AN ACT relating to public employee trainings and declaring an emergency.

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

<p>SECTION 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:</p>

(1) As used in this section, unless the context requires otherwise:

(a) "Bigotry" means any of the following concepts:

1. The belief that an individual or group is inherently superior or inferior to others based on their race or sex;

2. The belief that individuals do not or should not possess equal rights, regardless of their race or sex;

3. The belief that an individual or group, by virtue of their race, sex, or religion:
   a. Bears responsibility or accountability for actions committed by other individuals of the same race, sex, or religion; or
   b. Should feel personal guilt, anguish, shame, or embarrassment on account of their race, sex, or religion;

4. The belief that an individual or group should be discriminated against or otherwise receive adverse treatment solely, or partly, because of their race, sex, or religion;

5. The belief that an individual or group should not, or cannot, attempt to treat others of a different race without respect to race;

6. Race or sex essentialism, meaning:
   a. Assigning values, moral and ethical codes, privileges, status, or beliefs to an individual or group of persons based on their race or sex, including the assumption that an individual or group's race or sex makes them fundamentally or inherently dominant, privileged, oppressed, oppressive, or victimized;
b. The belief that an individual or group's moral character or
moral worth is determined, in whole or part, by their race or sex;
or

c. The belief that meritocracy or merit-based systems, or related
character traits such as a hard work ethic, self-reliance,
objectivity, rational or linear thinking, planning for the future,
or delayed gratification:
i. Are racist, sexist, or oppressive;

ii. Were created by members of a particular race or sex to
protect their political, financial, or social status or to
oppress members of another race or sex; or

iii. Are traits that generally differentiate Americans on the
basis of race or sex; or

7. Race or sex scapegoating, meaning the assigning or imputing of
intrinsically negative characteristics to a sex or race, or to individuals
because of their race or sex, including but not limited to bias, blame,
domination, fault, harm, oppression, sexism, or racism, regardless of
whether the negative characteristics are assumed to be held
consciously or unconsciously. This shall not include discussions
relating to the historical fact of past oppression of one (1) group by
another on the basis of race or sex;

(b) "Critical social justice theory" means the ideological worldview that:

1. Sees people primarily in terms of their immutable characteristics or
social group membership;

2. Holds that a relationship exists between those immutable
characteristics or social groups and societal power and privilege and
seeks to disrupt that relationship; and
3. Holds those immutable characteristics or social groups intersect in a matrix of domination, oppression, and marginalization that provides the foundation for and protects societal systems that preserve the interests of the dominant while excluding or harming everyone else and demands action to dismantle those systems;

(c) "Public employee" means an employee of a public employer;

(d) "Public employer" has the same meaning as "public agency" in KRS 61.870 and includes but is not limited to public school districts, public charter schools, and public postsecondary education institutions;

(e) "Qualified plaintiff" means:

1. A public employee of the defendant public employer;

2. A student, or parent or guardian of a minor student, enrolled at an educational institution that is the defendant public employer; or

3. A Kentucky resident, including any individual residing in the Commonwealth, a domestic business entity residing in the Commonwealth, or a foreign business entity that is registered and in good standing with the Secretary of State;

(f) "Revisionist history of America's founding" means one (1) or more of the following concepts:

1. Slavery, racism, sexism, and white supremacy are practices and principles that are fundamental to America rather than deviations from the American promise of life, liberty, and the pursuit of happiness, as expressed in the Declaration of Independence and enshrined in the Constitution of the Commonwealth of Kentucky and the Constitution of the United States;

2. The advent of slavery in the territory that is now the United States constituted the true founding of the United States; or
3. The United States or the Commonwealth of Kentucky is fundamentally or inherently racist or sexist because racism and sexism are not merely products of individual prejudice but are embedded in American society for the purpose of upholding white supremacy; and

(g) "Student" means an individual:

1. Attending a Kentucky public school or public charter school; or

2. Enrolled in a Kentucky public postsecondary education institution.

(2) Public employer diversity and inclusion efforts shall, first and foremost, encourage public employees and students not to judge each other or treat each other differently based on race, sex, or religion and not to grant mental assent to bigotry, critical social justice theory, race and sex essentialism, or a revisionist history of America's founding. Nothing in this section shall be construed to prohibit or discourage public employers from providing workplace sensitivity training based on the inherent humanity and equality of all persons and the ideal that all persons should be treated with equality, dignity, and respect, provided such training is consistent with the requirements of this section.

