

1 AN ACT relating to menstrual discharge collection devices.

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

3 ➔Section 1. KRS 139.010 is amended to read as follows:

4 As used in this chapter, unless the context otherwise provides:

5 (1) (a) "Admissions" means the fees paid for:

6 1. The right of entrance to a display, program, sporting event, music  
7 concert, performance, play, show, movie, exhibit, fair, or other  
8 entertainment or amusement event or venue; and

9 2. The privilege of using facilities or participating in an event or activity,  
10 including but not limited to:

11 a. Bowling centers;

12 b. Skating rinks;

13 c. Health spas;

14 d. Swimming pools;

15 e. Tennis courts;

16 f. Weight training facilities;

17 g. Fitness and recreational sports centers; and

18 h. Golf courses, both public and private;

19 regardless of whether the fee paid is per use or in any other form,  
20 including but not limited to an initiation fee, monthly fee, membership  
21 fee, or combination thereof.

22 (b) "Admissions" does not include:

23 1. Any fee paid to enter or participate in a fishing tournament; or

24 2. Any fee paid for the use of a boat ramp for the purpose of allowing  
25 boats to be launched into or hauled out from the water;

26 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of  
27 which is to attract public attention to a product, person, business, or organization, or

- 1 to attempt to sell, popularize, or secure financial support for a product, person,  
2 business, or organization. As used in this definition, "product" means tangible  
3 personal property, an item transferred electronically, or a service;
- 4 (3) "Business" includes any activity engaged in by any person or caused to be engaged  
5 in by that person with the object of gain, benefit, or advantage, either direct or  
6 indirect;
- 7 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 8 (5) (a) "Cosmetic surgery services" means modifications to all areas of the head,  
9 neck, and body to enhance appearance through surgical and medical  
10 techniques.
- 11 (b) "Cosmetic surgery services" does not include surgery services that are  
12 medically necessary to reconstruct or correct dysfunctional areas of the face  
13 and body due to birth disorders, trauma, burns, or disease;
- 14 (6) "Department" means the Department of Revenue;
- 15 (7) (a) "Digital audio-visual works" means a series of related images which, when  
16 shown in succession, impart an impression of motion, with accompanying  
17 sounds, if any.
- 18 (b) "Digital audio-visual works" includes movies, motion pictures, musical  
19 videos, news and entertainment programs, and live events.
- 20 (c) "Digital audio-visual works" shall not include video greeting cards, video  
21 games, and electronic games;
- 22 (8) (a) "Digital audio works" means works that result from the fixation of a series of  
23 musical, spoken, or other sounds.
- 24 (b) "Digital audio works" includes ringtones, recorded or live songs, music,  
25 readings of books or other written materials, speeches, or other sound  
26 recordings.
- 27 (c) "Digital audio works" shall not include audio greeting cards sent by electronic

1 mail;

2 (9) (a) "Digital books" means works that are generally recognized in the ordinary and  
3 usual sense as books, including any literary work expressed in words,  
4 numbers, or other verbal or numerical symbols or indicia if the literary work  
5 is generally recognized in the ordinary or usual sense as a book.

6 (b) "Digital books" shall not include digital audio-visual works, digital audio  
7 works, periodicals, magazines, newspapers, or other news or information  
8 products, chat rooms, or weblogs;

9 (10) (a) "Digital code" means a code which provides a purchaser with a right to obtain  
10 one (1) or more types of digital property. A "digital code" may be obtained by  
11 any means, including electronic mail messaging or by tangible means,  
12 regardless of the code's designation as a song code, video code, or book code.

13 (b) "Digital code" shall not include a code that represents:

- 14 1. A stored monetary value that is deducted from a total as it is used by the  
15 purchaser; or
- 16 2. A redeemable card, gift card, or gift certificate that entitles the holder to  
17 select specific types of digital property;

18 (11) (a) "Digital property" means any of the following which is transferred  
19 electronically:

- 20 1. Digital audio works;
- 21 2. Digital books;
- 22 3. Finished artwork;
- 23 4. Digital photographs;
- 24 5. Periodicals;
- 25 6. Newspapers;
- 26 7. Magazines;
- 27 8. Video greeting cards;

- 1           9. Audio greeting cards;
- 2           10. Video games;
- 3           11. Electronic games; or
- 4           12. Any digital code related to this property.
- 5           (b) "Digital property" shall not include digital audio-visual works or satellite
- 6           radio programming;
- 7       (12) (a) "Direct mail" means printed material delivered or distributed by United States
- 8           mail or other delivery service to a mass audience or to addressees on a mailing
- 9           list provided by the purchaser or at the direction of the purchaser when the
- 10          cost of the items are not billed directly to the recipient.
- 11          (b) "Direct mail" includes tangible personal property supplied directly or
- 12          indirectly by the purchaser to the direct mail retailer for inclusion in the
- 13          package containing the printed material.
- 14          (c) "Direct mail" does not include multiple items of printed material delivered to
- 15          a single address;
- 16       (13) "Directly used in the manufacturing or industrial processing process" means the
- 17          process that commences with the movement of raw materials from storage into a
- 18          continuous, unbroken, integrated process and ends when the finished product is
- 19          packaged and ready for sale;
- 20       (14) (a) "Executive employee recruitment services" means services provided by a
- 21          person to locate potential candidates to fill open senior-level management
- 22          positions.
- 23          (b) "Executive employee recruitment services" includes but is not limited to
- 24          making a detailed list of client requirements, researching and identifying
- 25          potential candidates, performing prescreening interviews, and providing
- 26          contract and salary negotiations;
- 27       (15) (a) "Extended warranty services" means services provided through a service

1 contract agreement between the contract provider and the purchaser where the  
2 purchaser agrees to pay compensation for the contract and the provider agrees  
3 to repair, replace, support, or maintain tangible personal property, digital  
4 property, real property, or prewritten computer software access services  
5 according to the terms of the contract.

6 (b) "Extended warranty services" does not include the sale of a service contract  
7 agreement for tangible personal property to be used by a small telephone  
8 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in  
9 KRS 65.7621 to deliver communications services as defined in KRS 136.602  
10 or broadband;

11 (16) (a) "Finished artwork" means final art that is used for actual reproduction by  
12 photomechanical or other processes or for display purposes.

13 (b) "Finished artwork" includes:

- 14 1. Assemblies;
- 15 2. Charts;
- 16 3. Designs;
- 17 4. Drawings;
- 18 5. Graphs;
- 19 6. Illustrative materials;
- 20 7. Lettering;
- 21 8. Mechanicals;
- 22 9. Paintings; and
- 23 10. Paste-ups;

24 (17) (a) "Gross receipts" and "sales price" mean the total amount or consideration,  
25 including cash, credit, property, and services, for which tangible personal  
26 property, digital property, or services are sold, leased, or rented, valued in  
27 money, whether received in money or otherwise, without any deduction for

1 any of the following:

- 2 1. The retailer's cost of the tangible personal property, digital property, or  
3 services sold;
- 4 2. The cost of the materials used, labor or service cost, interest, losses, all  
5 costs of transportation to the retailer, all taxes imposed on the retailer, or  
6 any other expense of the retailer;
- 7 3. Charges by the retailer for any services necessary to complete the sale;
- 8 4. Delivery charges, which are defined as charges by the retailer for the  
9 preparation and delivery to a location designated by the purchaser  
10 including transportation, shipping, postage, handling, crating, and  
11 packing;
- 12 5. Any amount for which credit is given to the purchaser by the retailer,  
13 other than credit for tangible personal property or digital property traded  
14 when the tangible personal property or digital property traded is of like  
15 kind and character to the property purchased and the property traded is  
16 held by the retailer for resale; and
- 17 6. The amount charged for labor or services rendered in installing or  
18 applying the tangible personal property, digital property, or service sold.

