

1 AN ACT relating to menstrual discharge collection devices and making an
2 appropriation therefor.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) All public schools or public charter schools that include any of grades six (6)
7 through twelve (12) shall make at least one (1) type of age-appropriate menstrual
8 discharge collection device available in:

9 (a) Each school building for use by students at no cost; and

10 (b) At least fifty percent (50%) of the combined total of the female, handicap,
11 unisex, or family bathrooms in each school building.

12 (2) Each local board of education or public charter school board of directors shall
13 adopt policies:

14 (a) Establishing procedures for the distribution of age-appropriate menstrual
15 discharge collection devices for use by students and related guidance
16 regarding the safe and healthy use of the products;

17 (b) Prohibiting the resale, redistribution, or misuse of menstrual discharge
18 collection devices distributed to students in accordance with this section.

19 (3) As used in this section, "menstrual discharge collection device" means tampons,
20 panty liners, menstrual cups, pads, and other similar tangible personal property
21 designed for use in connection with the human menstrual cycle, but does not
22 include "grooming and hygiene products" as defined in KRS 139.472;

23 ➔Section 2. KRS 139.010 is amended to read as follows:

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

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

26 1. The right of entrance to a display, program, sporting event, music
27 concert, performance, play, show, movie, exhibit, fair, or other

- 1 entertainment or amusement event or venue; and
- 2 2. The privilege of using facilities or participating in an event or activity,
- 3 including but not limited to:
- 4 a. Bowling centers;
- 5 b. Skating rinks;
- 6 c. Health spas;
- 7 d. Swimming pools;
- 8 e. Tennis courts;
- 9 f. Weight training facilities;
- 10 g. Fitness and recreational sports centers; and
- 11 h. Golf courses, both public and private;
- 12 regardless of whether the fee paid is per use or in any other form,
- 13 including but not limited to an initiation fee, monthly fee, membership
- 14 fee, or combination thereof.
- 15 (b) "Admissions" does not include:
- 16 1. Any fee paid to enter or participate in a fishing tournament; or
- 17 2. Any fee paid for the use of a boat ramp for the purpose of allowing
- 18 boats to be launched into or hauled out from the water;
- 19 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of
- 20 which is to attract public attention to a product, person, business, or organization, or
- 21 to attempt to sell, popularize, or secure financial support for a product, person,
- 22 business, or organization. As used in this definition, "product" means tangible
- 23 personal property, an item transferred electronically, or a service;
- 24 (3) "Business" includes any activity engaged in by any person or caused to be engaged
- 25 in by that person with the object of gain, benefit, or advantage, either direct or
- 26 indirect;
- 27 (4) "Commonwealth" means the Commonwealth of Kentucky;

- 1 (5) (a) "Cosmetic surgery services" means modifications to all areas of the head,
2 neck, and body to enhance appearance through surgical and medical
3 techniques.
- 4 (b) "Cosmetic surgery services" does not include surgery services that are
5 medically necessary to reconstruct or correct dysfunctional areas of the face
6 and body due to birth disorders, trauma, burns, or disease;
- 7 (6) "Department" means the Department of Revenue;
- 8 (7) (a) "Digital audio-visual works" means a series of related images which, when
9 shown in succession, impart an impression of motion, with accompanying
10 sounds, if any.
- 11 (b) "Digital audio-visual works" includes movies, motion pictures, musical
12 videos, news and entertainment programs, and live events.
- 13 (c) "Digital audio-visual works" shall not include video greeting cards, video
14 games, and electronic games;
- 15 (8) (a) "Digital audio works" means works that result from the fixation of a series of
16 musical, spoken, or other sounds.
- 17 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
18 readings of books or other written materials, speeches, or other sound
19 recordings.
- 20 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
21 mail;
- 22 (9) (a) "Digital books" means works that are generally recognized in the ordinary and
23 usual sense as books, including any literary work expressed in words,
24 numbers, or other verbal or numerical symbols or indicia if the literary work
25 is generally recognized in the ordinary or usual sense as a book.
- 26 (b) "Digital books" shall not include digital audio-visual works, digital audio
27 works, periodicals, magazines, newspapers, or other news or information

1 products, chat rooms, or weblogs;

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

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

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

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

- 13 1. Digital audio works;
- 14 2. Digital books;
- 15 3. Finished artwork;
- 16 4. Digital photographs;
- 17 5. Periodicals;
- 18 6. Newspapers;
- 19 7. Magazines;
- 20 8. Video greeting cards;
- 21 9. Audio greeting cards;
- 22 10. Video games;
- 23 11. Electronic games; or
- 24 12. Any digital code related to this property.

