AN ACT relating to the state of emergency in response to COVID-19 and declaring an emergency.

WHEREAS, the General Assembly recognizes the efforts of the Executive Branch to address the state of emergency in the Commonwealth declared by Executive Order 2020-215 due to the outbreak of COVID-19 virus, a public health emergency;

WHEREAS, the General Assembly recognizes that the Executive Branch is without legal authority to create statutory law, modify statutory law, or otherwise create policy on behalf of the citizens of the Commonwealth;

WHEREAS, the Kentucky Constitution vests the General Assembly with the exclusive power to create statutory law, modify statutory law, or otherwise create policy on behalf of the citizens of the Commonwealth;

WHEREAS, within existing constraints of time and personnel the General Assembly has acted upon certain matters of initial priority and the actions herein are not statements of approval or disapproval relative to any executive order or action;

NOW, THEREFORE, the General Assembly offers the following supportive statutory measures:

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

➔Section 1. Notwithstanding any state law to the contrary, during the state of emergency declared by the Governor in response to COVID-19 on March 6, 2020, by Executive Order 2020-215:

(1) (a) If persons or entities have been ordered by the Governor to close or alter the businesses for which those persons or entities have been licensed under Kentucky law, the Governor may direct any administrative body, as defined by KRS 13A.010, to suspend or waive the collection of the following for those persons or entities:

1. Licensing fees;

2. Renewal fees;

3. Application fees;

4. Forms, applications, and other administrative requirements; and

5. Other fees or administrative obligations that may be specified by the Governor;

where those fees or administrative obligations are required to engage in a business licensed by the Commonwealth.

(b) If the Governor does not direct any applicable administrative body of a person or entity referred to in paragraph (a) of this subsection to waive or suspend the collection of fees or administrative burdens, the administrative body may waive or suspend the fees or administrative obligations required to engage in the business regulated by that administrative body.

(c) Fees or administrative obligations suspended under paragraph (a) or (b) of this subsection may be suspended throughout the course of the state of emergency.

(d) Licensees may continue to practice their business without interruption, and shall be granted at least thirty (30) days after the expiration of the state of emergency to pay any owed fee or complete any administrative obligation before an action may be taken against their license.

(e) The Governor shall consider using any federal grants, moneys, or other funding received as a result of the state or federal emergency declared in response to COVID-19 to make any administrative body whole due to a suspension or waiver granted under this subsection;

(2) (a) The Governor may waive or suspend the provisions of KRS Chapter 341 and KAR Title 787 necessary to protect workers affected by the Executive Orders issued during the state of emergency, specifically the provisions of:

1. KRS 341.350 and KAR Title 787 regarding standards for ability to work, availability to work, work-search activities, and suitable work in the context of COVID-19;

2. KRS 341.350(2) regarding the seven-day waiting period prior to becoming

eligible for unemployment insurance benefits;

3. KRS 341.090 to adopt an alternative base period to determine if an unemployed worker who is unemployed as a result of COVID-19 or due to restrictions imposed by Executive Orders issued during the state of emergency has earned enough wages to qualify for unemployment insurance benefits;

4. KRS 341.270 to indicate that the reserve ratio of businesses with 100 employees or less shall not be impacted as a result of layoffs of employees due to restrictions imposed by Executive Orders issued during the state of emergency;

5. Notwithstanding the provisions in KRS 341.050 and KRS 341.055, to expand coverage to the self-insured, self-employed, and those employees otherwise not covered by unemployment insurance who have suffered job loss due to COVID-19;

6. KRS Chapter 341 to allow employees who have not been terminated or separated from employment but have experienced a reduction in work hours of more than 10 percent but less than 60 percent with no reduction in hourly rate, or the equivalent thereto, to be eligible for unemployment benefits to compensate the employee for the temporary loss of income; and

7. KRS 341.250 and KRS 341.260 to allow the Governor to delay the date in which contributions by employers shall be due and payable. Such delay shall not result in the imposition of any penalties or interest against an employer.

(b) The Education and Workforce Development Cabinet shall seek eligible waivers, reimbursement, or other assistance as necessary from the federal government, in addition to employer contributions per KRS 341.250, and shall have the discretion to use other resources to reimburse the unemployment insurance trust fund as needed when funds become available in order to provide benefits to as many people as practicable and maintain the integrity of the unemployment insurance trust fund.