19 (b) "Gross receipts" and "sales price" shall include consideration received by the  
20 retailer from a third party if:

- 21 1. The retailer actually receives consideration from a third party and the  
22 consideration is directly related to a price reduction or discount on the  
23 sale to the purchaser;
- 24 2. The retailer has an obligation to pass the price reduction or discount  
25 through to the purchaser;
- 26 3. The amount of consideration attributable to the sale is fixed and  
27 determinable by the retailer at the time of the sale of the item to the

1 purchaser; and

2 4. One (1) of the following criteria is met:

3 a. The purchaser presents a coupon, certificate, or other  
4 documentation to the retailer to claim a price reduction or discount  
5 where the coupon, certificate, or documentation is authorized,  
6 distributed, or granted by a third party with the understanding that  
7 the third party will reimburse any seller to whom the coupon,  
8 certificate, or documentation is presented;

9 b. The price reduction or discount is identified as a third-party price  
10 reduction or discount on the invoice received by the purchaser or  
11 on a coupon, certificate, or other documentation presented by the  
12 purchaser; or

13 c. The purchaser identifies himself or herself to the retailer as a  
14 member of a group or organization entitled to a price reduction or  
15 discount. A "preferred customer" card that is available to any  
16 patron does not constitute membership in such a group.

17 (c) "Gross receipts" and "sales price" shall not include:

18 1. Discounts, including cash, term, or coupons that are not reimbursed by a  
19 third party and that are allowed by a retailer and taken by a purchaser on  
20 a sale;

21 2. Interest, financing, and carrying charges from credit extended on the  
22 sale of tangible personal property, digital property, or services, if the  
23 amount is separately stated on the invoice, bill of sale, or similar  
24 document given to the purchaser;

25 3. Any taxes legally imposed directly on the purchaser that are separately  
26 stated on the invoice, bill of sale, or similar document given to the  
27 purchaser; or

1           4. Local alcohol regulatory license fees authorized under KRS 243.075 that  
2           are separately stated on the invoice, bill of sale, or similar document  
3           given to the purchaser.

4           (d) As used in this subsection, "third party" means a person other than the  
5           purchaser;

6   (18) "In this state" or "in the state" means within the exterior limits of the  
7       Commonwealth and includes all territory within these limits owned by or ceded to  
8       the United States of America;

9   (19) "Industrial processing" includes:

10       (a) Refining;

11       (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;

12       (c) Mining, quarrying, fabricating, and industrial assembling;

13       (d) The processing and packaging of raw materials, in-process materials, and  
14       finished products; and

15       (e) The processing and packaging of farm and dairy products for sale;

16   (20) (a) "Lease or rental" means any transfer of possession or control of tangible  
17       personal property for a fixed or indeterminate term for consideration. A lease  
18       or rental shall include future options to:

19       1. Purchase the property; or

20       2. Extend the terms of the agreement and agreements covering trailers  
21       where the amount of consideration may be increased or decreased by  
22       reference to the amount realized upon sale or disposition of the property  
23       as defined in 26 U.S.C. sec. 7701(h)(1).

24       (b) "Lease or rental" shall not include:

25       1. A transfer of possession or control of property under a security  
26       agreement or deferred payment plan that requires the transfer of title  
27       upon completion of the required payments;



- 1           2.    A transfer of possession or control of property under an agreement that  
2                    requires the transfer of title upon completion of the required payments  
3                    and payment of an option price that does not exceed the greater of one  
4                    hundred dollars (\$100) or one percent (1%) of the total required  
5                    payments; or
- 6           3.    Providing tangible personal property and an operator for the tangible  
7                    personal property for a fixed or indeterminate period of time. To qualify  
8                    for this exclusion, the operator must be necessary for the equipment to  
9                    perform as designed, and the operator must do more than maintain,  
10                  inspect, or setup the tangible personal property.
- 11       (c)   This definition shall apply regardless of the classification of a transaction  
12                  under generally accepted accounting principles, the Internal Revenue Code, or  
13                  other provisions of federal, state, or local law;
- 14   (21) (a)   "Lobbying services" means the act of promoting or securing passage of  
15                  legislation or an attempt to influence or sway a public official or other public  
16                  servant toward a desired action, including but not limited to the support of or  
17                  opposition to a project or the passage, amendment, defeat, approval, or veto of  
18                  any legislation, regulation, rule, or ordinance;
- 19       (b)   "Lobbying services" includes but is not limited to the performance of  
20                  activities described as executive agency lobbying activities as defined in KRS  
21                  11A.201, activities described under the definition of lobby in KRS 6.611, and  
22                  any similar activities performed at the local, state, or federal levels;
- 23   (22) (a)   "Machinery for new and expanded industry" means machinery:
- 24                  1.    Directly used in the manufacturing or industrial processing process of:
- 25                          a.    Tangible personal property at a plant facility;
- 26                          b.    Distilled spirits or wine at a plant facility or on the premises of a  
27                          distiller, rectifier, winery, or small farm winery licensed under

- 1 KRS 243.030 that includes a retail establishment on the premises;  
2 or  
3 c. Malt beverages at a plant facility or on the premises of a brewer or  
4 microbrewery licensed under KRS 243.040 that includes a retail  
5 establishment;
- 6 2. Which is incorporated for the first time into:  
7 a. A plant facility established in this state; or  
8 b. Licensed premises located in this state; and
- 9 3. Which does not replace machinery in the plant facility or licensed  
10 premises unless that machinery purchased to replace existing machinery:  
11 a. Increases the consumption of recycled materials at the plant  
12 facility by not less than ten percent (10%);  
13 b. Performs different functions;  
14 c. Is used to manufacture a different product; or  
15 d. Has a greater productive capacity, as measured in units of  
16 production, than the machinery being replaced.
- 17 (b) "Machinery for new and expanded industry" does not include repair,  
18 replacement, or spare parts of any kind, regardless of whether the purchase of  
19 repair, replacement, or spare parts is required by the manufacturer or seller as  
20 a condition of sale or as a condition of warranty;
- 21 (23) "Manufacturing" means any process through which material having little or no  
22 commercial value for its intended use before processing has appreciable  
23 commercial value for its intended use after processing by the machinery;
- 24 (24) "Marketplace" means any physical or electronic means through which one (1) or  
25 more retailers may advertise and sell tangible personal property, digital property, or  
26 services, or lease tangible personal property or digital property, such as a catalog,  
27 Internet website, or television or radio broadcast, regardless of whether the tangible

1 personal property, digital property, or retailer is physically present in this state;

2 (25) (a) "Marketplace provider" means a person, including any affiliate of the person,  
3 that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this  
4 paragraph as follows:

5 1. The person directly or indirectly:

6 a. Lists, makes available, or advertises tangible personal property,  
7 digital property, or services for sale by a marketplace retailer in a  
8 marketplace owned, operated, or controlled by the person;

9 b. Facilitates the sale of a marketplace retailer's product through a  
10 marketplace by transmitting or otherwise communicating an offer  
11 or acceptance of a retail sale of tangible personal property, digital  
12 property, or services between a marketplace retailer and a  
13 purchaser in a forum including a shop, store, booth, catalog,  
14 Internet site, or similar forum;

15 c. Owns, rents, licenses, makes available, or operates any electronic  
16 or physical infrastructure or any property, process, method,  
17 copyright, trademark, or patent that connects marketplace retailers  
18 to purchasers for the purpose of making retail sales of tangible  
19 personal property, digital property, or services;

20 d. Provides a marketplace for making retail sales of tangible personal  
21 property, digital property, or services, or otherwise facilitates retail  
22 sales of tangible personal property, digital property, or services,  
23 regardless of ownership or control of the tangible personal  
24 property, digital property, or services, that are the subject of the  
25 retail sale;

26 e. Provides software development or research and development  
27 activities related to any activity described in this subparagraph, if

- 1 the software development or research and development activities  
2 are directly related to the physical or electronic marketplace  
3 provided by a marketplace provider;
- 4 f. Provides or offers fulfillment or storage services for a marketplace  
5 retailer;
- 6 g. Sets prices for a marketplace retailer's sale of tangible personal  
7 property, digital property, or services;
- 8 h. Provides or offers customer service to a marketplace retailer or a  
9 marketplace retailer's customers, or accepts or assists with taking  
10 orders, returns, or exchanges of tangible personal property, digital  
11 property, or services sold by a marketplace retailer; or
- 12 i. Brands or otherwise identifies sales as those of the marketplace  
13 provider; and
- 14 2. The person directly or indirectly:
- 15 a. Collects the sales price or purchase price of a retail sale of tangible  
16 personal property, digital property, or services;
- 17 b. Provides payment processing services for a retail sale of tangible  
18 personal property, digital property, or services;
- 19 c. Through terms and conditions, agreements, or arrangements with a  
20 third party, collects payment in connection with a retail sale of  
21 tangible personal property, digital property, or services from a  
22 purchaser and transmits that payment to the marketplace retailer,  
23 regardless of whether the person collecting and transmitting the  
24 payment receives compensation or other consideration in exchange  
25 for the service; or
- 26 d. Provides a virtual currency that purchasers are allowed or required  
27 to use to purchase tangible personal property, digital property, or

1 services.

