magazine mailed into Kentucky.
- 26 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty  
27 of a Class A misdemeanor.

- 1 (8) In addition to the penalties contained in this section, the Attorney General, upon  
2 petition to the court, may recover, on behalf of the Commonwealth a civil penalty of  
3 not more than the greater of five thousand dollars (\$5,000) or two hundred dollars  
4 (\$200) per day for each and every violation of KRS 367.175.
- 5 (9) Any person who shall willfully and intentionally violate any provision of KRS  
6 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- 7 (10) (a) Any person who violates the terms of a temporary or permanent injunction  
8 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a  
9 penalty of not more than five thousand dollars (\$5,000) per violation. For the  
10 purposes of this section, the Circuit Court issuing an injunction shall retain  
11 jurisdiction, and the cause shall be continued, and in such cases the Attorney  
12 General acting in the name of the Commonwealth may petition for recovery of  
13 civil penalties;
- 14 (b) The Attorney General may, upon petition to a court having jurisdiction under  
15 KRS 367.190, recover on behalf of the Commonwealth from any person  
16 found to have willfully committed an act declared unlawful by KRS 367.667 a  
17 penalty of not more than two thousand dollars (\$2,000) per violation; and
- 18 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,  
19 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false  
20 or incorrect information to the Attorney General in filing statements or reports  
21 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- 22 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under  
23 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per  
24 violation to be collected in the name of the Commonwealth upon action of the  
25 Attorney General.
- 26 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be  
27 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in

- 1 the name of the Commonwealth upon action by the Attorney General.
- 2 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or  
3 367.816 shall be guilty of a Class C felony.
- 4 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have  
5 authority to prosecute violations of KRS 367.801 to 367.819.
- 6 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the  
7 Attorney General or the appropriate Commonwealth's attorney shall have authority  
8 to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- 9 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 10 (17) Any person, partnership, or corporation who violates the provisions of KRS  
11 367.850 shall be guilty of a Class A misdemeanor.
- 12 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets  
13 back, disconnects, fails to connect, or causes to be changed, set back, or  
14 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale  
15 of the motor vehicle shall be guilty of a Class D felony.
- 16 (19) Any person who negotiates a contract of membership on behalf of a club without  
17 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty  
18 of a Class D felony.
- 19 (20) Any person or corporation who operates or attempts to operate a health spa in  
20 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 21 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and  
22 (b) The appropriate Commonwealth's attorney shall have authority to prosecute  
23 felony violations of KRS 367.832.
- 24 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be  
25 guilty of a violation. Either the Attorney General or the appropriate county  
26 health department may prosecute violators of KRS 367.855 or 367.857.
- 27 (b) The provisions of this subsection shall not apply to any retail establishment if

1           the wholesaler, distributor, or processor fails to comply with the provisions of  
2           KRS 367.857.

3 (23) Notwithstanding any other provision of law, any telemarketing company,  
4           telemarketer, caller, or merchant shall be guilty of a Class D felony when that  
5           telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)  
6           calendar year knowingly and willfully violates KRS 367.46955(15) by making or  
7           causing to be made an unsolicited telephone solicitation call to a telephone number  
8           that appears in the current publication of the zero call list maintained by the Office  
9           of Consumer Protection in the Office of the Attorney General, ~~Division of~~  
10          ~~Consumer Protection~~.

11 (24) Notwithstanding any other provision of law, any telemarketing company,  
12          telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when  
13          that telemarketing company, telemarketer, caller, or merchant uses a zero call list  
14          identified in KRS 367.46955(15) for any purpose other than complying with the  
15          provisions of KRS 367.46951 to 367.46999.

16 (25) (a) Notwithstanding any other provision of law, any telemarketing company,  
17          telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999  
18          shall be assessed a civil penalty of not more than five thousand dollars  
19          (\$5,000) for each offense.

