

AN ACT relating to commercial activities of governments.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Commercial product" means any product of a type customarily used by the general public, or by nongovernmental entities, for purposes other than governmental purposes and that has been historically sold, leased, or licensed, or offered for sale, lease, or license, to the general public by retail establishments;

(b) "Commercial product" does not include the following:

1. Any governmental sale of product that is authorized pursuant to a provision of the Kentucky Revised Statutes. For the purposes of this subparagraph, a statutory authorization shall serve as an authorization for all units and classes of local governments to provide that product;
2. Seasonal fundraising activities conducted by the local government that involve the sale of a product or products;
3. Any sales of a commercial product generating gross revenues of no more than twenty-five thousand dollars (\$25,000) annually for the local government;
4. Sales of commercial products that are traditionally ancillary to or in conjunction with the provision of a government service;
5. Broadband, information technology, or cable service, or other traditional utility service; or
6. The sale of a product when there are no private alternatives to serve the need of the local government's citizens within a reasonable

distance of the jurisdictional boundaries to the local government; and

(c) "Local government" means a city, county, urban-county government, charter county government, consolidated local government, unified local government or any political subdivision of a local government, or corporation created by or on behalf of a local government.

(2) (a) Prior to commencing or continuing the retail or wholesale sale of a commercial product not previously sold by the local government prior to January 1, 2013, the local government legislative body shall conduct a study to determine what effects the sale of that product likely will have on the:

1. Local government;
2. Citizens of the local government;
3. Entities already providing that product in the jurisdiction of the local government.

(b) The study shall also include an analysis that specifically identifies:

1. The commercial products that the local government proposes to sell;
2. The potential customer base;
3. The pricing of the commercial products;
4. Competitors in the marketplace;
5. A plan for selling the commercial products, including the infrastructure, equipment, and personnel to be used; and
6. Any other information the local government may wish to include.

(c) The study, upon completion, shall be deemed a "public record" as defined in KRS 61.870 and shall be subject to full disclosure, notwithstanding any exemption in KRS 61.878.

(d) The study shall be completed and shall be available for inspection on or before the day the advertisement is published as set out in subsection (3) of this section.

(e) If the local government is planning to commence or continue retail or wholesale sale of a commercial product through the use of a political subdivision of a local government, or a corporation created by or on behalf of a local government, all analyses required by this subsection shall, in addition to the immediate effects on the subdivision or corporation, take into account the effects of the sale on the entirety of the city, county, urban-county government, consolidated local government, charter county government, or unified local government in which the subdivision or corporation operates.

(3) Prior to commencing or continuing the retail or wholesale sale of a commercial product not previously sold by the local government prior to January 1, 2013, the local government legislative body shall have a public hearing on the proposed retail or wholesale sale of the commercial product. The public hearing shall be held by the legislative body or board immediately governing the local government and shall be advertised to the public in accordance with KRS Chapter 424. In addition, the local government shall provide details of the proposed action to the public by either placing information on an Internet Web site that is affiliated with the local government and contains other information about the local government or by publishing the information in a newspaper of general circulation pursuant to KRS Chapter 424. Regardless of which option of providing the information the local government chooses, it shall be made available at least four (4) weeks but not earlier than twelve (12) weeks prior to the date of the public hearing and shall, at a minimum, include the following:

(a) A statement that the local government plans to sell a commercial product, which specifically identifies that product;

(b) The reasons that the local government will enter the market for the sale of the commercial product;

- (c) A statement that the local government has performed a study relating to the sale of that commercial product to determine the effects on the local government, the citizens of the local government, and the entities selling that product;
- (d) The date, time, and place of a public hearing to receive public comment on the proposed sale of the commercial product and upon the study performed relating to the sale of the product; and
- (e) The manner in which members of the public may obtain copies of or otherwise examine the study required by this subsection to be performed by the local government.
- (4) A local government that commences or continues retail or wholesale sales of any commercial product not previously sold by this local government before January 1, 2013, shall be subject to the following conditions in the sale of the commercial products:
- (a) 1. The revenues, expenses, and all other matters relating to the venture in which the commercial products are sold shall be accounted for separately from all other activities of the local government; and
2. All revenues derived from the venture shall be maintained in an account separate and unique from all other funds and revenues collected by the local government;
- (b) Sales of the commercial products shall not be subsidized with funds from any other governmental operation or revenue source of the local government;
- (c) The local government shall not price the commercial product below the cost of providing the product for sale to the public. In calculating the cost of the product sales, the local government shall impute the equivalent cost of capital for a private competitor, and an amount equal to all taxes, licenses,

fees, and other assessments that a private competitor would pay;