2 (b) "Marketplace provider" includes but is not limited to a person that satisfies the  
3 requirements of this subsection through the ownership, operation, or control  
4 of a digital distribution service, digital distribution platform, online portal, or  
5 application store;

6 (26) "Marketplace retailer" means a seller that makes retail sales through any  
7 marketplace owned, operated, or controlled by a marketplace provider;

8 (27) "Menstrual discharge collection devices" means tampons, panty liners,  
9 menstrual cups, pads, period panties, and other similar tangible personal property  
10 designed for use in connection with the human menstrual cycle, but does not  
11 include "grooming and hygiene products" as defined in KRS 139.472;

12 **(28)** (a) "Occasional sale" includes:

13 1. A sale of tangible personal property or digital property not held or used  
14 by a seller in the course of an activity for which he or she is required to  
15 hold a seller's permit, provided such sale is not one (1) of a series of  
16 sales sufficient in number, scope, and character to constitute an activity  
17 requiring the holding of a seller's permit. In the case of the sale of the  
18 entire, or a substantial portion of the nonretail assets of the seller, the  
19 number of previous sales of similar assets shall be disregarded in  
20 determining whether or not the current sale or sales shall qualify as an  
21 occasional sale; or

22 2. Any transfer of all or substantially all the tangible personal property or  
23 digital property held or used by a person in the course of such an activity  
24 when after such transfer the real or ultimate ownership of such property  
25 is substantially similar to that which existed before such transfer.

26 (b) For the purposes of this subsection, stockholders, bondholders, partners, or  
27 other persons holding an interest in a corporation or other entity are regarded

1 as having the "real or ultimate ownership" of the tangible personal property or  
2 digital property of such corporation or other entity;

3 ~~(29)~~~~(28)~~ (a) "Other direct mail" means any direct mail that is not advertising and  
4 promotional direct mail, regardless of whether advertising and promotional  
5 direct mail is included in the same mailing.

6 (b) "Other direct mail" includes but is not limited to:

- 7 1. Transactional direct mail that contains personal information specific to  
8 the addressee, including but not limited to invoices, bills, statements of  
9 account, and payroll advices;
- 10 2. Any legally required mailings, including but not limited to privacy  
11 notices, tax reports, and stockholder reports; and
- 12 3. Other nonpromotional direct mail delivered to existing or former  
13 shareholders, customers, employees, or agents, including but not limited  
14 to newsletters and informational pieces.

15 (c) "Other direct mail" does not include the development of billing information or  
16 the provision of any data processing service that is more than incidental to the  
17 production of printed material;

18 ~~(30)~~~~(29)~~ "Person" includes any individual, firm, copartnership, joint venture,  
19 association, social club, fraternal organization, corporation, estate, trust, business  
20 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or  
21 agency, or any other group or combination acting as a unit;

22 ~~(31)~~~~(30)~~ "Permanent," as the term applies to digital property, means perpetual or for an  
23 indefinite or unspecified length of time;

24 ~~(32)~~~~(31)~~ (a) "Photography and photofinishing services" means:

- 25 1. The taking, developing, or printing of an original photograph; or
- 26 2. Image editing, including shadow removal, tone adjustments, vertical and  
27 horizontal alignment and cropping, composite image creation,

1 formatting, watermarking printing, and delivery of an original  
2 photograph in the form of tangible personal property, digital property, or  
3 other media.

4 (b) "Photography and photofinishing services" does not include photography  
5 services necessary for medical or dental health;

6 ~~(33)~~~~(32)~~ "Plant facility" means a single location that is exclusively dedicated to  
7 manufacturing or industrial processing activities. A location shall be deemed to be  
8 exclusively dedicated to manufacturing or industrial processing activities even if  
9 retail sales are made there, provided that the retail sales are incidental to the  
10 manufacturing or industrial processing activities occurring at the location. The term  
11 "plant facility" shall not include any restaurant, grocery store, shopping center, or  
12 other retail establishment;

13 ~~(34)~~~~(33)~~ (a) "Prewritten computer software" means:

- 14 1. Computer software, including prewritten upgrades, that are not designed  
15 and developed by the author or other creator to the specifications of a  
16 specific purchaser;
- 17 2. Software designed and developed by the author or other creator to the  
18 specifications of a specific purchaser when it is sold to a person other  
19 than the original purchaser; or
- 20 3. Any portion of prewritten computer software that is modified or  
21 enhanced in any manner, where the modification or enhancement is  
22 designed and developed to the specifications of a specific purchaser,  
23 unless there is a reasonable, separately stated charge on an invoice or  
24 other statement of the price to the purchaser for the modification or  
25 enhancement.

26 (b) When a person modifies or enhances computer software of which the person  
27 is not the author or creator, the person shall be deemed to be the author or

1 creator only of the modifications or enhancements the person actually made.

2 (c) The combining of two (2) or more prewritten computer software programs or  
3 portions thereof does not cause the combination to be other than prewritten  
4 computer software;

5 ~~(35)~~~~(34)~~ "Prewritten computer software access services" means the right of access to  
6 prewritten computer software where the object of the transaction is to use the  
7 prewritten computer software while possession of the prewritten computer software  
8 is maintained by the seller or a third party, wherever located, regardless of whether  
9 the charge for the access or use is on a per use, per user, per license, subscription, or  
10 some other basis;

11 ~~(36)~~~~(35)~~ (a) "Purchase" means any transfer of title or possession, exchange, barter,  
12 lease, or rental, conditional or otherwise, in any manner or by any means  
13 whatsoever, of:

- 14 1. Tangible personal property;
- 15 2. An extended warranty service;
- 16 3. Digital property transferred electronically; or
- 17 4. Services included in KRS 139.200;
- 18 for a consideration.

19 (b) "Purchase" includes:

- 20 1. When performed outside this state or when the customer gives a resale  
21 certificate, the producing, fabricating, processing, printing, or imprinting  
22 of tangible personal property for a consideration for consumers who  
23 furnish either directly or indirectly the materials used in the producing,  
24 fabricating, processing, printing, or imprinting;
- 25 2. A transaction whereby the possession of tangible personal property or  
26 digital property is transferred but the seller retains the title as security  
27 for the payment of the price; and



1           3. A transfer for a consideration of the title or possession of tangible  
2           personal property or digital property which has been produced,  
3           fabricated, or printed to the special order of the customer, or of any  
4           publication;

5    ~~(37)~~~~(36)~~ "Recycled materials" means materials which have been recovered or diverted  
6           from the solid waste stream and reused or returned to use in the form of raw  
7           materials or products;

8    ~~(38)~~~~(37)~~ "Recycling purposes" means those activities undertaken in which materials  
9           that would otherwise become solid waste are collected, separated, or processed in  
10          order to be reused or returned to use in the form of raw materials or products;

11   ~~(39)~~~~(38)~~ "Remote retailer" means a retailer with no physical presence in this state;

12   ~~(40)~~~~(39)~~ (a) "Repair, replacement, or spare parts" means any tangible personal  
13          property used to maintain, restore, mend, or repair machinery or equipment.