25 (b) "Digital property" shall not include digital audio-visual works or satellite
26 radio programming;

27 (12) (a) "Direct mail" means printed material delivered or distributed by United States

1 mail or other delivery service to a mass audience or to addressees on a mailing
2 list provided by the purchaser or at the direction of the purchaser when the
3 cost of the items are not billed directly to the recipient.

4 (b) "Direct mail" includes tangible personal property supplied directly or
5 indirectly by the purchaser to the direct mail retailer for inclusion in the
6 package containing the printed material.

7 (c) "Direct mail" does not include multiple items of printed material delivered to
8 a single address;

9 (13) "Directly used in the manufacturing or industrial processing process" means the
10 process that commences with the movement of raw materials from storage into a
11 continuous, unbroken, integrated process and ends when the finished product is
12 packaged and ready for sale;

13 (14) (a) "Executive employee recruitment services" means services provided by a
14 person to locate potential candidates to fill open senior-level management
15 positions.

16 (b) "Executive employee recruitment services" includes but is not limited to
17 making a detailed list of client requirements, researching and identifying
18 potential candidates, performing prescreening interviews, and providing
19 contract and salary negotiations;

20 (15) (a) "Extended warranty services" means services provided through a service
21 contract agreement between the contract provider and the purchaser where the
22 purchaser agrees to pay compensation for the contract and the provider agrees
23 to repair, replace, support, or maintain tangible personal property, digital
24 property, real property, or prewritten computer software access services
25 according to the terms of the contract.

26 (b) "Extended warranty services" does not include the sale of a service contract
27 agreement for tangible personal property to be used by a small telephone

1 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
2 KRS 65.7621 to deliver communications services as defined in KRS 136.602
3 or broadband;

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

6 (b) "Finished artwork" includes:

- 7 1. Assemblies;
- 8 2. Charts;
- 9 3. Designs;
- 10 4. Drawings;
- 11 5. Graphs;
- 12 6. Illustrative materials;
- 13 7. Lettering;
- 14 8. Mechanicals;
- 15 9. Paintings; and
- 16 10. Paste-ups;

17 (17) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
18 including cash, credit, property, and services, for which tangible personal
19 property, digital property, or services are sold, leased, or rented, valued in
20 money, whether received in money or otherwise, without any deduction for
21 any of the following:

- 22 1. The retailer's cost of the tangible personal property, digital property, or
23 services sold;
- 24 2. The cost of the materials used, labor or service cost, interest, losses, all
25 costs of transportation to the retailer, all taxes imposed on the retailer, or
26 any other expense of the retailer;
- 27 3. Charges by the retailer for any services necessary to complete the sale;

- 1 4. Delivery charges, which are defined as charges by the retailer for the
- 2 preparation and delivery to a location designated by the purchaser
- 3 including transportation, shipping, postage, handling, crating, and
- 4 packing;
- 5 5. Any amount for which credit is given to the purchaser by the retailer,
- 6 other than credit for tangible personal property or digital property traded
- 7 when the tangible personal property or digital property traded is of like
- 8 kind and character to the property purchased and the property traded is
- 9 held by the retailer for resale; and
- 10 6. The amount charged for labor or services rendered in installing or
- 11 applying the tangible personal property, digital property, or service sold.
- 12 (b) "Gross receipts" and "sales price" shall include consideration received by the
- 13 retailer from a third party if:
- 14 1. The retailer actually receives consideration from a third party and the
- 15 consideration is directly related to a price reduction or discount on the
- 16 sale to the purchaser;
- 17 2. The retailer has an obligation to pass the price reduction or discount
- 18 through to the purchaser;
- 19 3. The amount of consideration attributable to the sale is fixed and
- 20 determinable by the retailer at the time of the sale of the item to the
- 21 purchaser; and
- 22 4. One (1) of the following criteria is met:
- 23 a. The purchaser presents a coupon, certificate, or other
- 24 documentation to the retailer to claim a price reduction or discount
- 25 where the coupon, certificate, or documentation is authorized,
- 26 distributed, or granted by a third party with the understanding that
- 27 the third party will reimburse any seller to whom the coupon,

1 certificate, or documentation is presented;