(c) The Governor shall have additional flexibility to provide administrative directives to the Education and Workforce Development Cabinet for unemployment

insurance based on guidance provided by the United States Department of Labor;

(3) The Department of Revenue shall adhere to any declarations or changes in tax filing and payment requirements provided by the U.S. Treasury Department or the Internal Revenue Service and provide the same to taxpayers for comparable tax filing and payment requirements under Kentucky law, including an extension of time to file a return or report and an extension of time to pay any tax due with that return or report, without the imposition of penalty under KRS 131.180, 141.044, 141.305, or 141.990 on that extended payment, and notwithstanding KRS 131.175 and 141.170, without the imposition of interest under KRS 131.183 or 141.985;

(4) Unless specifically prohibited or limited by federal law, a health care provider who establishes a provider-patient relationship, regardless of whether or not the telehealth provider has previously conducted an in-person examination or consultation or is conducting a new patient examination or consultation, with a patient in this state may remotely provide health care services to a patient through the use of telemedicine at an appropriate site for both the provider and patient and in compliance with HIPAA. Such provider must have an active unencumbered license for a health care profession which is issued by another state, the District of Columbia, or a possession or territory of the United States and have never been subject to discipline by a licensing agency in any state or federal jurisdiction and never had their license or permit for controlled substances suspended or revoked. Such providers must register with the relevant state agency and only offer clinically appropriate, medically necessary services. An insurer, as defined under KRS 304.17A-005, shall provide coverage for such services that are rendered to insureds in this state and the reimbursement rates for the service shall not be more than for the same services delivered in-person as provided under KRS 304.17A-138 and shall be determined between insurers and providers;

(5) (a) A health care provider shall be considered to be in compliance with any Executive Orders and directives issued by the Cabinet for Health and Family Services

related to elective procedures if the health care provider complies with recommendations from the United States Centers for Medicare and Medicaid Services on elective surgery and medical procedures and:

1. The health care provider, in his or her professional judgment, deems the procedure or service to be emergent or urgent; or

2. The procedure or service is ordered for a patient by a physician licensed by the Kentucky Board of Medical Licensure pursuant to KRS Chapter 311 and is provided by one of the following providers or facilities:

a. Physical therapists licensed under KRS Chapter 327;

b. Occupational therapists licensed under KRS Chapter 319A;

c. Speech-language pathologists licensed under KRS Chapter 334A;

d. Pain management facilities as defined in KRS 218A.175;

e. Alcohol and drug abuse treatment programs licensed under KRS Chapter 222; and

f. Substance use disorder programs licensed as "Chemical Dependency Treatment Services" pursuant to KRS 216B.042.

(b) A health care provider who in good faith renders care or treatment of a COVID-19 patient during the state of emergency shall have a defense to civil liability for ordinary negligence for any personal injury resulting from said care or treatment, or from any act or failure to act in providing or arranging further medical treatment, if the health care provider acts as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances. The aforesaid defense under this paragraph shall include a health care provider who:

1. Prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus, in accordance with the federal Right to Try Act, United States Public Law 115-176, and KRS 217.5401 to 217.5408;

2. Provides health care services, upon the request of health care facilities or

public health entities, that are outside of the provider's professional scope of practice; or

3. Utilizes equipment or supplies outside of the product's normal use for medical practice and the provision of health care services.

(c) As used in this subsection:

1. "Emergent" means any health care procedure or service that, were it not provided, is at high-risk of resulting in serious or irreparable harm to a patient if not provided within 24 hours; and

2. "Urgent" means any health care procedure or service that, were it not provided, is at high-risk of resulting in serious or irreparable harm to the patient if not provided within 24 hours to 30 days;

(6) Legally permitted food service establishments shall be exempt from state laws and administrative regulations prohibiting the sale of food items such as bread, milk, and other grocery staples to any customer. No permit or permit fee shall be required for such sales of food items;

(7) (a) A license holder with the privilege of selling alcoholic beverages by the drink at retail shall be permitted to sell alcoholic beverages by the drink in a covered or sealed container, and by the package in closed sealed original containers, on a delivery, to-go, or take-out basis in conjunction with food sales, as follows:

1. The sale of alcoholic beverages pursuant to this section must be incidental to the purchase of a meal and alcoholic beverages are not to be sold in bulk quantity;

2. Deliveries that include alcoholic beverages shall be made in a vehicle operated and owned by the licensee, the licensee's employee, or an independent contractor or agent;

3. Any person delivering alcoholic beverages must be at least 20 years of age;

4. Vehicles used for deliveries performed under this subsection are exempt from displaying the name and license number of the retail licensee selling the alcoholic beverages being delivered; and

5. No delivery shall be made to a minor under 21 years of age or to an intoxicated person.

(b) For purposes of this subsection, a covered or sealed container shall not be considered an open container.

(c) All licensees are prohibited from:

1. Shipping or delivering into dry territories; and

2. Completing sales in dry territories.

(d) The Department of Alcoholic Beverage Control may, but is not required to, promulgate an emergency administrative regulation that sets forth the:

1. Conditions under which sales may take place;

2. Days and times that sales may take place; and

3. Expected end date of the emergency conditions.

(e) Licensees holding licenses that expire on April 30, 2020, shall remain in effect for an additional 30 days and authorize alcoholic beverage sales until May 31, 2020, or as otherwise determined by the Department of Alcoholic Beverage Control. Licensees must submit license renewal applications to continue alcoholic beverages sales thereafter.

(f) Except as provided in this subsection, sales of alcoholic beverages shall be governed by all of the statutes and administrative regulations governing the retail sale of alcoholic beverages by the drink;

(8) (a) Notwithstanding KRS 61.872 and 61.880, a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt. A public agency may delay on-site inspection during the pendency of the state of emergency.

(b) Notwithstanding KRS 61.826, a public agency may conduct any meeting, including its regular meeting, by live audio or live video teleconference during the period of the state of emergency. A public agency acting under this paragraph shall:

1. Provide public notice, under subsections (3) to (5) of KRS 61.823, that the

meeting is being conducted under this paragraph by live audio or video teleconference;

2. Conduct the meeting by:

a. Live video teleconference if the public agency has the technological capacity and availability to provide for live video teleconference; or

b. Live audio teleconference if the public agency does not have the technological capacity or availability to provide for a live video teleconference; and

3. Provide specific information on how any member of the public or media organization can access the meeting.

(c) Any person or provider providing court-ordered counseling or educational classes may conduct the counseling or classes by live audio or live video teleconference during the period of the state of emergency. A person or provider acting under this paragraph shall:

1. Provide notice to all appropriate parties that the counseling or educational classes are being conducted under this paragraph by live audio or video teleconference;

2. Conduct the meeting by:

a. Live video teleconference if the person or provider has the technological capacity and availability to provide for live video teleconference; or

b. Live audio teleconference if the person or provider does not have the technological capacity or availability to provide for a live video teleconference; and

3. Provide specific information on how the counseling or educational classes can be accessed;

(9) (a) Any deadlines provided by statute for any hearings required to be held, or any decisions to be made, by any local legislative body, board, or commission relating to land use, planning, or zoning pursuant to KRS Chapter 100 are hereby suspended and the time for action on any pending matter shall be tolled during the state of emergency. Nothing in this paragraph shall be construed to prohibit provisions for continued service to the public in the area of land use, planning, or zoning that complies with social

distancing guidance provided by the CDC or the Kentucky Department for Public Health, as determined by the executive authority of the relevant local government.

(b) Any deadlines provided by statute for code enforcement proceedings or hearings arising from or related to KRS 65.8825 and KRS 65.8828 are hereby suspended and the time for action on any pending matter shall be tolled during the pendency of the state of emergency. Nothing in this paragraph shall be construed to prohibit continued service to the public in the area of code enforcement that complies with social distancing guidance provided by the CDC or the Kentucky Department for Public Health, as determined by the executive authority of the relevant local government.

(c) Nothing contained in paragraph (a) or (b) of this subsection is intended to prevent any action necessary for public safety from being taken.