14          (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or  
15          industrial tools;

16   ~~(41)~~~~(40)~~ (a) "Retailer" means:

17          1. Every person engaged in the business of making retail sales of tangible  
18          personal property, digital property, or furnishing any services in a retail  
19          sale included in KRS 139.200;

20          2. Every person engaged in the business of making sales at auction of  
21          tangible personal property or digital property owned by the person or  
22          others for storage, use or other consumption, except as provided in  
23          paragraph (c) of this subsection;

24          3. Every person making more than two (2) retail sales of tangible personal  
25          property, digital property, or services included in KRS 139.200 during  
26          any twelve (12) month period, including sales made in the capacity of  
27          assignee for the benefit of creditors, or receiver or trustee in bankruptcy;

- 1           4. Any person conducting a race meeting under the provision of KRS  
2           Chapter 230, with respect to horses which are claimed during the  
3           meeting.
- 4           (b) When the department determines that it is necessary for the efficient  
5           administration of this chapter to regard any salesmen, representatives,  
6           peddlers, or canvassers as the agents of the dealers, distributors, supervisors or  
7           employers under whom they operate or from whom they obtain the tangible  
8           personal property, digital property, or services sold by them, irrespective of  
9           whether they are making sales on their own behalf or on behalf of the dealers,  
10          distributors, supervisors or employers, the department may so regard them and  
11          may regard the dealers, distributors, supervisors or employers as retailers for  
12          purposes of this chapter.
- 13          (c) 1. Any person making sales at a charitable auction for a qualifying entity  
14          shall not be a retailer for purposes of the sales made at the charitable  
15          auction if:
- 16               a. The qualifying entity, not the person making sales at the auction, is  
17               sponsoring the auction;
- 18               b. The purchaser of tangible personal property at the auction directly  
19               pays the qualifying entity sponsoring the auction for the property  
20               and not the person making the sales at the auction; and
- 21               c. The qualifying entity, not the person making sales at the auction, is  
22               responsible for the collection, control, and disbursement of the  
23               auction proceeds.
- 24          2. If the conditions set forth in subparagraph 1. of this paragraph are met,  
25          the qualifying entity sponsoring the auction shall be the retailer for  
26          purposes of the sales made at the charitable auction.
- 27          3. For purposes of this paragraph, "qualifying entity" means a resident:

- 1 a. Church;
- 2 b. School;
- 3 c. Civic club; or
- 4 d. Any other nonprofit charitable, religious, or educational
- 5 organization;

6 ~~(42)~~~~(41)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,  
7 sublease, or subrent;

8 ~~(43)~~~~(42)~~ (a) "Ringtones" means digitized sound files that are downloaded onto a  
9 device and that may be used to alert the customer with respect to a  
10 communication.

11 (b) "Ringtones" shall not include ringback tones or other digital files that are not  
12 stored on the purchaser's communications device;

13 ~~(44)~~~~(43)~~ (a) "Sale" means:

- 14 1. The furnishing of any services included in KRS 139.200;
- 15 2. Any transfer of title or possession, exchange, barter, lease, or rental,  
16 conditional or otherwise, in any manner or by any means whatsoever,  
17 of:
  - 18 a. Tangible personal property; or
  - 19 b. Digital property transferred electronically;

20 for a consideration.

21 (b) "Sale" includes but is not limited to:

- 22 1. The producing, fabricating, processing, printing, or imprinting of  
23 tangible personal property or digital property for a consideration for  
24 purchasers who furnish, either directly or indirectly, the materials used  
25 in the producing, fabricating, processing, printing, or imprinting;
- 26 2. A transaction whereby the possession of tangible personal property or  
27 digital property is transferred, but the seller retains the title as security

1 for the payment of the price; and

2 3. A transfer for a consideration of the title or possession of tangible  
3 personal property or digital property which has been produced,  
4 fabricated, or printed to the special order of the purchaser.

5 (c) This definition shall apply regardless of the classification of a transaction  
6 under generally accepted accounting principles, the Internal Revenue Code, or  
7 other provisions of federal, state, or local law;

8 ~~(45)~~~~[(44)]~~ "Seller" includes every person engaged in the business of selling tangible  
9 personal property, digital property, or services of a kind, the gross receipts from the  
10 retail sale of which are required to be included in the measure of the sales tax, and  
11 every person engaged in making sales for resale;

12 ~~(46)~~~~[(45)]~~ (a) "Storage" includes any keeping or retention in this state for any purpose  
13 except sale in the regular course of business or subsequent use solely outside  
14 this state of tangible personal property, digital property, or prewritten  
15 computer software access services purchased from a retailer.

16 (b) "Storage" does not include the keeping, retaining, or exercising any right or  
17 power over tangible personal property for the purpose of subsequently  
18 transporting it outside the state for use thereafter solely outside the state, or  
19 for the purpose of being processed, fabricated, or manufactured into, attached  
20 to, or incorporated into, other tangible personal property to be transported  
21 outside the state and thereafter used solely outside the state;

22 ~~(47)~~~~[(46)]~~ "Tangible personal property" means personal property which may be seen,  
23 weighed, measured, felt, or touched, or which is in any other manner perceptible to  
24 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,  
25 and prewritten computer software;

26 ~~(48)~~~~[(47)]~~ "Taxpayer" means any person liable for tax under this chapter;

27 ~~(49)~~~~[(48)]~~ "Telemarketing services" means services provided via telephone, facsimile,

1 electronic mail, text messages, or other modes of communications to another  
2 person, which are unsolicited by that person, for the purposes of:

- 3 (a) 1. Promoting products or services;  
4 2. Taking orders; or  
5 3. Providing information or assistance regarding the products or services;  
6 or

7 (b) Soliciting contributions;

8 ~~(50)~~~~(49)~~ "Transferred electronically" means accessed or obtained by the purchaser by  
9 means other than tangible storage media; and

10 ~~(51)~~~~(50)~~ (a) "Use" includes the exercise of:

- 11 1. Any right or power over tangible personal property or digital property  
12 incident to the ownership of that property, or by any transaction in  
13 which possession is given, or by any transaction involving digital  
14 property or tangible personal property where the right of access is  
15 granted; or  
16 2. Any right or power to benefit from any services subject to tax under  
17 KRS 139.200(2)(p) to (ax).

18 (b) "Use" does not include the keeping, retaining, or exercising any right or  
19 power over:

- 20 1. Tangible personal property or digital property for the purpose of:  
21 a. Selling tangible personal property or digital property in the regular  
22 course of business; or  
23 b. Subsequently transporting tangible personal property outside the  
24 state for use thereafter solely outside the state, or for the purpose  
25 of being processed, fabricated, or manufactured into, attached to,  
26 or incorporated into, other tangible personal property to be  
27 transported outside the state and thereafter used solely outside the

1 state; or

2 2. Prewritten computer software access services purchased for use outside  
3 the state and transferred electronically outside the state for use thereafter  
4 solely outside the state.

5 ➔Section 2. KRS 139.480 (Effective until January 1, 2025) is amended to read as  
6 follows:

7 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at  
8 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not  
9 include the sale, use, storage, or other consumption of:

10 (1) Locomotives or rolling stock, including materials for the construction, repair, or  
11 modification thereof, or fuel or supplies for the direct operation of locomotives and  
12 trains, used or to be used in interstate commerce;

13 (2) Coal for the manufacture of electricity;

14 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,  
15 processing, mining, or refining and any related distribution, transmission, and  
16 transportation services for this energy that are billed to the user, to the extent  
17 that the cost of the energy or energy-producing fuels used, and related  
18 distribution, transmission, and transportation services for this energy that are  
19 billed to the user exceed three percent (3%) of the cost of production.

20 (b) Cost of production shall be computed on the basis of a plant facility, which  
21 shall include all operations within the continuous, unbroken, integrated  
22 manufacturing or industrial processing process that ends with a product  
23 packaged and ready for sale.

24 (c) A person who performs a manufacturing or industrial processing activity for a  
25 fee and does not take ownership of the tangible personal property that is  
26 incorporated into, or becomes the product of, the manufacturing or industrial  
27 processing activity is a toller. For periods on or after July 1, 2018, the costs of

1 the tangible personal property shall be excluded from the toller's cost of  
2 production at a plant facility with tolling operations in place as of July 1,  
3 2018.

