

1 AN ACT relating to fairness for licensees and businesses during the Coronavirus  
2 response and declaring an emergency.

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

4 ➔Section 1. KRS 217.125 is amended to read as follows:

5 (1) The authority to promulgate regulations for the efficient administration and  
6 enforcement of KRS 217.005 to 217.215 is hereby vested in the secretary. The  
7 secretary may make the regulations promulgated under KRS 217.005 to 217.215  
8 consistent with those promulgated under the federal act and the Fair Packaging and  
9 Labeling Act. Regulations promulgated may require permits to operate and include  
10 provisions for regulating the issuance, suspension, and reinstatement of permits.  
11 The authority to promulgate regulations pursuant to KRS 217.005 to 217.205 is  
12 restricted to the Cabinet for Health and Family Services.

13 (2) No person shall operate a food processing establishment, food storage warehouse,  
14 salvage distributor, or salvage processing plant without having obtained an annual  
15 permit to operate from the cabinet. An application for the permit to operate shall be  
16 made to the cabinet upon forms provided by it and shall be accompanied by the  
17 required fee as shall be provided by regulation. The secretary shall promulgate  
18 administrative regulations to establish a fee schedule not to exceed costs of the  
19 program to the cabinet. Fees collected by the cabinet shall be deposited in the State  
20 Treasury and credited to a revolving fund account for use by the cabinet in carrying  
21 out the provisions of KRS 217.025 to 217.390 and the regulations adopted by the  
22 secretary pursuant thereto. The balance of the account shall lapse to the general fund  
23 at the end of each biennium.

24 (3) No person shall operate a retail food establishment without having obtained a  
25 permit to operate from the cabinet. An application for a permit to operate any retail  
26 food establishment shall be made to the cabinet upon forms provided by it and shall  
27 contain the information the cabinet may reasonably require.

- 1 (4) (a) Except as otherwise provided in subsection (11) of this section, each  
2 application for a temporary food service establishment or for an annual permit  
3 to operate a retail food establishment shall be accompanied by the required  
4 fee. The secretary shall promulgate administrative regulations to establish a  
5 fee schedule not to exceed costs to the cabinet.
- 6 (b) The total fees for permitting and inspection:
- 7 1. Shall be the total of the operational and administrative costs of the  
8 programs to the cabinet and to agencies as defined in KRS 211.185;
  - 9 2. Beginning on March 17, 2020, until December 31, 2020, shall not  
10 increase more than twenty-five percent (25%) of the fee amount on  
11 March 17, 2020; and
  - 12 3. Beginning on or after January 1, 2021, shall not increase more than five  
13 percent (5%) for each year thereafter.
- 14 (5) Except as otherwise provided in subsection (11) of this section, each application for  
15 a farmers market temporary food service establishment shall be accompanied by the  
16 required fee of at least fifty dollars (\$50). The secretary shall establish a fee  
17 schedule by promulgation of administrative regulation. Fees collected by the cabinet  
18 shall be used to carry out duties related to farmers market temporary food service  
19 establishments, including but not limited to inspections and the issuance of permits.
- 20 (6) An applicant for a permit to operate a farmers market temporary food service  
21 establishment must provide documentation of successful completion of a food  
22 safety training program offered by either the state, a local health department, or  
23 other entity approved by the cabinet to conduct food safety training. Each  
24 certification of food safety training shall expire after a period of twenty-four (24)  
25 months from the date of issuance. Permits issued shall be posted in a conspicuous  
26 place in the establishment, and a person who has completed the food safety training  
27 for farmers market temporary food service establishments shall be present at all

- 1 times during the operation of the establishment.
- 2 (7) Upon expiration of a temporary food service establishment permit, any subsequent  
3 permits shall not be issued to the same operator to operate at the same location until  
4 a period of thirty (30) days has elapsed.
- 5 (8) Upon receipt of an application for a permit to operate a food processing  
6 establishment, food storage warehouse, salvage distributor, or salvage processing  
7 plant or a retail food establishment accompanied by the required fee, the cabinet  
8 shall issue a permit if the establishment meets the requirements of KRS 217.005 to  
9 217.215 and regulations adopted by the cabinet. Retail food establishments holding  
10 a valid and effective permit on January 1, 1973, even though not fully meeting the  
11 construction requirements of KRS 217.005 to 217.215 and the regulations adopted  
12 pursuant thereto, may continue to be eligible for permit renewal if in good repair  
13 and capable of being maintained in a safe and sanitary manner.
- 14 (9) Permits shall not be issued to operate a temporary food service establishment and a  
15 farmers market temporary food service establishment simultaneously at the same  
16 location and by the same operator.
- 17 (10) In all instances of permit issuance for either a temporary food service establishment  
18 permit or a farmers market temporary food service establishment permit, any  
19 subsequent permits shall not be issued until a period of thirty (30) days has elapsed.
- 20 (11) Private, parochial, and public school cafeterias or lunchroom facilities through the  
21 twelfth grade, charitable food kitchens, and all facilities operated by the Cabinet for  
22 Health and Family Services or Department of Corrections shall be exempt from the  
23 payment of fees, but shall comply with all other provisions of KRS 217.005 to  
24 217.215 and the state retail food establishment code. For this subsection, the term  
25 "charitable food kitchens" means a not-for-profit, benevolent food service  
26 establishment where more than one-half (1/2) of the employees are volunteers.
- 27 (12) Each annual permit to operate a food processing establishment, food storage

1 warehouse, salvage distributor, or salvage processing plant or a retail food  
2 establishment, unless previously suspended or revoked, shall expire on December  
3 31 following its date of issuance, and be renewable annually upon application  
4 accompanied by the required fee, except as otherwise provided in subsection (11) of  
5 this section, and if the establishment is in compliance with KRS 217.005 to 217.215  
6 and regulations of the cabinet.