2 b. The price reduction or discount is identified as a third-party price
3 reduction or discount on the invoice received by the purchaser or
4 on a coupon, certificate, or other documentation presented by the
5 purchaser; or

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

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

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

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

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

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

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

26 (18) "In this state" or "in the state" means within the exterior limits of the
27 Commonwealth and includes all territory within these limits owned by or

1 ceded to the United States of America;

2 (19) "Industrial processing" includes:

3 (a) Refining;

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

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

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

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

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

12 1. Purchase the property; or

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

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

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

21 2. A transfer of possession or control of property under an agreement that
22 requires the transfer of title upon completion of the required payments
23 and payment of an option price that does not exceed the greater of one
24 hundred dollars (\$100) or one percent (1%) of the total required
25 payments; or

26 3. Providing tangible personal property and an operator for the tangible
27 personal property for a fixed or indeterminate period of time. To qualify

1 for this exclusion, the operator must be necessary for the equipment to
2 perform as designed, and the operator must do more than maintain,
3 inspect, or setup the tangible personal property.

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

7 (21) (a) "Lobbying services" means the act of promoting or securing passage of
8 legislation or an attempt to influence or sway a public official or other public
9 servant toward a desired action, including but not limited to the support of or
10 opposition to a project or the passage, amendment, defeat, approval, or veto of
11 any legislation, regulation, rule, or ordinance;

12 (b) "Lobbying services" includes but is not limited to the performance of
13 activities described as executive agency lobbying activities as defined in KRS
14 11A.201, activities described under the definition of lobby in KRS 6.611, and
15 any similar activities performed at the local, state, or federal levels;

16 (22) (a) "Machinery for new and expanded industry" means machinery:

17 1. Directly used in the manufacturing or industrial processing process of:

18 a. Tangible personal property at a plant facility;

19 b. Distilled spirits or wine at a plant facility or on the premises of a
20 distiller, rectifier, winery, or small farm winery licensed under
21 KRS 243.030 that includes a retail establishment on the premises;

22 or

23 c. Malt beverages at a plant facility or on the premises of a brewer or
24 microbrewery licensed under KRS 243.040 that includes a retail
25 establishment;

26 2. Which is incorporated for the first time into:

27 a. A plant facility established in this state; or

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

- 1 marketplace owned, operated, or controlled by the person;
- 2 b. Facilitates the sale of a marketplace retailer's product through a
- 3 marketplace by transmitting or otherwise communicating an offer
- 4 or acceptance of a retail sale of tangible personal property, digital
- 5 property, or services between a marketplace retailer and a
- 6 purchaser in a forum including a shop, store, booth, catalog,
- 7 Internet site, or similar forum;
- 8 c. Owns, rents, licenses, makes available, or operates any electronic
- 9 or physical infrastructure or any property, process, method,
- 10 copyright, trademark, or patent that connects marketplace retailers
- 11 to purchasers for the purpose of making retail sales of tangible
- 12 personal property, digital property, or services;
- 13 d. Provides a marketplace for making retail sales of tangible personal
- 14 property, digital property, or services, or otherwise facilitates retail
- 15 sales of tangible personal property, digital property, or services,
- 16 regardless of ownership or control of the tangible personal
- 17 property, digital property, or services, that are the subject of the
- 18 retail sale;
- 19 e. Provides software development or research and development
- 20 activities related to any activity described in this subparagraph, if
- 21 the software development or research and development activities
- 22 are directly related to the physical or electronic marketplace
- 23 provided by a marketplace provider;
- 24 f. Provides or offers fulfillment or storage services for a marketplace
- 25 retailer;
- 26 g. Sets prices for a marketplace retailer's sale of tangible personal
- 27 property, digital property, or services;

- 1 h. Provides or offers customer service to a marketplace retailer or a
2 marketplace retailer's customers, or accepts or assists with taking
3 orders, returns, or exchanges of tangible personal property, digital
4 property, or services sold by a marketplace retailer; or
5 i. Brands or otherwise identifies sales as those of the marketplace
6 provider; and
7 2. The person directly or indirectly:
8 a. Collects the sales price or purchase price of a retail sale of tangible
9 personal property, digital property, or services;
10 b. Provides payment processing services for a retail sale of tangible
11 personal property, digital property, or services;
12 c. Through terms and conditions, agreements, or arrangements with a
13 third party, collects payment in connection with a retail sale of
14 tangible personal property, digital property, or services from a
15 purchaser and transmits that payment to the marketplace retailer,
16 regardless of whether the person collecting and transmitting the
17 payment receives compensation or other consideration in exchange
18 for the service; or
19 d. Provides a virtual currency that purchasers are allowed or required
20 to use to purchase tangible personal property, digital property, or
21 services.
22 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
23 requirements of this subsection through the ownership, operation, or control
24 of a digital distribution service, digital distribution platform, online portal, or
25 application store;
26 (26) "Marketplace retailer" means a seller that makes retail sales through any
27 marketplace owned, operated, or controlled by a marketplace provider;