4 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of  
5 tangible personal property shall be excluded from the toller's cost of  
6 production if the toller:

- 7 1. Maintains a binding contract for periods after July 1, 2018, that governs  
8 the terms, conditions, and responsibilities with a separate legal entity,  
9 which holds title to the tangible personal property that is incorporated  
10 into, or becomes the product of, the manufacturing or industrial  
11 processing activity;
- 12 2. Maintains accounting records that show the expenses it incurs to fulfill  
13 the binding contract that include but are not limited to energy or energy-  
14 producing fuels, materials, labor, procurement, depreciation,  
15 maintenance, taxes, administration, and office expenses;
- 16 3. Maintains separate payroll, bank accounts, tax returns, and other records  
17 that demonstrate its independent operations in the performance of its  
18 tolling responsibilities;
- 19 4. Demonstrates one (1) or more substantial business purposes for the  
20 tolling operations germane to the overall manufacturing, industrial  
21 processing activities, or corporate structure at the plant facility. A  
22 business purpose is a purpose other than the reduction of sales tax  
23 liability for the purchases of energy and energy-producing fuels; and
- 24 5. Provides information to the department upon request that documents  
25 fulfillment of the requirements in subparagraphs 1. to 4. of this  
26 paragraph and gives an overview of its tolling operations with an  
27 explanation of how the tolling operations relate and connect with all

- 1                   other manufacturing or industrial processing activities occurring at the  
2                   plant facility;
- 3 (4) Livestock of a kind the products of which ordinarily constitute food for human  
4                   consumption, provided the sales are made for breeding or dairy purposes and by or  
5                   to a person regularly engaged in the business of farming;
- 6 (5) Poultry for use in breeding or egg production;
- 7 (6) Farm work stock for use in farming operations;
- 8 (7) Seeds, the products of which ordinarily constitute food for human consumption or  
9                   are to be sold in the regular course of business, and commercial fertilizer to be  
10                  applied on land, the products from which are to be used for food for human  
11                  consumption or are to be sold in the regular course of business; provided such sales  
12                  are made to farmers who are regularly engaged in the occupation of tilling and  
13                  cultivating the soil for the production of crops as a business, or who are regularly  
14                  engaged in the occupation of raising and feeding livestock or poultry or producing  
15                  milk for sale; and provided further that tangible personal property so sold is to be  
16                  used only by those persons designated above who are so purchasing;
- 17 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be  
18                  used in the production of crops as a business, or in the raising and feeding of  
19                  livestock or poultry, the products of which ordinarily constitute food for human  
20                  consumption;
- 21 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the  
22                  products of which ordinarily constitute food for human consumption;
- 23 (10) Machinery for new and expanded industry;
- 24 (11) Farm machinery. As used in this section, the term "farm machinery":
- 25           (a) Means machinery used exclusively and directly in the occupation of:
- 26                   1. Tilling the soil for the production of crops as a business;
- 27                   2. Raising and feeding livestock or poultry for sale; or



- 1           3.    Producing milk for sale;
- 2           (b) Includes machinery, attachments, and replacements therefor, repair parts, and  
3           replacement parts which are used or manufactured for use on, or in the  
4           operation of farm machinery and which are necessary to the operation of the  
5           machinery, and are customarily so used, including but not limited to combine  
6           header wagons, combine header trailers, or any other implements specifically  
7           designed and used to move or transport a combine head; and
- 8           (c) Does not include:
- 9           1.    Automobiles;
- 10          2.    Trucks;
- 11          3.    Trailers, except combine header trailers; or
- 12          4.    Truck-trailer combinations;
- 13   (12) Tombstones and other memorial grave markers;
- 14   (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,  
15       or handling. The exemption applies to the equipment, machinery, attachments,  
16       repair and replacement parts, and any materials incorporated into the construction,  
17       renovation, or repair of the facilities;
- 18   (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption  
19       shall apply to the equipment, machinery, attachments, repair and replacement parts,  
20       and any materials incorporated into the construction, renovation, or repair of the  
21       facilities. The exemption shall apply but not be limited to vent board equipment,  
22       waterer and feeding systems, brooding systems, ventilation systems, alarm systems,  
23       and curtain systems. In addition, the exemption shall apply whether or not the seller  
24       is under contract to deliver, assemble, and incorporate into real estate the  
25       equipment, machinery, attachments, repair and replacement parts, and any materials  
26       incorporated into the construction, renovation, or repair of the facilities;
- 27   (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively

- 1 and directly to:
- 2 (a) Operate farm machinery as defined in subsection (11) of this section;
- 3 (b) Operate on-farm grain or soybean drying facilities as defined in subsection  
4 (13) of this section;
- 5 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of  
6 this section;
- 7 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
- 8 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this  
9 section; or
- 10 (f) Operate on-farm dairy facilities;
- 11 (16) Textbooks, including related workbooks and other course materials, purchased for  
12 use in a course of study conducted by an institution which qualifies as a nonprofit  
13 educational institution under KRS 139.495. The term "course materials" means only  
14 those items specifically required of all students for a particular course but shall not  
15 include notebooks, paper, pencils, calculators, tape recorders, or similar student  
16 aids;
- 17 (17) Any property which has been certified as an alcohol production facility as defined  
18 in KRS 247.910;
- 19 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the  
20 direct operation of aircraft in interstate commerce and used exclusively for the  
21 conveyance of property or passengers for hire. Nominal intrastate use shall not  
22 subject the property to the taxes imposed by this chapter;
- 23 (19) Any property which has been certified as a fluidized bed energy production facility  
24 as defined in KRS 211.390;
- 25 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,  
26 modification, or expansion of a blast furnace or any of its components or  
27 appurtenant equipment or structures as part of an approved supplemental

- 1 project, as defined by KRS 154.26-010; and
- 2 2. Materials, supplies, and repair or replacement parts purchased for use in
- 3 the operation and maintenance of a blast furnace and related carbon
- 4 steel-making operations as part of an approved supplemental project, as
- 5 defined by KRS 154.26-010.
- 6 (b) The exemptions provided in this subsection shall be effective for sales made:
- 7 1. On and after July 1, 2018; and
- 8 2. During the term of a supplemental project agreement entered into
- 9 pursuant to KRS 154.26-090;
- 10 (21) Beginning on October 1, 1986, food or food products purchased for human
- 11 consumption with food coupons issued by the United States Department of
- 12 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
- 13 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
- 14 continue participation in the federal food stamp program;
- 15 (22) Machinery or equipment purchased or leased by a business, industry, or
- 16 organization in order to collect, source separate, compress, bale, shred, or otherwise
- 17 handle waste materials if the machinery or equipment is primarily used for
- 18 recycling purposes;
- 19 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
- 20 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
- 21 products, and the following items used in this agricultural pursuit:
- 22 (a) Feed and feed additives;
- 23 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 24 and
- 25 (c) On-farm facilities, including equipment, machinery, attachments, repair and
- 26 replacement parts, and any materials incorporated into the construction,
- 27 renovation, or repair of the facilities. The exemption shall apply to incubation

1 systems, egg processing equipment, waterer and feeding systems, brooding  
2 systems, ventilation systems, alarm systems, and curtain systems. In addition,  
3 the exemption shall apply whether or not the seller is under contract to  
4 deliver, assemble, and incorporate into real estate the equipment, machinery,  
5 attachments, repair and replacement parts, and any materials incorporated into  
6 the construction, renovation, or repair of the facilities;

7 (24) Embryos and semen that are used in the reproduction of livestock, if the products of  
8 these embryos and semen ordinarily constitute food for human consumption, and if  
9 the sale is made to a person engaged in the business of farming;

10 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for  
11 the breeding and production of hides, breeding stock, fiber and wool products,  
12 meat, and llama and alpaca by-products, and the following items used in this  
13 pursuit:

14 (a) Feed and feed additives;