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

23          (c) Any civil penalty imposed under paragraph (a) of this subsection may be  
24          compromised by the Attorney General or his or her designated representative.  
25          In determining the amount of the penalty or the amount agreed upon in  
26          compromise, the Attorney General, or his or her designated representative,  
27          shall consider the appropriateness of the penalty to the financial resources of

1 the telemarketing company, telemarketer, caller, or merchant charged, the  
2 gravity of the violation, the number of times the telemarketing company,  
3 telemarketer, caller, or merchant charged has been cited, and the good faith of  
4 the telemarketing company, telemarketer, caller, or merchant charged in  
5 attempting to achieve compliance, after notification of the violation.

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

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

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

17 (1) Subject to subsection (3) of this section, a person, whether or not located in this  
18 state, who is engaged in debt adjusting and actually or constructively receives any  
19 money or other thing of value, other than the fees permitted by this chapter, for the  
20 purpose of disbursing the money or thing of value to the debtor's creditors, shall do  
21 both of the following:

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

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

- 1 (2) If a fee, contribution, or other consideration for engaging in debt adjusting is  
2 accepted, directly or indirectly, a person engaged in debt adjusting shall not do any  
3 of the following:
- 4 (a) Accept a fee, contribution, or other consideration exceeding seventy-five  
5 dollars (\$75) from a debtor residing in this state for an initial set up;
  - 6 (b) Accept a fee, contribution, or other consideration exceeding fifty dollars (\$50)  
7 per calendar year from a debtor residing in this state for consultation;
  - 8 (c) If money or anything else of value is received and held by the person engaged  
9 in debt adjusting for the purpose of disbursing the money or thing of value to  
10 the debtor's unsecured creditors, accept a periodic fee, contribution, or other  
11 consideration from a debtor who resides in this state that exceeds the greater  
12 of eight and one-half percent (8.5%) of the amount paid by the debtor each  
13 month for distribution to the debtor's creditors or thirty dollars (\$30); or
  - 14 (d) Accept any other fee, contribution, or other consideration in advance of the  
15 complete performance of all promised services in relation to secured debt.  
16 Acceptance of a fee, contribution, or other consideration in advance of the  
17 complete performance of all promised services in relation to secured debt,  
18 including the placement of the fee, contribution, or other consideration into an  
19 escrow account to be paid upon completion of the services, is specifically  
20 prohibited. For purposes of this paragraph, "secured debt" means any debt  
21 primarily for personal, family, or household use that is secured by a mortgage,  
22 deed of trust, other equivalent consensual security interest on residential real  
23 property, or collateral that has a mortgage lien interest in residential real  
24 property.
- 25 (3) Subsections (1) and (2) of this section shall not prohibit a person engaged in debt  
26 adjusting for a debtor who resides in this state from charging the debtor a bad check  
27 charge of twenty dollars (\$20) or the amount passed on from the debt adjuster's

1 bank, whichever is greater, in addition to fees, contributions, or other consideration  
2 not prohibited by subsection (2) of this section.

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

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

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

17 (a) The person shall file the results of the audit and the auditor's opinion with the  
18 Office of Consumer Protection~~[-Division]~~ of the Office of the Attorney  
19 General within thirty (30) days of the anniversary date of filing the initial  
20 registration; and

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

24 (7) (a) A person engaged in debt adjusting shall obtain and at all times maintain  
25 insurance coverage for errors and omissions, employee dishonesty, depositor's  
26 forgery, computer fraud, and violations of this chapter in the amount of ten  
27 percent (10%) of the monthly average for the immediately preceding six (6)

1 months of the aggregate amount of all deposits made with the person by all  
2 debtors. The insurance coverage shall comply with all of the following:

- 3 1. The minimum limit of the insurance coverage shall not be less than one  
4 hundred thousand dollars (\$100,000), and the maximum limit of the  
5 insurance coverage shall not be more than two hundred fifty thousand  
6 dollars (\$250,000);
- 7 2. The insurance coverage shall not include a deductible in excess of ten  
8 percent (10%) of the face amount of the policy coverage;
- 9 3. The insurance coverage shall be issued by an insurer and rated at least  
10 A-, or its equivalent, by a nationally recognized rating organization; and
- 11 4. The insurance coverage shall provide that the Office of Consumer  
12 Protection~~[-Division]~~ of the Office of the Attorney General shall be  
13 named as an additional interested party.