(d) For the purposes of calculating the taxes, licenses, fees, and other assessments that a private competitor would pay, the finances and business affairs of the venture shall be evaluated as if the venture were a separate, independent C corporation;

(e) The local government shall:

1. Annually remit to its general fund from the separate account of the venture the equivalent of all taxes, licenses, fees, and other assessments that a nongovernmental commercial entity operating as a separate, independent C corporation would pay while operating within the local government's boundaries, as a result of taxes, licenses, fees, and other assessments levied by the local government itself; and

2. Make payments in lieu of taxes, licenses, fees, and other assessments that are the equivalent of all taxes, licenses, fees, and other assessments that a nongovernmental commercial entity operating as a separate, independent C corporation would pay to the state and any other local government taxing jurisdiction while operating within the local government's boundaries, including any applicable property taxes; and

(f) The local government shall annually prepare a statement of resource allocation that specifically identifies the venture and shows individual products, materials, infrastructure, personnel, utilities, and other resources that are shared by both the local government and the venture. This statement of resource allocation shall identify the monetary value of the individual shared resources used by the venture in proportion to its use by the local government. The records required in this paragraph shall be deemed "public records" as defined in KRS 61.870 and shall be subject to

full disclosure, notwithstanding any exemption in KRS 61.878.

(5) The requirements of subsections (2), (3), and (4) of this section shall be suspended in the event of a gubernatorial declaration of a state of emergency pursuant to KRS Chapter 39A in the boundaries of a local government. If the declaration of emergency has no concluding date, subsections (2), (3), and (4) of this section shall be suspended until one hundred eighty (180) days following the date of the issuance of the declaration of emergency, or until the declaration of emergency is otherwise concluded, whichever is earlier.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Commercial product" means any product of a type customarily used by the general public, or by nongovernmental entities, for purposes other than governmental purposes and that has been historically sold, leased, or licensed, or offered for sale, lease, or license, to the general public by retail establishments;

(b) "Commercial product" does not include the following:

1. Any governmental sale of product that is authorized pursuant to a provision of the Kentucky Revised Statutes. For the purposes of this subparagraph, a statutory authorization shall serve as an authorization for all state entities to provide that product;
2. Seasonal fundraising activities conducted by the state entity that involve the sale of a product or products;
3. Any sales of a commercial product generating gross revenues of no more than twenty-five thousand dollars (\$25,000) annually for the state entity;
4. Sales of commercial products that are traditionally ancillary to or in

conjunction with the provision of a government service;

5. Broadband, information technology, or cable service, or other traditional utility service; or

6. The sale of a product when there are no private alternatives to serve the need of the Commonwealth's citizens within the jurisdictional boundaries of the Commonwealth; and

(c) "State entity" means a unit of state government set out in KRS 12.020.

(2) (a) Prior to commencing or continuing the retail or wholesale sale of a commercial product not previously sold by the state entity prior to January 1, 2013, the executive head, or governing body, if there is one, of the state entity shall conduct a study to determine what effects the sale of that product likely will have on the:

1. State entity;

2. Citizens of the Commonwealth;

3. Entities already providing that product in the jurisdiction of the Commonwealth.

(b) The study shall also include an analysis that specifically identifies:

1. The commercial products that the state entity proposes to sell;

2. The potential customer base;

3. The pricing of the commercial products;

4. Competitors in the marketplace;

5. A plan for selling the commercial products, including the infrastructure, equipment, and personnel to be used; and

6. Any other information the state entity may wish to include.

(c) The study, upon completion, shall be deemed a "public record" as defined in KRS 61.870 and shall be subject to full disclosure, notwithstanding any exemption in KRS 61.878.