15 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;  
16 and

17 (c) On-farm facilities, including equipment, machinery, attachments, repair and  
18 replacement parts, and any materials incorporated into the construction,  
19 renovation, or repair of the facilities. The exemption shall apply to waterer  
20 and feeding systems, ventilation systems, and alarm systems. In addition, the  
21 exemption shall apply whether or not the seller is under contract to deliver,  
22 assemble, and incorporate into real estate the equipment, machinery,  
23 attachments, repair and replacement parts, and any materials incorporated into  
24 the construction, renovation, or repair of the facilities;

25 (26) Baling twine and baling wire for the baling of hay and straw;

26 (27) Water sold to a person regularly engaged in the business of farming and used in the:

27 (a) Production of crops;

- 1 (b) Production of milk for sale; or
- 2 (c) Raising and feeding of:
- 3 1. Livestock or poultry, the products of which ordinarily constitute food
- 4 for human consumption; or
- 5 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- 6 (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
- 7 production of hides, breeding stock, meat, and buffalo by-products, and the
- 8 following items used in this pursuit:
- 9 (a) Feed and feed additives;
- 10 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 11 and
- 12 (c) On-farm facilities, including equipment, machinery, attachments, repair and
- 13 replacement parts, and any materials incorporated into the construction,
- 14 renovation, or repair of the facilities. The exemption shall apply to waterer
- 15 and feeding systems, ventilation systems, and alarm systems. In addition, the
- 16 exemption shall apply whether or not the seller is under contract to deliver,
- 17 assemble, and incorporate into real estate the equipment, machinery,
- 18 attachments, repair and replacement parts, and any materials incorporated into
- 19 the construction, renovation, or repair of the facilities;
- 20 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the
- 21 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
- 22 and the following items used in this pursuit:
- 23 (a) Feed and feed additives;
- 24 (b) Water;
- 25 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 26 and
- 27 (d) On-farm facilities, including equipment, machinery, attachments, repair and

1 replacement parts, and any materials incorporated into the construction,  
2 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied  
3 petroleum gas, or natural gas used to operate the facilities. The exemption  
4 shall apply, but not be limited to: waterer and feeding systems; ventilation,  
5 aeration, and heating systems; processing and storage systems; production  
6 systems such as ponds, tanks, and raceways; harvest and transport equipment  
7 and systems; and alarm systems. In addition, the exemption shall apply  
8 whether or not the seller is under contract to deliver, assemble, and  
9 incorporate into real estate the equipment, machinery, attachments, repair and  
10 replacement parts, and any materials incorporated into the construction,  
11 renovation, or repair of the facilities;

12 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the  
13 production of hides, breeding stock, meat, and cervid by-products, and the  
14 following items used in this pursuit:

15 (a) Feed and feed additives;

16 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and

17 (c) On-site facilities, including equipment, machinery, attachments, repair and  
18 replacement parts, and any materials incorporated into the construction,  
19 renovation, or repair of the facilities. In addition, the exemption shall apply  
20 whether or not the seller is under contract to deliver, assemble, and  
21 incorporate into real estate the equipment, machinery, attachments, repair and  
22 replacement parts, and any materials incorporated into the construction,  
23 renovation, or repair of the facilities;

24 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor  
25 vehicle, including any towed unit, used exclusively in interstate commerce for  
26 the conveyance of property or passengers for hire, provided the motor vehicle  
27 is licensed for use on the highway and its declared gross vehicle weight with

1 any towed unit is forty-four thousand and one (44,001) pounds or greater.  
2 Nominal intrastate use shall not subject the property to the taxes imposed by  
3 this chapter; and

4 (b) Repair or replacement parts for the direct operation and maintenance of a  
5 motor vehicle operating under a charter bus certificate issued by the  
6 Transportation Cabinet under KRS Chapter 281, or under similar authority  
7 granted by the United States Department of Transportation.

8 (c) For the purposes of this subsection, "repair or replacement parts" means tires,  
9 brakes, engines, transmissions, drive trains, chassis, body parts, and their  
10 components. "Repair or replacement parts" shall not include fuel, machine  
11 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential  
12 to the operation of the motor vehicle itself, except when sold as part of the  
13 assembled unit, such as cigarette lighters, radios, lighting fixtures not  
14 otherwise required by the manufacturer for operation of the vehicle, or tool or  
15 utility boxes;

16 (32) Food donated by a retail food establishment or any other entity regulated under  
17 KRS 217.127 to a nonprofit organization for distribution to the needy;

18 (33) Drugs and over-the counter drugs, as defined in KRS 139.472, that are purchased  
19 by a person regularly engaged in the business of farming and used in the treatment  
20 of cattle, sheep, goats, swine, poultry, ratite birds, llamas, alpacas, buffalo, aquatic  
21 organisms, or cervids;

22 (34) (a) Building materials, fixtures, or supplies purchased by a construction  
23 contractor if:

24 1. Fulfilled by a construction contract for a sewer or water project with:

25 a. A municipally owned water utility organized under KRS Chapter  
26 96;

27 b. A water district or water commission formed or organized under

- 1 KRS Chapter 74;
- 2 c. A sanitation district established under KRS Chapter 220 or formed
- 3 pursuant to KRS Chapter 65;
- 4 d. A nonprofit corporation created under KRS 58.180 to act on behalf
- 5 of a governmental agency in the acquisition and financing of
- 6 public projects;
- 7 e. Regional wastewater commissions formed under KRS Chapter
- 8 278;
- 9 f. A municipally owned joint sewer agency formed under KRS
- 10 Chapter 76; or
- 11 g. Any other governmental agency; and
- 12 2. The building materials, fixtures, or supplies:
- 13 a. Will be permanently incorporated into a structure or improvement
- 14 to real property, or will be completely consumed, in fulfilling a
- 15 construction contract for the purpose of furnishing water or sewer
- 16 services to the general public; and
- 17 b. Would be exempt if purchased directly by the entities listed in
- 18 subparagraph 1. of this paragraph.
- 19 (b) As used in this subsection, "construction contract" means a:
- 20 1. Lump sum contract;
- 21 2. Cost plus contract;
- 22 3. Materials only contract;
- 23 4. Labor and materials contract; or
- 24 5. Any other type of contract.
- 25 (c) The exemption provided in this subsection shall apply without regard to the
- 26 payment arrangement between the construction contractor, the retailer, and
- 27 the entities listed in paragraph (a)1. of this subsection or to the place of



1 delivery for the building materials, fixtures, or supplies;

2 (35) (a) On or after February 25, 2022, the rental of space for meetings, conventions,  
3 short-term business uses, entertainment events, weddings, banquets, parties,  
4 and other short-term social events, as referenced in KRS 139.200, if the tax  
5 established in KRS 139.200 is paid by the primary lessee to the lessor.

6 (b) For the purpose of this subsection, "primary lessee" means the person who  
7 leases the space and who has a contract with the lessor of the space only if:

- 8 1. The contract between the lessor and the lessee specifies that the lessee  
9 may sublease, subrent, or otherwise sell the space; and
- 10 2. The space is then sublet, subrented, or otherwise sold to exhibitors,  
11 vendors, sponsors, or other entities and persons who will use the space  
12 associated with the event to be conducted under the primary lease; ~~and~~

13 (36) Prewritten computer software access services sold to or purchased by a retailer that  
14 develops prewritten computer software for print technology and uses and sells  
15 prewritten computer software access services for print technology; **and**

16 **(37) Menstrual discharge collection devices sold or purchased.**

17 ➔Section 3. KRS 139.480 (Effective January 1, 2025) is amended to read as  
18 follows:

19 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at  
20 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not  
21 include the sale, use, storage, or other consumption of:

22 (1) Locomotives or rolling stock, including materials for the construction, repair, or  
23 modification thereof, or fuel or supplies for the direct operation of locomotives and  
24 trains, used or to be used in interstate commerce;

25 (2) Coal for the manufacture of electricity;

26 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,  
27 processing, mining, or refining and any related distribution, transmission, and

1 transportation services for this energy that are billed to the user, to the extent  
2 that the cost of the energy or energy-producing fuels used, and related  
3 distribution, transmission, and transportation services for this energy that are  
4 billed to the user exceed three percent (3%) of the cost of production.