(27) "Menstrual discharge collection devices" means tampons, panty liners, menstrual cups, pads, period underwear, other items that meet the definition of "clothing" but are marked specifically for use as menstrual discharge collection devices for the human menstrual cycle such as period swimwear, period running shorts, or period sleep shorts, and other similar tangible personal property designed for use in connection with the human menstrual cycle, but does not include "grooming and hygiene products" as defined in KRS 139.472;

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

1. A sale of tangible personal property or digital property not held or used by a seller in the course of an activity for which he or she is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. In the case of the sale of the entire, or a substantial portion of the nonretail assets of the seller, the number of previous sales of similar assets shall be disregarded in determining whether or not the current sale or sales shall qualify as an occasional sale; or
2. Any transfer of all or substantially all the tangible personal property or digital property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.

(b) For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the tangible personal property or digital property of such corporation or other entity;

~~(29)~~~~(28)~~ (a) "Other direct mail" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional

1 direct mail is included in the same mailing.

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

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

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

14 ~~(30)~~~~(29)~~ "Person" includes any individual, firm, copartnership, joint venture,
15 association, social club, fraternal organization, corporation, estate, trust, business
16 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or
17 agency, or any other group or combination acting as a unit;

18 ~~(31)~~~~(30)~~ "Permanent," as the term applies to digital property, means perpetual or for an
19 indefinite or unspecified length of time;

20 ~~(32)~~~~(31)~~ (a) "Photography and photofinishing services" means:

- 21 1. The taking, developing, or printing of an original photograph; or
- 22 2. Image editing, including shadow removal, tone adjustments, vertical and
23 horizontal alignment and cropping, composite image creation,
24 formatting, watermarking printing, and delivery of an original
25 photograph in the form of tangible personal property, digital property, or
26 other media.

27 (b) "Photography and photofinishing services" does not include photography

1 services necessary for medical or dental health;

2 ~~(33)~~~~(32)~~ "Plant facility" means a single location that is exclusively dedicated to
3 manufacturing or industrial processing activities. A location shall be deemed to be
4 exclusively dedicated to manufacturing or industrial processing activities even if
5 retail sales are made there, provided that the retail sales are incidental to the
6 manufacturing or industrial processing activities occurring at the location. The term
7 "plant facility" shall not include any restaurant, grocery store, shopping center, or
8 other retail establishment;

9 ~~(34)~~~~(33)~~ (a) "Prewritten computer software" means:

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

22 (b) When a person modifies or enhances computer software of which the person
23 is not the author or creator, the person shall be deemed to be the author or
24 creator only of the modifications or enhancements the person actually made.

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

1 ~~(35)~~~~[(34)]~~ "Prewritten computer software access services" means the right of access to
2 prewritten computer software where the object of the transaction is to use the
3 prewritten computer software while possession of the prewritten computer software
4 is maintained by the seller or a third party, wherever located, regardless of whether
5 the charge for the access or use is on a per use, per user, per license, subscription, or
6 some other basis;

7 ~~(36)~~~~[(35)]~~ (a) "Purchase" means any transfer of title or possession, exchange, barter,
8 lease, or rental, conditional or otherwise, in any manner or by any means
9 whatsoever, of:

- 10 1. Tangible personal property;
- 11 2. An extended warranty service;
- 12 3. Digital property transferred electronically; or
- 13 4. Services included in KRS 139.200;
- 14 for a consideration.