14 (b) If the debt adjuster engages in debt adjusting in relation to any debt that is  
15 primarily for personal, family, or household use that is secured by a mortgage,  
16 deed of trust, other equivalent consensual security interest on residential real  
17 property, or collateral that has a mortgage lien interest in residential real  
18 property, the amount of insurance coverage required in paragraph (a) of this  
19 subsection shall be increased by two hundred fifty thousand dollars  
20 (\$250,000).

21 (8) (a) A debt adjuster shall maintain a bond issued by a surety company admitted to  
22 do business in this Commonwealth. The bond shall be in the amount of  
23 twenty-five thousand dollars (\$25,000) in favor of the Attorney General for  
24 the benefit of the Commonwealth for any violation of this chapter or any  
25 person suffering injury or loss by reason of any violation of this chapter. A  
26 copy of the bond shall be filed with the Attorney General.

27 (b) The bond required by paragraph (a) of this subsection shall be in effect during



1 the period of the debt adjuster's registration as well as for two (2) years after  
2 the debt adjuster ceases to provide debt-adjusting services to debtors.

3 (c) A change in ownership of a debt adjuster shall not release, cancel, or terminate  
4 liability under any bond previously filed unless the Attorney General agrees in  
5 writing to the release, cancellation, or termination because the debt adjuster  
6 has filed a new bond meeting the requirements of paragraph (a) of this  
7 subsection.

8 (d) The proceeds of the bond required by paragraph (a) of this subsection shall be  
9 paid to any person suffering injury or loss by reason of any violation of this  
10 chapter or to the Attorney General for any violation of this chapter or shall be  
11 paid pursuant to the terms of any order of a court of competent jurisdiction.  
12 Any person who is damaged by any violation of this chapter may bring an  
13 action against the bond to recover damages pursuant to this paragraph,  
14 provided the aggregate liability of the surety shall not exceed the amount of  
15 the bond.

16 (e) In lieu of the bond required by paragraph (a) of this subsection, a debt adjuster  
17 may, with the written approval of the Attorney General, deliver to the  
18 Attorney General an irrevocable letter of credit issued or confirmed by a  
19 financial institution authorized by law to transact business in the  
20 Commonwealth. The irrevocable letter of credit shall be in the amount of  
21 twenty-five thousand dollars (\$25,000) in favor of the Attorney General for  
22 the benefit of the Commonwealth or any person suffering injury or loss by  
23 reason of any violation of this chapter.

24 (f) 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 the bond required in paragraph (a) of this subsection  
2 or the irrevocable letter of credit approved pursuant to paragraph (e) of this  
3 subsection shall be increased by fifty thousand dollars (\$50,000).

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

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

6 (b) Settle a debtor's debt if the amount the debtor will owe after settlement is  
7 equal to or more than fifty percent (50%) of the amount of the debt prior to  
8 settlement unless, after the creditor has assented, the debtor assents to a  
9 settlement for which the amount the debtor will owe after settlement is equal  
10 to or more than fifty percent (50%) of the amount of the debt prior to  
11 settlement;

12 (c) Take a power of attorney that authorizes the debt adjuster to settle a debt,  
13 unless the power of attorney is expressly limited to the debtor's debts and  
14 grants authority to settle debts only if the amount the debtor will owe after  
15 settlement is less than fifty percent (50%) of the amount of the debt prior to  
16 settlement. However, in no event shall an agreement confer on a debt adjuster  
17 a power of attorney to negotiate or settle any of the debtor's debt that is  
18 primarily for personal, family, or household use that is secured by a mortgage,  
19 deed of trust, other equivalent consensual security interest on residential real  
20 property, or collateral that has a mortgage lien interest in residential real  
21 property;

22 (d) Exercise or attempt to exercise a power of attorney after a debtor has  
23 terminated an agreement;

24 (e) Initiate a transfer from a debtor's account at a bank or with another person  
25 unless the transfer is:

26 1. A return of money to the debtor; or

27 2. Before termination of an agreement, properly authorized by the

- 1 agreement and this chapter, and for payment to one (1) or more creditors  
2 pursuant to a plan or payment of a fee;
- 3 (f) Structure a plan in a manner that would result in a negative amortization of  
4 any of a debtor's debts, unless a creditor that is owed a negatively amortizing  
5 debt agrees to refund or waive the finance charge upon payment of the  
6 principal amount of the debt;
- 7 (g) Settle a debt or lead a debtor to believe that a payment to a creditor is in  
8 settlement of a debt to the creditor unless, at the time of settlement, the debtor  
9 receives a certification by the creditor that the payment is in full settlement of  
10 the debt or is part of a payment plan, the terms of which are included in the  
11 certification, that upon completion will lead to full settlement of the debt;
- 12 (h) Make a representation that:
- 13 1. The debt adjuster will furnish money to pay bills or prevent attachments;
  - 14 2. Payment of a certain amount will permit satisfaction of a certain amount  
15 or range of indebtedness;
  - 16 3. Participation in a plan will or may prevent litigation, garnishment,  
17 attachment, repossession, foreclosure, eviction, or loss of employment,  
18 and will or may stop efforts to collect a debt from the debtor;
  - 19 4. Failure to make required minimum payments to creditors will not or may  
20 not break the terms of agreements with creditors, will not or may not  
21 lead creditors to increase finance charges and pursue litigation, will not  
22 or may not be reported to consumer reporting agencies, or will not or  
23 may not have an adverse effect on the debtor's credit report and credit  
24 score; or
  - 25 5. Fees paid to a debt adjuster will be used to pay creditors;
- 26 (i) Misrepresent that it is authorized or competent to furnish legal advice or  
27 perform legal services;

- 1 (j) Take a confession of judgment or power of attorney to confess judgment  
2 against a debtor;
- 3 (k) Purchase a debt or obligation of the debtor;
- 4 (l) Receive from or on behalf of the debtor:
- 5 1. A promissory note or other negotiable instrument other than a check or a  
6 demand draft; or
- 7 2. A postdated check or demand draft;
- 8 (m) Lend money or provide credit to the debtor, except as a deferral of a  
9 settlement fee at no additional expense to the debtor;
- 10 (n) Obtain a mortgage or other security interest from any person in connection  
11 with the services provided to the debtor;
- 12 (o) Provide the debtor less than the full benefit of a compromise of a debt  
13 arranged by the debt adjuster; or
- 14 (p) Charge the debtor for or provide credit or other insurance, coupons for goods  
15 or services, membership in a club, access to computers or the Internet, or any  
16 other matter not directly related to debt adjusting services or educational  
17 services concerning personal finance.
- 18 (10) Any unfair, false, misleading, or deceptive act or practice in the conduct of debt  
19 adjusting is prohibited. For purposes of this subsection, "unfair" shall be construed  
20 to mean unconscionable.

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

- 22 (1) The Council on Domestic Violence and Sexual Assault shall create a Sexual  
23 Assault Response Team Advisory Committee.
- 24 (2) The Sexual Assault Response Team Advisory Committee shall be co-chaired by the  
25 executive director of the Kentucky Association of Sexual Assault Programs and the  
26 commissioner of the Department of Kentucky State Police or the commissioner's  
27 designee.

- 1 (3) The membership of the Sexual Assault Response Team Advisory Committee shall  
2 consist of the following:
- 3 (a) The executive director of the Kentucky Board of Nursing or the executive  
4 director's designee;
  - 5 (b) The executive director of the Kentucky Nurses Association or the executive  
6 director's designee;
  - 7 (c) The executive director of the Kentucky Hospital Association or the executive  
8 director's designee;
  - 9 (d) The executive director of the Kentucky Association of Children's Advocacy  
10 Centers;
  - 11 (e) The director of the Department of Kentucky State Police Crime Lab;
  - 12 (f) The chief medical examiner or the chief medical examiner's designee;
  - 13 (g) The commissioner of the Department for Community Based Services or the  
14 commissioner's designee;
  - 15 (h) The executive director of the Office of Victims~~[Victims]~~ Advocacy~~[Division]~~  
16 of the Office of the Attorney General or the director's designee;
  - 17 (i) A sexual assault nurse examiner serving on the Governor's Council on  
18 Domestic Violence and Sexual Assault;
  - 19 (j) A representative from a sexual assault response team serving on the Council  
20 on Domestic Violence and Sexual Assault;
  - 21 (k) A physician appointed by the co-chairs of the Council on Domestic Violence  
22 and Sexual Assault; and
  - 23 (l) A Commonwealth's attorney or an assistant Commonwealth's attorney  
24 appointed by the co-chairs of the Council on Domestic Violence and Sexual  
25 Assault.
- 26 (4) Members appointed under subsection (3)(i) to (l) of this section shall serve at the  
27 pleasure of the appointing authority and shall not serve longer than four (4) years

1 without reappointment.