5 (b) Cost of production shall be computed on the basis of a plant facility, which  
6 shall include all operations within the continuous, unbroken, integrated  
7 manufacturing or industrial processing process that ends with a product  
8 packaged and ready for sale.

9 (c) A person who performs a manufacturing or industrial processing activity for a  
10 fee and does not take ownership of the tangible personal property that is  
11 incorporated into, or becomes the product of, the manufacturing or industrial  
12 processing activity is a toller. For periods on or after July 1, 2018, the costs of  
13 the tangible personal property shall be excluded from the toller's cost of  
14 production at a plant facility with tolling operations in place as of July 1,  
15 2018.

16 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of  
17 tangible personal property shall be excluded from the toller's cost of  
18 production if the toller:

19 1. Maintains a binding contract for periods after July 1, 2018, that governs  
20 the terms, conditions, and responsibilities with a separate legal entity,  
21 which holds title to the tangible personal property that is incorporated  
22 into, or becomes the product of, the manufacturing or industrial  
23 processing activity;

24 2. Maintains accounting records that show the expenses it incurs to fulfill  
25 the binding contract that include but are not limited to energy or energy-  
26 producing fuels, materials, labor, procurement, depreciation,  
27 maintenance, taxes, administration, and office expenses;

- 1           3.   Maintains separate payroll, bank accounts, tax returns, and other records  
2           that demonstrate its independent operations in the performance of its  
3           tolling responsibilities;
- 4           4.   Demonstrates one (1) or more substantial business purposes for the  
5           tolling operations germane to the overall manufacturing, industrial  
6           processing activities, or corporate structure at the plant facility. A  
7           business purpose is a purpose other than the reduction of sales tax  
8           liability for the purchases of energy and energy-producing fuels; and
- 9           5.   Provides information to the department upon request that documents  
10          fulfillment of the requirements in subparagraphs 1. to 4. of this  
11          paragraph and gives an overview of its tolling operations with an  
12          explanation of how the tolling operations relate and connect with all  
13          other manufacturing or industrial processing activities occurring at the  
14          plant facility;
- 15   (4)   Livestock of a kind the products of which ordinarily constitute food for human  
16          consumption, provided the sales are made for breeding or dairy purposes and by or  
17          to a person regularly engaged in the business of farming;
- 18   (5)   Poultry for use in breeding or egg production;
- 19   (6)   Farm work stock for use in farming operations;
- 20   (7)   Seeds, the products of which ordinarily constitute food for human consumption or  
21          are to be sold in the regular course of business, and commercial fertilizer to be  
22          applied on land, the products from which are to be used for food for human  
23          consumption or are to be sold in the regular course of business; provided such sales  
24          are made to farmers who are regularly engaged in the occupation of tilling and  
25          cultivating the soil for the production of crops as a business, or who are regularly  
26          engaged in the occupation of raising and feeding livestock or poultry or producing  
27          milk for sale; and provided further that tangible personal property so sold is to be

- 1 used only by those persons designated above who are so purchasing;
- 2 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be  
3 used in the production of crops as a business, or in the raising and feeding of  
4 livestock or poultry, the products of which ordinarily constitute food for human  
5 consumption;
- 6 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the  
7 products of which ordinarily constitute food for human consumption;
- 8 (10) Machinery for new and expanded industry;
- 9 (11) Farm machinery. As used in this section, the term "farm machinery":
- 10 (a) Means machinery used exclusively and directly in the occupation of:
- 11 1. Tilling the soil for the production of crops as a business;
- 12 2. Raising and feeding livestock or poultry for sale; or
- 13 3. Producing milk for sale;
- 14 (b) Includes machinery, attachments, and replacements therefor, repair parts, and  
15 replacement parts which are used or manufactured for use on, or in the  
16 operation of farm machinery and which are necessary to the operation of the  
17 machinery, and are customarily so used, including but not limited to combine  
18 header wagons, combine header trailers, or any other implements specifically  
19 designed and used to move or transport a combine head; and
- 20 (c) Does not include:
- 21 1. Automobiles;
- 22 2. Trucks;
- 23 3. Trailers, except combine header trailers; or
- 24 4. Truck-trailer combinations;
- 25 (12) Tombstones and other memorial grave markers;
- 26 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,  
27 or handling. The exemption applies to the equipment, machinery, attachments,

- 1 repair and replacement parts, and any materials incorporated into the construction,  
2 renovation, or repair of the facilities;
- 3 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption  
4 shall apply to the equipment, machinery, attachments, repair and replacement parts,  
5 and any materials incorporated into the construction, renovation, or repair of the  
6 facilities. The exemption shall apply but not be limited to vent board equipment,  
7 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,  
8 and curtain systems. In addition, the exemption shall apply whether or not the seller  
9 is under contract to deliver, assemble, and incorporate into real estate the  
10 equipment, machinery, attachments, repair and replacement parts, and any materials  
11 incorporated into the construction, renovation, or repair of the facilities;
- 12 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively  
13 and directly to:
- 14 (a) Operate farm machinery as defined in subsection (11) of this section;
  - 15 (b) Operate on-farm grain or soybean drying facilities as defined in subsection  
16 (13) of this section;
  - 17 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of  
18 this section;
  - 19 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
  - 20 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this  
21 section; or
  - 22 (f) Operate on-farm dairy facilities;
- 23 (16) Textbooks, including related workbooks and other course materials, purchased for  
24 use in a course of study conducted by an institution which qualifies as a nonprofit  
25 educational institution under KRS 139.495. The term "course materials" means only  
26 those items specifically required of all students for a particular course but shall not  
27 include notebooks, paper, pencils, calculators, tape recorders, or similar student

- 1 aids;
- 2 (17) Any property which has been certified as an alcohol production facility as defined  
3 in KRS 247.910;
- 4 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the  
5 direct operation of aircraft in interstate commerce and used exclusively for the  
6 conveyance of property or passengers for hire. Nominal intrastate use shall not  
7 subject the property to the taxes imposed by this chapter;
- 8 (19) Any property which has been certified as a fluidized bed energy production facility  
9 as defined in KRS 211.390;
- 10 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,  
11 modification, or expansion of a blast furnace or any of its components or  
12 appurtenant equipment or structures as part of an approved supplemental  
13 project, as defined by KRS 154.26-010; and
- 14 2. Materials, supplies, and repair or replacement parts purchased for use in  
15 the operation and maintenance of a blast furnace and related carbon  
16 steel-making operations as part of an approved supplemental project, as  
17 defined by KRS 154.26-010.
- 18 (b) The exemptions provided in this subsection shall be effective for sales made:
- 19 1. On and after July 1, 2018; and
- 20 2. During the term of a supplemental project agreement entered into  
21 pursuant to KRS 154.26-090;
- 22 (21) Beginning on October 1, 1986, food or food products purchased for human  
23 consumption with food coupons issued by the United States Department of  
24 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to  
25 be exempted by the Food Security Act of 1985 in order for the Commonwealth to  
26 continue participation in the federal food stamp program;
- 27 (22) Machinery or equipment purchased or leased by a business, industry, or

1 organization in order to collect, source separate, compress, bale, shred, or otherwise  
2 handle waste materials if the machinery or equipment is primarily used for  
3 recycling purposes;

4 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and  
5 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-  
6 products, and the following items used in this agricultural pursuit:

7 (a) Feed and feed additives;

8 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;  
9 and

10 (c) On-farm facilities, including equipment, machinery, attachments, repair and  
11 replacement parts, and any materials incorporated into the construction,  
12 renovation, or repair of the facilities. The exemption shall apply to incubation  
13 systems, egg processing equipment, waterer and feeding systems, brooding  
14 systems, ventilation systems, alarm systems, and curtain systems. In addition,  
15 the exemption shall apply whether or not the seller is under contract to  
16 deliver, assemble, and incorporate into real estate the equipment, machinery,  
17 attachments, repair and replacement parts, and any materials incorporated into  
18 the construction, renovation, or repair of the facilities;

19 (24) Embryos and semen that are used in the reproduction of livestock, if the products of  
20 these embryos and semen ordinarily constitute food for human consumption, and if  
21 the sale is made to a person engaged in the business of farming;