15 (b) "Purchase" includes:

- 16 1. When performed outside this state or when the customer gives a resale
17 certificate, the producing, fabricating, processing, printing, or imprinting
18 of tangible personal property for a consideration for consumers who
19 furnish either directly or indirectly the materials used in the producing,
20 fabricating, processing, printing, or imprinting;
- 21 2. A transaction whereby the possession of tangible personal property or
22 digital property is transferred but the seller retains the title as security
23 for the payment of the price; and
- 24 3. A transfer for a consideration of the title or possession of tangible
25 personal property or digital property which has been produced,
26 fabricated, or printed to the special order of the customer, or of any
27 publication;

1 ~~(37)~~~~[(36)]~~ "Recycled materials" means materials which have been recovered or diverted
2 from the solid waste stream and reused or returned to use in the form of raw
3 materials or products;

4 ~~(38)~~~~[(37)]~~ "Recycling purposes" means those activities undertaken in which materials
5 that would otherwise become solid waste are collected, separated, or processed in
6 order to be reused or returned to use in the form of raw materials or products;

7 ~~(39)~~~~[(38)]~~ "Remote retailer" means a retailer with no physical presence in this state;

8 ~~(40)~~~~[(39)]~~ (a) "Repair, replacement, or spare parts" means any tangible personal
9 property used to maintain, restore, mend, or repair machinery or equipment.
10 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
11 industrial tools;

12 ~~(41)~~~~[(40)]~~ (a) "Retailer" means:

- 13 1. Every person engaged in the business of making retail sales of tangible
14 personal property, digital property, or furnishing any services in a retail
15 sale included in KRS 139.200;
- 16 2. Every person engaged in the business of making sales at auction of
17 tangible personal property or digital property owned by the person or
18 others for storage, use or other consumption, except as provided in
19 paragraph (c) of this subsection;
- 20 3. Every person making more than two (2) retail sales of tangible personal
21 property, digital property, or services included in KRS 139.200 during
22 any twelve (12) month period, including sales made in the capacity of
23 assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
- 24 4. Any person conducting a race meeting under the provision of KRS
25 Chapter 230, with respect to horses which are claimed during the
26 meeting.

27 (b) When the department determines that it is necessary for the efficient

1 administration of this chapter to regard any salesmen, representatives,
2 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
3 employers under whom they operate or from whom they obtain the tangible
4 personal property, digital property, or services sold by them, irrespective of
5 whether they are making sales on their own behalf or on behalf of the dealers,
6 distributors, supervisors or employers, the department may so regard them and
7 may regard the dealers, distributors, supervisors or employers as retailers for
8 purposes of this chapter.

9 (c) 1. Any person making sales at a charitable auction for a qualifying entity
10 shall not be a retailer for purposes of the sales made at the charitable
11 auction if:

- 12 a. The qualifying entity, not the person making sales at the auction, is
13 sponsoring the auction;
- 14 b. The purchaser of tangible personal property at the auction directly
15 pays the qualifying entity sponsoring the auction for the property
16 and not the person making the sales at the auction; and
- 17 c. The qualifying entity, not the person making sales at the auction, is
18 responsible for the collection, control, and disbursement of the
19 auction proceeds.

20 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
21 the qualifying entity sponsoring the auction shall be the retailer for
22 purposes of the sales made at the charitable auction.

23 3. For purposes of this paragraph, "qualifying entity" means a resident:

- 24 a. Church;
- 25 b. School;
- 26 c. Civic club; or
- 27 d. Any other nonprofit charitable, religious, or educational

1 organization;

2 ~~(42)~~~~[(41)]~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,
3 sublease, or subrent;

4 ~~(43)~~~~[(42)]~~ (a) "Ringtones" means digitized sound files that are downloaded onto a
5 device and that may be used to alert the customer with respect to a
6 communication.

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

9 ~~(44)~~~~[(43)]~~ (a) "Sale" means:

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

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

- 18 1. The producing, fabricating, processing, printing, or imprinting of
19 tangible personal property or digital property for a consideration for
20 purchasers who furnish, either directly or indirectly, the materials used
21 in the producing, fabricating, processing, printing, or imprinting;
22 2. A transaction whereby the possession of tangible personal property or
23 digital property is transferred, but the seller retains the title as security
24 for the payment of the price; and
25 3. A transfer for a consideration of the title or possession of tangible
26 personal property or digital property which has been produced,
27 fabricated, or printed to the special order of the purchaser.

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

4 ~~(45)~~~~[(44)]~~ "Seller" includes every person engaged in the business of selling tangible
5 personal property, digital property, or services of a kind, the gross receipts from the
6 retail sale of which are required to be included in the measure of the sales tax, and
7 every person engaged in making sales for resale;

8 ~~(46)~~~~[(45)]~~ (a) "Storage" includes any keeping or retention in this state for any purpose
9 except sale in the regular course of business or subsequent use solely outside
10 this state of tangible personal property, digital property, or prewritten
11 computer software access services purchased from a retailer.