(3) Subject to KRS Chapter 344 and subsection (6) of this section, it shall be an unlawful practice for a public employer to:

(a) Act directly or indirectly to compel, inculcate, instruct, teach, train, or orient any individual, including but not limited to a public employee, student, service recipient, contractor, staff member, volunteer or inmate, to adhere to, affirm, adopt, believe, or otherwise assent to bigotry, critical social justice theory, race and sex essentialism, or a revisionist history of America's founding; or

(b) Subject any public employee or student to any adverse employment action, warning, discipline, or adverse consequences of any kind for refusing to
participate in any training, orientation, program, or other activity at which the public employer violates the requirements of paragraph (a) of this subsection.

(4) Every public employer shall review all trainings, orientations, or similar programming related to diversity and inclusion at least once a year to ensure compliance with the requirements of this section. If a training program violates the requirements of subsection (3) of this section, the public employer shall promptly terminate its use. If the training, orientation, or similar programing is offered through a third party, such as a contractor, the public employer shall:

(a) Terminate any contract with the third party, consistent with applicable law and regulations; and

(b) Evaluate whether permanently to bar the third party from contracts with the public employer, consistent with applicable law and regulations.

(5) Willful or repeated violations of subsection (3) of this section by a specific public employee of a public employer shall be considered a violation of the employee code of conduct that justifies disciplinary sanction, up to and including termination of employment, in accordance with applicable law and regulation.

(6) (a) Notwithstanding any provision of law to the contrary, including but not limited to any claim for civil immunity, the Attorney General or a qualified plaintiff may file an action in any court of competent jurisdiction for injunctive relief and damages, including but not limited to reasonable attorney's fees and litigation costs, against a public employer for a violation of subsection (3) of this section.

(b) A qualified plaintiff bringing an action under this paragraph shall exhaust the administrative remedies set forth in KRS Chapter 344 by filing a complaint with the Human Rights Commission prior to filing the action. All qualified plaintiffs shall be deemed to have standing to seek the
administrative remedies set forth in KRS Chapter 344.

(c) A claim brought pursuant to this subsection may be asserted within one (1) year of the date that the complaint filed with the Human Rights Commission is finally resolved pursuant to KRS 344.200.

(d) The remedies identified in this subsection shall be in addition to, not in lieu of, any other remedies available at law or equity.

(7) Nothing in this section shall be construed to limit or otherwise impair:

(a) Academic freedom of faculty members of any public postsecondary education institution of the Commonwealth of Kentucky to conduct research, publish, lecture, or teach in the academic setting; or

(b) Conduct or speech of students acting on their own behalf or otherwise acting in a private capacity.

Section 2. KRS 344.010 is amended to read as follows:

In this chapter:

(1) "Person" includes one (1) or more individuals, labor organizations, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, fiduciaries, receivers, or other legal or commercial entity; the state, any of its political or civil subdivisions or agencies.

(2) "Commission" means the Kentucky Commission on Human Rights.

(3) "Commissioner" means a member of the commission.

(4) "Disability" means, with respect to an individual:

(a) A physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

Persons with current or past controlled substances abuse or alcohol abuse problems
and persons excluded from coverage by the Americans with Disabilities Act of 1990 (P.L. 101-336) shall be excluded from this section.

(5) "Discrimination" means:

(a) Any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial; or

(b) Any other act or practice of differentiation or preference in the treatment of a person or persons, or the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under this chapter; or

(c) A public employee training that violates Section 1 of this Act.

(6) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in the above.

(7) "Housing accommodations" includes improved and unimproved property and means any building, structure, lot or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied as the home or residence of one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building or structure.

(8) "Real estate operator" means any individual or combination of individuals, labor organizations, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, or other legal or commercial entity, the county, or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting, or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental, or lease of real estate; or an individual employed by or acting on behalf of any of these.

(9) "Real estate broker" or "real estate salesman" means any individual, whether
licensed or not, who, on behalf of others, for a fee, commission, salary, or other
valuable consideration, or who with the intention or expectation of receiving or
collecting the same, lists, sells, purchases, exchanges, rents, or leases real estate, or
the improvements thereon, including options, or who negotiates or attempts to
negotiate on behalf of others such an activity; or who advertises or holds himself
out as engaged in these activities; or who negotiates or attempts to negotiate on
behalf of others a loan secured by mortgage or other encumbrance upon a transfer of
real estate, or who is engaged in the business of charging an advance fee or
contracting for collection of a fee in connection with a contract whereby he
undertakes to promote the sale, purchase, exchange, rental, or lease of real estate
through its listing in a publication issued primarily for this purpose; or any person
employed by or acting on behalf of any of these.