(d) Notwithstanding KRS 67.750 to 67.795, a tax district may suspend or otherwise extend the applicable deadline for the filing of returns for taxable net profits or taxable gross receipts of businesses within the tax district during the pendency of the state of emergency;

(10) Any business in the Commonwealth that makes or provides personal protective equipment or personal hygiene supplies relative to COVID-19, such as masks, gowns, or sanitizer, during and in response to the state of emergency and that does not make or provide such products in the normal course of its business shall have a defense to ordinary negligence and product liability so long as the business has acted in good faith and in an ordinary, reasonable, and prudent manner under the same or similar circumstances;

(11) For purposes of complying with any law, rule, order, or other requirement relating to the receipt of testimony or signature from any party or witness, or the acknowledgement or notarization of any document, for any legal purpose:

(a) Individuals, whether acting for themselves or in a representative capacity, not in the same physical location shall be considered in the presence of one another if the

individuals can communicate via a video teleconference in real time to the same extent as if they were physically present in the same location; and

(b) Any document resulting from a video teleconference conducted in accordance with paragraph (a) of this subsection may be executed, acknowledged, or notarized in counterparts, which together shall be considered a single document;

(12) (a) Employees of farm retail outlets and suppliers, agrochemical business, custom harvesters, and livestock feeders may, in the course of their employment, operate vehicles that would ordinarily require a Class B or C commercial driver's license, as defined in KRS 281A.170, without obtaining a limited commercial driver's license for farm-related service industries if the employee meets the eligibility requirements in Section 2(2) of 601 KAR 11:080, except an employee shall not be required to:

1. Have a current medical certificate as provided by 601 KAR 1:005; or

2. Pass the vision test for commercial drivers administered by the Kentucky State Police.

(b) Operation of commercial motor vehicles under this subsection shall be subject to the following restrictions:

1. If the employee's privilege to operate a motor vehicle is suspended or revoked, any limited commercial driving privilege granted under this subsection shall be terminated at the same time;

2. Operation under this subsection shall not include the operation of a Class A vehicle as defined in KRS 281A.170;

3. The authority granted under this subsection shall only be valid within 150 highway miles of the employing farm-related service industry; and

4. The authority granted under this subsection shall not be valid for those commercial drivers transporting hazardous materials as defined in 601 KAR 1:025, except the following:

a. 1,000 gallons or less of diesel fuel;

b. Anhydrous ammonia or other types of liquid fertilizer transported in a vehicle or implement of husbandry with a total capacity of 3,000 gallons or less; or

c. Solid fertilizer in any quantity; and

(13) The State Board of Medical Licensure, the Kentucky Board of Emergency Medical Services, and the Board of Nursing may waive or modify state statutes or administrative regulations relating to the respective professions over which each Board has jurisdiction:

(a) For licensure or certification requirements for health care providers who are licensed or certified in other states to provide services in Kentucky;

(b) To relax the scope of practice requirements to allow health care providers to practice in all settings of care;

(c) To allow physicians to supervise a greater number of other health care providers and to do so using remote or telephonic means;

(d) To allow for rapid certification or licensure and recertification or relicensure of health care providers;

(e) To allow medical students to conduct triage, diagnose, and treat patients under the supervision of licensed health care providers;

(f) For standards that are not necessary for the applicable standards of care to establish a patient-provider relationship, diagnose, and deliver treatment recommendations utilizing telehealth technologies; and

(g) To reactivate the licenses of inactive and retired health care providers, including emergency medical providers and nurses, to allow them to re-enter the healthcare workforce.

➔Section 2. In order to reduce burdens to hospitals and emergency services personnel, the General Assembly hereby declares that it supports the use of, and intends to appropriate, budgetary funds to support continued access to the KY COVID-19 Hotline that is operated by the healthcare professionals at the Kentucky Poison Control Center.

➔Section 3. Notwithstanding any state law to the contrary, the Governor shall declare, in writing, the date upon which the state of emergency in response to COVID-19, declared on March 6, 2020, by Executive Order 2020-215, has ceased. In the event no such declaration is made by the Governor on or before the first day of the next regular session of the General Assembly, the General Assembly may make the determination.

➔Section 4. Whereas the economic impact of the state of emergency in response to COVID-19 on Kentucky's citizens and small businesses is of the utmost importance, an emergency is declared to exist, and this Act takes effect immediately upon the passage of this Act and approval by the Governor or upon its otherwise becoming a law.