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

18 ~~(47)~~~~[(46)]~~ "Tangible personal property" means personal property which may be seen,
19 weighed, measured, felt, or touched, or which is in any other manner perceptible to
20 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
21 and prewritten computer software;

22 ~~(48)~~~~[(47)]~~ "Taxpayer" means any person liable for tax under this chapter;

23 ~~(49)~~~~[(48)]~~ "Telemarketing services" means services provided via telephone, facsimile,
24 electronic mail, text messages, or other modes of communications to another
25 person, which are unsolicited by that person, for the purposes of:

- 26 (a) 1. Promoting products or services;
27 2. Taking orders; or

1 3. Providing information or assistance regarding the products or services;

2 or

3 (b) Soliciting contributions;

4 ~~(50)~~~~(49)~~ "Transferred electronically" means accessed or obtained by the purchaser by
5 means other than tangible storage media; and

6 (51)~~[(50)]~~ (a) "Use" includes the exercise of:

7 1. Any right or power over tangible personal property or digital property
8 incident to the ownership of that property, or by any transaction in
9 which possession is given, or by any transaction involving digital
10 property or tangible personal property where the right of access is
11 granted; or

12 2. Any right or power to benefit from any services subject to tax under
13 KRS 139.200(2)(p) to (ax).

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

16 1. Tangible personal property or digital property for the purpose of:

17 a. Selling tangible personal property or digital property in the regular
18 course of business; or

b. Subsequently transporting tangible personal property outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state; or

25 2. Prewritten computer software access services purchased for use outside
26 the state and transferred electronically outside the state for use thereafter
27 solely outside the state.

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

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

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

9 (2) Coal for the manufacture of electricity;

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

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

20 (c) A person who performs a manufacturing or industrial processing activity for a
21 fee and does not take ownership of the tangible personal property that is
22 incorporated into, or becomes the product of, the manufacturing or industrial
23 processing activity is a toller. For periods on or after July 1, 2018, the costs of
24 the tangible personal property shall be excluded from the toller's cost of
25 production at a plant facility with tolling operations in place as of July 1,
26 2018.

27 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of

1 tangible personal property shall be excluded from the toller's cost of
2 production if the toller:

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

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

1 machinery, and are customarily so used, including but not limited to combine
2 header wagons, combine header trailers, or any other implements specifically
3 designed and used to move or transport a combine head; and

4 (c) Does not include:

- 5 1. Automobiles;
- 6 2. Trucks;
- 7 3. Trailers, except combine header trailers; or
- 8 4. Truck-trailer combinations;

9 (12) Tombstones and other memorial grave markers;

10 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
11 or handling. The exemption applies to the equipment, machinery, attachments,
12 repair and replacement parts, and any materials incorporated into the construction,
13 renovation, or repair of the facilities;

14 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption
15 shall apply to the equipment, machinery, attachments, repair and replacement parts,
16 and any materials incorporated into the construction, renovation, or repair of the
17 facilities. The exemption shall apply but not be limited to vent board equipment,
18 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
19 and curtain systems. In addition, the exemption shall apply whether or not the seller
20 is under contract to deliver, assemble, and incorporate into real estate the
21 equipment, machinery, attachments, repair and replacement parts, and any materials
22 incorporated into the construction, renovation, or repair of the facilities;

23 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
24 and directly to:

- 25 (a) Operate farm machinery as defined in subsection (11) of this section;
- 26 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
27 (13) of this section;

- 1 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
2 this section;
- 3 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
- 4 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
5 section; or
- 6 (f) Operate on-farm dairy facilities;
- 7 (16) Textbooks, including related workbooks and other course materials, purchased for
8 use in a course of study conducted by an institution which qualifies as a nonprofit
9 educational institution under KRS 139.495. The term "course materials" means only
10 those items specifically required of all students for a particular course but shall not
11 include notebooks, paper, pencils, calculators, tape recorders, or similar student
12 aids;
- 13 (17) Any property which has been certified as an alcohol production facility as defined
14 in KRS 247.910;
- 15 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the
16 direct operation of aircraft in interstate commerce and used exclusively for the
17 conveyance of property or passengers for hire. Nominal intrastate use shall not
18 subject the property to the taxes imposed by this chapter;
- 19 (19) Any property which has been certified as a fluidized bed energy production facility
20 as defined in KRS 211.390;
- 21 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
22 modification, or expansion of a blast furnace or any of its components or
23 appurtenant equipment or structures as part of an approved supplemental
24 project, as defined by KRS 154.26-010; and
- 25 2. Materials, supplies, and repair or replacement parts purchased for use in
26 the operation and maintenance of a blast furnace and related carbon
27 steel-making operations as part of an approved supplemental project, as

1 defined by KRS 154.26-010.