(10) "Financial institution" means bank, banking organization, mortgage company,
insurance company, or other lender to whom application is made for financial
assistance for the purchase, lease, acquisition, construction, rehabilitation, repair,
maintenance, or improvement of real property, or an individual employed by or
acting on behalf of any of these.

(11) "Licensing agency" means any public or private organization which has as one (1)
of its duties the issuing of licenses or the setting of standards which an individual
must hold or must meet as a condition to practicing a particular trade or profession
or to obtaining certain employment within the state or as a condition to competing
effectively with an individual who does hold a license or meet the standards.

(12) "Credit transaction" shall mean any open or closed end credit transaction whether in
the nature of a loan, retail installment transaction, credit card issue or charge, or
otherwise, and whether for personal or for business purposes, in which a service,
finance, or interest charge is imposed, or which provides for repayment in scheduled
payments, when such credit is extended in the course of the regular course of any
trade or commerce, including but not limited to transactions by banks, savings and
loan associations, or other financial lending institutions of whatever nature, stock
brokers, or by a merchant or mercantile establishment which as part of its ordinary
business permits or provides that payment for purchases of property or services
therefrom may be deferred.

(13) "To rent" means to lease, to sublease, to let, or otherwise to grant for a
consideration the right to occupy premises not owned by the occupant.

(14) "Family" includes a single individual.

(15) (a) "Familial status" means one (1) or more individuals who have not attained the
age of eighteen (18) years and are domiciled with:

1. A parent or another person having legal custody of the individual or
   individuals; or

2. The designee of a parent or other person having custody, with the
   written permission of the parent or other person.

(b) The protection afforded against discrimination on the basis of familial status
shall apply to any person who is pregnant or is in the process of securing legal
custody of any individual who has not attained the age of eighteen (18) years.

(16) "Discriminatory housing practice" means an act that is unlawful under KRS
344.360, 344.367, 344.370, 344.380, or 344.680.

→ Section 3. KRS 344.040 is amended to read as follows:

(1) It is an unlawful practice for an employer:

(a) To fail or refuse to hire, or to discharge any individual, or otherwise to
discriminate against an individual with respect to compensation, terms,
conditions, or privileges of employment, because of the individual's race,
color, religion, national origin, sex, age forty (40) and over, because the
person is a qualified individual with a disability, or because the individual is a
smoker or nonsmoker, as long as the person complies with any workplace
policy concerning smoking;

(b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's race, color, religion, national origin, sex, or age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;

c) To fail to make reasonable accommodations for any employee with limitations related to pregnancy, childbirth, or a related medical condition who requests an accommodation, including but not limited to the need to express breast milk, unless the employer can demonstrate the accommodation would impose an undue hardship on the employer's program, enterprise, or business. The following shall be required as to reasonable accommodations:

1. An employee shall not be required to take leave from work if another reasonable accommodation can be provided;

2. The employer and employee shall engage in a timely, good faith, and interactive process to determine effective reasonable accommodations; and

3. If the employer has a policy to provide, would be required to provide, is currently providing, or has provided a similar accommodation to other classes of employees, then a rebuttable presumption is created that the accommodation does not impose an undue hardship on the employer; or

(d) To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.
(2) (a) A difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan shall not be deemed to be an unlawful practice in violation of this section.

(b) The offering of incentives or benefits offered by an employer to employees who participate in a smoking cessation program shall not be deemed to be an unlawful practice in violation of this section.

(3) (a) An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, including the right to reasonable accommodations, to:

1. New employees at the commencement of employment; and
2. Existing employees not later than thirty (30) days after June 27, 2019.

(b) An employer shall conspicuously post a written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, including the right to reasonable accommodations, at the employer's place of business in an area accessible to employees.

(4) An employer's direct or indirect actions to compel, inculcate, instruct, teach, train, or orient its employees or students to adhere to, affirm, adopt, believe, or assent to bigotry or race and sex essentialism, as those terms are defined in Section 1 of this Act, shall create a rebuttable presumption that an employer knowingly created or contributed to a hostile work environment or hostile learning environment prohibited under this chapter.

Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 5. Whereas it is imperative that the racist indoctrination of Kentucky public employees be eradicated, an emergency is declared to exist, and this Act takes
effect upon its passage and approval by the Governor or upon its otherwise becoming a law.