- (d) The study shall be completed and shall be available for inspection on or before the day the advertisement is published as set out in subsection (3) of this section.
- (e) If the state entity is planning to commence or continue retail or wholesale sale of a commercial product through the use of a political subdivision of a state entity, or a corporation created by or on behalf of a state entity, all analyses required by this subsection shall, in addition to the immediate effects on the subdivision or corporation, take into account the effects of the sale on the entirety of the geographic area in which the subdivision or corporation operates.
- (3) Prior to commencing or continuing the retail or wholesale sale of a commercial product not previously sold by the state entity prior to January 1, 2013, the executive head, or governing body, if there is one, of the state entity shall have a public hearing specifically called for that purpose on the proposed retail or wholesale sale of the commercial product. The public hearing shall be advertised to the public in accordance with KRS Chapter 424. In addition, the state entity shall provide details of the proposed action to the public by either placing information on an Internet Web site that is affiliated with the state entity and contains other information about the state entity or by publishing the information in a newspaper of general circulation pursuant to KRS Chapter 424. Regardless of which option of providing the information the state entity chooses, it shall be made available at least four (4) weeks but not earlier than twelve (12) weeks prior to the date of the public hearing and shall, at a minimum, include the following:
- (a) A statement that the state entity plans to sell a commercial product, which specifically identifies that product;
- (b) The reasons that the state entity will enter the market for the sale of the commercial product;

- (c) A statement that the state entity has performed a study relating to the sale of that commercial product to determine the effects on the Commonwealth, the citizens of the Commonwealth, and the entities selling that product;
- (d) The date, time, and place of a public hearing to receive public comment on the proposed sale of the commercial product and upon the study performed relating to the sale of the product; and
- (e) The manner in which members of the public may obtain copies of or otherwise examine the study required by this subsection to be performed by the state entity.
- (4) A state entity that commences or continues retail or wholesale sales of any commercial product not previously sold by this state entity before January 1, 2013, shall be subject to the following conditions in the sale of the commercial products:
- (a) 1. The revenues, expenses, and all other matters relating to the venture in which the commercial products are sold shall be accounted for separately from all other activities of the state entity; and
2. All revenues derived from the venture shall be maintained in an account separate and unique from all other funds and revenues collected by the state entity;
- (b) Sales of the commercial products shall not be subsidized with funds from any other governmental operation or revenue source of the state entity;
- (c) The state entity shall not price the commercial product below the cost of providing the product for sale to the public. In calculating the cost of the product sales, the state entity shall impute the equivalent cost of capital for a private competitor, and an amount equal to all taxes, licenses, fees, and other assessments that a private competitor would pay;
- (d) For the purposes of calculating the taxes, licenses, fees, and other

assessments that a private competitor would pay, the finances and business affairs of the venture shall be evaluated as if the venture were a separate, independent C corporation;

(e) The state entity shall:

1. Annually remit to its general fund from the separate account of the venture the equivalent of all taxes, licenses, fees, and other assessments that a nongovernmental commercial entity operating as a separate, independent C corporation would pay while operating within the city, county, urban-county government, charter county government, consolidated local government or unified local government boundaries wherein the sale occurs, as a result of taxes, licenses, fees, and other assessments and taxes levied by the Commonwealth itself; and

2. Make payments in lieu of taxes, licenses, fees, and other assessments that are the equivalent of all taxes, licenses, fees, and other assessments that a nongovernmental commercial entity operating as a separate, independent C corporation would pay to the state and any other city, county, urban-county government, charter county government, consolidated local government or unified local government taxing jurisdiction while operating within the city, county, urban-county government, charter county government, consolidated local government or unified local government boundaries, including any applicable property taxes; and

(f) The state entity shall annually prepare a statement of resource allocation that specifically identifies the venture and shows individual products, materials, infrastructure, personnel, utilities, and other resources that are shared by both the state entity and the venture. This statement of resource

allocation shall identify the monetary value of the individual shared resources used by the venture in proportion to its use by the state entity. The records required in this paragraph shall be deemed "public records" as defined in KRS 61.870 and shall be subject to full disclosure, notwithstanding any exemption in KRS 61.878.

(5) The requirements of subsections (2), (3), and (4) of this section shall be suspended in the event of a gubernatorial declaration of a state of emergency pursuant to KRS Chapter 39A in the boundaries of a city, county, urban-county government, charter county government, consolidated local government, or unified local government wherein the state entity conducts sales. If the declaration of emergency has no concluding date, subsections (2), (3), and (4) of this section shall be suspended until one hundred eighty (180) days following the date of the issuance of the declaration of emergency, or until the declaration of emergency is otherwise concluded, whichever is earlier.

(6) Nothing in this section shall be construed to abridge or otherwise relieve the requirements applicable to the Commonwealth and any subdivisions of the state relating to procurement and the sale of surplus property found in KRS Chapter 45A.