2 (b) The exemptions provided in this subsection shall be effective for sales made:

3 1. On and after July 1, 2018; and

4 2. During the term of a supplemental project agreement entered into
5 pursuant to KRS 154.26-090;

6 (21) Beginning on October 1, 1986, food or food products purchased for human
7 consumption with food coupons issued by the United States Department of
8 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
9 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
10 continue participation in the federal food stamp program;

11 (22) Machinery or equipment purchased or leased by a business, industry, or
12 organization in order to collect, source separate, compress, bale, shred, or otherwise
13 handle waste materials if the machinery or equipment is primarily used for
14 recycling purposes;

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

18 (a) Feed and feed additives;

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

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

1 attachments, repair and replacement parts, and any materials incorporated into
2 the construction, renovation, or repair of the facilities;

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

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

10 (a) Feed and feed additives;

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

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

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

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

23 (a) Production of crops;

24 (b) Production of milk for sale; or

25 (c) Raising and feeding of:

26 1. Livestock or poultry, the products of which ordinarily constitute food
27 for human consumption; or

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

1 aeration, and heating systems; processing and storage systems; production
2 systems such as ponds, tanks, and raceways; harvest and transport equipment
3 and systems; and alarm systems. In addition, the exemption shall apply
4 whether or not the seller is under contract to deliver, assemble, and
5 incorporate into real estate the equipment, machinery, attachments, repair and
6 replacement parts, and any materials incorporated into the construction,
7 renovation, or repair of the facilities;

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

- 11 (a) Feed and feed additives;
- 12 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
- 13 (c) On-site facilities, including equipment, machinery, attachments, repair and
14 replacement parts, and any materials incorporated into the construction,
15 renovation, or repair of the facilities. In addition, the exemption shall apply
16 whether or not the seller is under contract to deliver, assemble, and
17 incorporate into real estate the equipment, machinery, attachments, repair and
18 replacement parts, and any materials incorporated into the construction,
19 renovation, or repair of the facilities;

20 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor
21 vehicle, including any towed unit, used exclusively in interstate commerce for
22 the conveyance of property or passengers for hire, provided the motor vehicle
23 is licensed for use on the highway and its declared gross vehicle weight with
24 any towed unit is forty-four thousand and one (44,001) pounds or greater.
25 Nominal intrastate use shall not subject the property to the taxes imposed by
26 this chapter; and

27 (b) Repair or replacement parts for the direct operation and maintenance of a

1 motor vehicle operating under a charter bus certificate issued by the
2 Transportation Cabinet under KRS Chapter 281, or under similar authority
3 granted by the United States Department of Transportation.

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

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

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

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

- 20 1. Fulfilled by a construction contract for a sewer or water project with:
- 21 a. A municipally owned water utility organized under KRS Chapter
22 96;
- 23 b. A water district or water commission formed or organized under
24 KRS Chapter 74;
- 25 c. A sanitation district established under KRS Chapter 220 or formed
26 pursuant to KRS Chapter 65;
- 27 d. A nonprofit corporation created under KRS 58.180 to act on behalf

- 1 of a governmental agency in the acquisition and financing of
2 public projects;
- 3 e. Regional wastewater commissions formed under KRS Chapter
4 278;
- 5 f. A municipally owned joint sewer agency formed under KRS
6 Chapter 76; or
- 7 g. Any other governmental agency; and
- 8 2. The building materials, fixtures, or supplies:
- 9 a. Will be permanently incorporated into a structure or improvement
10 to real property, or will be completely consumed, in fulfilling a
11 construction contract for the purpose of furnishing water or sewer
12 services to the general public; and
- 13 b. Would be exempt if purchased directly by the entities listed in
14 subparagraph 1. of this paragraph.
- 15 (b) As used in this subsection, "construction contract" means a:
- 16 1. Lump sum contract;
- 17 2. Cost plus contract;
- 18 3. Materials only contract;
- 19 4. Labor and materials contract; or
- 20 5. Any other type of contract.
- 21 (c) The exemption provided in this subsection shall apply without regard to the
22 payment arrangement between the construction contractor, the retailer, and
23 the entities listed in paragraph (a)1. of this subsection or to the place of
24 delivery for the building materials, fixtures, or supplies;
- 25 (35) (a) On or after February 25, 2022, the rental of space for meetings, conventions,
26 short-term business uses, entertainment events, weddings, banquets, parties,
27 and other short-term social events, as referenced in KRS 139.200, if the tax

1 established in KRS 139.200 is paid by the primary lessee to the lessor.