22 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for  
23 the breeding and production of hides, breeding stock, fiber and wool products,  
24 meat, and llama and alpaca by-products, and the following items used in this  
25 pursuit:

26 (a) Feed and feed additives;

27 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

- 1           and
- 2           (c) On-farm facilities, including equipment, machinery, attachments, repair and
- 3           replacement parts, and any materials incorporated into the construction,
- 4           renovation, or repair of the facilities. The exemption shall apply to waterer
- 5           and feeding systems, ventilation systems, and alarm systems. In addition, the
- 6           exemption shall apply whether or not the seller is under contract to deliver,
- 7           assemble, and incorporate into real estate the equipment, machinery,
- 8           attachments, repair and replacement parts, and any materials incorporated into
- 9           the construction, renovation, or repair of the facilities;
- 10       (26) Baling twine and baling wire for the baling of hay and straw;
- 11       (27) Water sold to a person regularly engaged in the business of farming and used in the:
- 12           (a) Production of crops;
- 13           (b) Production of milk for sale; or
- 14           (c) Raising and feeding of:
- 15               1. Livestock or poultry, the products of which ordinarily constitute food
- 16                 for human consumption; or
- 17               2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- 18       (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
- 19       production of hides, breeding stock, meat, and buffalo by-products, and the
- 20       following items used in this pursuit:
- 21           (a) Feed and feed additives;
- 22           (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 23           and
- 24           (c) On-farm facilities, including equipment, machinery, attachments, repair and
- 25           replacement parts, and any materials incorporated into the construction,
- 26           renovation, or repair of the facilities. The exemption shall apply to waterer
- 27           and feeding systems, ventilation systems, and alarm systems. In addition, the



1 exemption shall apply whether or not the seller is under contract to deliver,  
2 assemble, and incorporate into real estate the equipment, machinery,  
3 attachments, repair and replacement parts, and any materials incorporated into  
4 the construction, renovation, or repair of the facilities;

5 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the  
6 business of producing products of aquaculture, as defined in KRS 260.960, for sale,  
7 and the following items used in this pursuit:

8 (a) Feed and feed additives;

9 (b) Water;

10 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;  
11 and

12 (d) On-farm facilities, including equipment, machinery, attachments, repair and  
13 replacement parts, and any materials incorporated into the construction,  
14 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied  
15 petroleum gas, or natural gas used to operate the facilities. The exemption  
16 shall apply, but not be limited to: waterer and feeding systems; ventilation,  
17 aeration, and heating systems; processing and storage systems; production  
18 systems such as ponds, tanks, and raceways; harvest and transport equipment  
19 and systems; and alarm systems. In addition, the exemption shall apply  
20 whether or not the seller is under contract to deliver, assemble, and  
21 incorporate into real estate the equipment, machinery, attachments, repair and  
22 replacement parts, and any materials incorporated into the construction,  
23 renovation, or repair of the facilities;

24 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the  
25 production of hides, breeding stock, meat, and cervid by-products, and the  
26 following items used in this pursuit:

27 (a) Feed and feed additives;

- 1 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
- 2 (c) On-site facilities, including equipment, machinery, attachments, repair and
- 3 replacement parts, and any materials incorporated into the construction,
- 4 renovation, or repair of the facilities. In addition, the exemption shall apply
- 5 whether or not the seller is under contract to deliver, assemble, and
- 6 incorporate into real estate the equipment, machinery, attachments, repair and
- 7 replacement parts, and any materials incorporated into the construction,
- 8 renovation, or repair of the facilities;
- 9 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor
- 10 vehicle, including any towed unit, used exclusively in interstate commerce for
- 11 the conveyance of property or passengers for hire, provided the motor vehicle
- 12 is licensed for use on the highway and its declared gross vehicle weight with
- 13 any towed unit is forty-four thousand and one (44,001) pounds or greater.
- 14 Nominal intrastate use shall not subject the property to the taxes imposed by
- 15 this chapter; and
- 16 (b) Repair or replacement parts for the direct operation and maintenance of a
- 17 motor vehicle operating under a charter bus certificate issued by the
- 18 Transportation Cabinet under KRS Chapter 281, or under similar authority
- 19 granted by the United States Department of Transportation.
- 20 (c) For the purposes of this subsection, "repair or replacement parts" means tires,
- 21 brakes, engines, transmissions, drive trains, chassis, body parts, and their
- 22 components. "Repair or replacement parts" shall not include fuel, machine
- 23 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential
- 24 to the operation of the motor vehicle itself, except when sold as part of the
- 25 assembled unit, such as cigarette lighters, radios, lighting fixtures not
- 26 otherwise required by the manufacturer for operation of the vehicle, or tool or
- 27 utility boxes;

- 1 (32) Food donated by a retail food establishment or any other entity regulated under  
2 KRS 217.127 to a nonprofit organization for distribution to the needy;
- 3 (33) Drugs and over-the counter drugs, as defined in KRS 139.472, that are purchased  
4 by a person regularly engaged in the business of farming and used in the treatment  
5 of cattle, sheep, goats, swine, poultry, ratite birds, llamas, alpacas, buffalo, aquatic  
6 organisms, or cervids;
- 7 (34) (a) Building materials, fixtures, or supplies purchased by a construction  
8 contractor if:
- 9 1. Fulfilled by a construction contract for a sewer or water project with:
- 10 a. A municipally owned water utility organized under KRS Chapter  
11 96;
- 12 b. A water district or water commission formed or organized under  
13 KRS Chapter 74;
- 14 c. A sanitation district established under KRS Chapter 220 or formed  
15 pursuant to KRS Chapter 65;
- 16 d. A nonprofit corporation created under KRS 58.180 to act on behalf  
17 of a governmental agency in the acquisition and financing of  
18 public projects;
- 19 e. Regional wastewater commissions formed under KRS Chapter  
20 278;
- 21 f. A municipally owned joint sewer agency formed under KRS  
22 Chapter 76; or
- 23 g. Any other governmental agency; and
- 24 2. The building materials, fixtures, or supplies:
- 25 a. Will be permanently incorporated into a structure or improvement  
26 to real property, or will be completely consumed, in fulfilling a  
27 construction contract for the purpose of furnishing water or sewer

1 services to the general public; and

2 b. Would be exempt if purchased directly by the entities listed in  
3 subparagraph 1. of this paragraph.

4 (b) As used in this subsection, "construction contract" means a:

- 5 1. Lump sum contract;
- 6 2. Cost plus contract;
- 7 3. Materials only contract;
- 8 4. Labor and materials contract; or
- 9 5. Any other type of contract.

10 (c) The exemption provided in this subsection shall apply without regard to the  
11 payment arrangement between the construction contractor, the retailer, and  
12 the entities listed in paragraph (a)1. of this subsection or to the place of  
13 delivery for the building materials, fixtures, or supplies;

14 (35) (a) On or after February 25, 2022, the rental of space for meetings, conventions,  
15 short-term business uses, entertainment events, weddings, banquets, parties,  
16 and other short-term social events, as referenced in KRS 139.200, if the tax  
17 established in KRS 139.200 is paid by the primary lessee to the lessor.

18 (b) For the purpose of this subsection, "primary lessee" means the person who  
19 leases the space and who has a contract with the lessor of the space only if:

- 20 1. The contract between the lessor and the lessee specifies that the lessee  
21 may sublease, subrent, or otherwise sell the space; and
- 22 2. The space is then sublet, subrented, or otherwise sold to exhibitors,  
23 vendors, sponsors, or other entities and persons who will use the space  
24 associated with the event to be conducted under the primary lease;

25 (36) Prewritten computer software access services sold to or purchased by a retailer that  
26 develops prewritten computer software for print technology and uses and sells  
27 prewritten computer software access services for print technology; ~~and~~

1 **(37) Menstrual discharge collection devices sold or purchased; and**

2 **(38)**~~(37)~~ Medicinal cannabis as defined in KRS 218B.010 when sold, used, stored, or  
3 consumed in accordance with KRS Chapter 218B.

4 ➔Section 4. This Act takes effect on August 1, 2024.