2 (5) The Sexual Assault Response Team Advisory Committee shall:

3 (a) Serve in an advisory capacity to the Kentucky Board of Nursing in  
4 accomplishing the duties set forth under KRS 314.142;

5 (b) Serve in an advisory capacity to the Justice and Public Safety Cabinet in the  
6 development of the statewide sexual assault protocol required under KRS  
7 216B.400(4);

8 (c) Develop a model protocol for the operation of sexual assault response teams  
9 which shall include the roles of sexual assault nurse examiners, physicians,  
10 law enforcement, prosecutors, and victim advocates;

11 (d) Provide assistance to each regional rape crisis center, as designated by the  
12 Cabinet for Health and Family Services, in establishing a regional sexual  
13 assault response team;

14 (e) Develop model policies for law enforcement agencies related to handling  
15 sexual assault examination kits and investigating sexual assaults with a  
16 victim-centered, evidence-based approach;

17 (f) By January 1, 2018, report to the General Assembly on the results of the  
18 analysis of previously untested sexual assault examination kits submitted to  
19 the Department of Kentucky State Police forensic laboratory pursuant to 2016  
20 Ky. Acts ch. 58, sec. 1, including whether analysis of those kits led to the  
21 identification and prosecution of suspects and the cost to society of the  
22 offenses committed by the suspects identified;

23 (g) By July 1, 2018, and by each July 1 thereafter, report to the General Assembly  
24 and to the secretary of the Justice and Public Safety Cabinet on the number of  
25 sexual assaults reported, the number of sexual assault examination kits  
26 submitted to the Department of Kentucky State Police forensic laboratory, the  
27 number of kits tested, and the number of charges filed and convictions

- 1           obtained in sexual assault cases in the previous calendar year;
- 2           (h) Provide information and recommendations concerning the activities of the  
3           agency or organization represented by each individual committee member as  
4           related to sexual assault issues and programs within the purview of the agency  
5           or organization; and
- 6           (i) Recommend to the Council on Domestic Violence and Sexual Assault any  
7           changes in statute, administrative regulation, training, policy, and budget to  
8           promote a multidisciplinary response to sexual assault.

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

- 10          (1) When a parent presents himself to the cabinet for the voluntary establishment of  
11          paternity and clear evidence of parentage is not present, the cabinet shall pay when  
12          administratively ordered the cost of genetic testing to establish paternity, subject to  
13          recoupment from the alleged father when paternity is established.
- 14          (2) The cabinet shall obtain additional testing in any case if an original test is contested,  
15          upon request and advance payment by the contestant.
- 16          (3) In a contested paternity case, the child, the mother, and the putative father shall  
17          submit to genetic testing upon a request of any of the parties, unless the person or  
18          guardian of the person who is requested to submit to genetic testing shows good  
19          cause, taking into account the best interests of the child, why the genetic tests  
20          cannot be performed. The request shall be supported by a sworn statement of the  
21          party, requesting that the test be performed, which shall include the information  
22          required by 42 U.S.C. sec. 666(a)(5)(B)(i) or (ii).
- 23          (4) When a parent who fails to support a child is not obligated to provide child support  
24          by court order, the cabinet may administratively establish a child support obligation  
25          based upon a voluntary acknowledgment of paternity as set forth in KRS Chapter  
26          406, the parent's minimum monthly child support obligation and proportionate share  
27          of child care costs incurred due to employment or job search of either parent, or