7 (13) Each permit to operate a food processing establishment, food storage warehouse,  
8 salvage distributor, salvage processing plant, or a retail food establishment shall be  
9 issued only for the premises and person named in the application and shall not be  
10 transferable. Permits issued shall be posted in a conspicuous place in the  
11 establishment.

12 (14) (a) Notwithstanding any other provisions of this chapter, no permit under this  
13 chapter shall be denied, revoked, or suspended, either before or after  
14 passage of this Act, because the establishment, or its operators, failed to  
15 comply with any executive order, guidance, directive, or emergency  
16 regulation issued by the Governor or the Cabinet for Health and Family  
17 Services, which was related to COVID-19, or for failing to comply with any  
18 orders of a local health department related to COVID-19.

19 (b) Any permit suspended by reason of the foregoing shall be immediately  
20 restored to such person upon passage of this Act without the need for any  
21 additional payment.

22 (c) Any person who has had a permit denied, revoked, or suspended under this  
23 subsection may maintain an action in the Circuit Court of the county where  
24 their facility is located for declaratory and injunctive relief to have the  
25 permit reissued without the need to show irreparable harm, and, upon  
26 prevailing, shall be awarded reasonable attorney fees and costs, which shall  
27 be paid from the appropriations to operate the Office of the Governor or to

1 operate the Cabinet for Health and Family Services.

2 (d) The Circuit Court shall prioritize such matters upon its docket and shall  
3 issue temporary restraining orders or temporary injunctions upon a prima  
4 facie showing of a violation.

5 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO  
6 READ AS FOLLOWS:

7 (1) (a) Notwithstanding any other provisions of this chapter, no license under this  
8 chapter shall be denied, revoked, or suspended by the Department of  
9 Alcoholic Beverage Control because the establishment, or its operators,  
10 failed to comply with any executive order guidance, directive, or emergency  
11 regulation, issued by the Governor or the Cabinet for Health and Family  
12 Services, which was related to COVID-19, or for failing to comply with any  
13 orders of a local health department related to same, either before, or after,  
14 passage of this Act.

15 (b) Any permit suspended or revoked, by reason of the foregoing shall be  
16 immediately restored to such person upon passage of this Act, without the  
17 need for any additional payment.

18 (c) Any person who has a permit denied, revoked, or suspended under this  
19 subsection may maintain an action in the Circuit Court of the county where  
20 their facility is located for declaratory and injunctive relief to have the  
21 permit reissued without the need to show irreparable harm, and upon  
22 prevailing, shall be awarded their reasonable attorney fees and costs, which  
23 shall be paid from the appropriations to operate the Office of the Governor  
24 or to operate the Cabinet for Health and Family Services.

25 (d) The Circuit Court shall prioritize such matter upon its docket and shall  
26 issue temporary restraining orders or temporary injunctions upon a prima  
27 facie showing of a violation.

1           ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
2 READ AS FOLLOWS:

3 *(1) (a) Notwithstanding any other provisions of this chapter, the secretary and*  
4 *officials of the Labor Cabinet shall not have jurisdiction over and shall not*  
5 *enforce any executive order, guidance, directive, or emergency regulation,*  
6 *issued by the Governor or the Cabinet for Health and Family Services,*  
7 *which was related to COVID-19, or any orders of a local health department*  
8 *related to same, either before, or after, passage of this Act. To the extent the*  
9 *secretary or other officials of the Labor Cabinet have issued any order*  
10 *closing, or otherwise enforcing any of the foregoing orders, they shall*  
11 *immediately rescind those orders.*

12 *(b) Any person who has had a permit denied, revoked, or suspended, or has*  
13 *been ordered to close or restrict their business by the secretary or other*  
14 *officials of the Labor Cabinet may maintain an action in the Circuit Court*  
15 *of the county where their facility is located for declaratory and injunctive*  
16 *relief to have the permit reissued without the need to show irreparable*  
17 *harm, and, upon prevailing, shall be awarded their reasonable attorney fees*  
18 *and costs, which shall be paid from the appropriations to operate the Office*  
19 *of the Governor or to operate the Labor Cabinet.*

20 *(c) The Circuit Court shall prioritize such matter upon its docket and shall*  
21 *issue temporary restraining orders to temporary injunctions upon a prima*  
22 *facie showing of a violation.*

23           ➔Section 4. This Act shall be known as the "Ensuring Business Fairness During  
24 COVID-19 Response Act."

25           ➔Section 5. For the avoidance of all doubt, it is the intention of the General  
26 Assembly to make this Act have retroactive application.

27           ➔Section 6. Whereas, the Governor has issued crippling restrictions on

1 businesses, and has crippled small business in particular, creating an existential human  
2 and economic emergency throughout the Commonwealth, and the constitutional and  
3 statutory rights of Kentucky citizens are compelling and immediate needs, an emergency  
4 is declared to exist, and this act takes effect upon its passage and approval by the  
5 Governor or upon its otherwise becoming law.