- 1 incurred while receiving elementary or secondary education, or higher education or  
2 vocational training which will lead to employment. The monthly child support  
3 obligation shall be determined pursuant to the Kentucky child support guidelines set  
4 forth in KRS 403.212. The actual cost of child care shall be reasonable and shall be  
5 allocated between the parents in the same proportion as each parent's gross income,  
6 as determined under the guidelines, bears to the total family gross income.
- 7 (5) The cabinet shall recognize a voluntary acknowledgment of paternity as a basis for  
8 seeking a support order, irrespective of the alleged father's willingness to consent to  
9 a support order.
- 10 (6) When in the best interest of the child, the cabinet may review and adjust a parent's  
11 child support obligation or child care obligation as established by the cabinet, upon  
12 a request of the cabinet when an assignment has been made, or upon either parent's  
13 petition if the amount of the child support awarded under the order differs from the  
14 amount that would be awarded in accordance with KRS 403.212. The cabinet shall  
15 notify parents at least once every three (3) years of the right to a review.
- 16 (7) In establishing or modifying a parent's monthly child support obligation, the cabinet  
17 may use automated methods to identify orders eligible for review, conduct the  
18 review, identify orders eligible for adjustment, and apply the adjustment to eligible  
19 orders in accordance with KRS 403.212. The cabinet shall utilize information,  
20 including financial records, about the parent and child which it has good reason to  
21 believe is reliable and may require the parents to provide income verification.
- 22 (8) In cases in which past-due support is owed for a child receiving public assistance  
23 under Title IV-A of the Federal Social Security Act, the cabinet shall issue an  
24 administrative order, or seek a judicial order, requiring the obligated parent to  
25 participate in work activities, or educational or vocational training activities for at  
26 least twenty (20) hours per week, unless the parent is incapacitated as defined by 42  
27 U.S.C. sec. 607.



- 1 (9) The cabinet may disclose financial records only for the purpose of establishing,  
2 modifying, or enforcing a child support obligation of an individual. A financial  
3 institution shall not be liable to any individual for disclosing any financial record of  
4 the individual to the cabinet attempting to establish, modify, or enforce a child  
5 support obligation.
- 6 (10) The cabinet may issue both intrastate and interstate administrative subpoenas to any  
7 individual or entity for financial or other information or documents which are  
8 needed to establish, modify, or enforce a child support obligation pursuant to Title  
9 IV-D of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative  
10 subpoena lawfully issued in another state to an individual or entity residing in this  
11 state shall be honored and enforced in the Circuit Court of the county in which the  
12 individual or entity resides.
- 13 (11) In any case where a person or entity fails to respond to a subpoena within the  
14 specified time frame, the cabinet shall impose a penalty.
- 15 (12) No person shall knowingly make, present, or cause to be made or presented to an  
16 employee or officer of the cabinet any false, fictitious, or fraudulent statement,  
17 representation, or entry in any application, report, document, or financial record  
18 used in determining child support or child care obligations.
- 19 (13) If a person knowingly or by reason of negligence discloses a financial record of an  
20 individual, that individual may pursue civil action for damages in a federal District  
21 Court or appropriate state court. No liability shall arise with respect to any  
22 disclosure which results from a good faith, but erroneous, interpretation. In any civil  
23 action brought for reason of negligence of disclosure of financial records, upon  
24 finding of liability on the part of the defendant, the defendant shall be liable to the  
25 plaintiff in an amount equal to:
- 26 (a) The sum of the greater of one thousand dollars (\$1,000) for each act of  
27 unauthorized disclosure of financial records; or

1 (b) The sum of the actual damages sustained by the plaintiff resulting from the  
2 unauthorized disclosure; plus

3 (c) If willful disclosure or disclosure was a result of gross negligence, punitive  
4 damages, plus the costs, including attorney fees, of the action.

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

10 ➔Section 37. The following KRS section is repealed:

11 15.290 Establishment of Child Support Enforcement Commission.

12 ➔Section 38. All files, funds, functions, positions, and equipment of the Child  
13 Support Enforcement Commission of the Office of the Attorney General shall be  
14 transferred to the Cabinet for Health and Family Services.

15 ➔Section 39. The General Assembly confirms the Attorney General's Executive  
16 Order AG 16-01, dated June 3, 2016, relating to the organization of the Office of the  
17 Attorney General, to the extent that it is not otherwise confirmed or superseded by this  
18 Act.