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

4 1. The contract between the lessor and the lessee specifies that the lessee
5 may sublease, subrent, or otherwise sell the space; and

6 2. The space is then sublet, subrented, or otherwise sold to exhibitors,
7 vendors, sponsors, or other entities and persons who will use the space
8 associated with the event to be conducted under the primary lease;~~and~~

9 (36) Prewritten computer software access services sold to or purchased by a retailer that
10 develops prewritten computer software for print technology and uses and sells
11 prewritten computer software access services for print technology; and

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

13 ➔Section 4. KRS 139.480 (Effective January 1, 2025) is amended to read as
14 follows:

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

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

21 (2) Coal for the manufacture of electricity;

22 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
23 processing, mining, or refining and any related distribution, transmission, and
24 transportation services for this energy that are billed to the user, to the extent
25 that the cost of the energy or energy-producing fuels used, and related
26 distribution, transmission, and transportation services for this energy that are
27 billed to the user exceed three percent (3%) of the cost of production.

- 1 (b) Cost of production shall be computed on the basis of a plant facility, which
2 shall include all operations within the continuous, unbroken, integrated
3 manufacturing or industrial processing process that ends with a product
4 packaged and ready for sale.
- 5 (c) A person who performs a manufacturing or industrial processing activity for a
6 fee and does not take ownership of the tangible personal property that is
7 incorporated into, or becomes the product of, the manufacturing or industrial
8 processing activity is a toller. For periods on or after July 1, 2018, the costs of
9 the tangible personal property shall be excluded from the toller's cost of
10 production at a plant facility with tolling operations in place as of July 1,
11 2018.
- 12 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of
13 tangible personal property shall be excluded from the toller's cost of
14 production if the toller:
- 15 1. Maintains a binding contract for periods after July 1, 2018, that governs
16 the terms, conditions, and responsibilities with a separate legal entity,
17 which holds title to the tangible personal property that is incorporated
18 into, or becomes the product of, the manufacturing or industrial
19 processing activity;
 - 20 2. Maintains accounting records that show the expenses it incurs to fulfill
21 the binding contract that include but are not limited to energy or energy-
22 producing fuels, materials, labor, procurement, depreciation,
23 maintenance, taxes, administration, and office expenses;
 - 24 3. Maintains separate payroll, bank accounts, tax returns, and other records
25 that demonstrate its independent operations in the performance of its
26 tolling responsibilities;
 - 27 4. Demonstrates one (1) or more substantial business purposes for the

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

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

- 1 and any materials incorporated into the construction, renovation, or repair of the
2 facilities. The exemption shall apply but not be limited to vent board equipment,
3 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
4 and curtain systems. In addition, the exemption shall apply whether or not the seller
5 is under contract to deliver, assemble, and incorporate into real estate the
6 equipment, machinery, attachments, repair and replacement parts, and any materials
7 incorporated into the construction, renovation, or repair of the facilities;
- 8 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
9 and directly to:
- 10 (a) Operate farm machinery as defined in subsection (11) of this section;
 - 11 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
12 (13) of this section;
 - 13 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
14 this section;
 - 15 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
 - 16 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
17 section; or
 - 18 (f) Operate on-farm dairy facilities;
- 19 (16) Textbooks, including related workbooks and other course materials, purchased for
20 use in a course of study conducted by an institution which qualifies as a nonprofit
21 educational institution under KRS 139.495. The term "course materials" means only
22 those items specifically required of all students for a particular course but shall not
23 include notebooks, paper, pencils, calculators, tape recorders, or similar student
24 aids;
- 25 (17) Any property which has been certified as an alcohol production facility as defined
26 in KRS 247.910;
- 27 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the

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

1 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
2 products, and the following items used in this agricultural pursuit:

3 (a) Feed and feed additives;

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

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

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

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

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

- 1 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the
2 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
3 and the following items used in this pursuit:
- 4 (a) Feed and feed additives;
 - 5 (b) Water;
 - 6 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - 7 and
 - 8 (d) On-farm facilities, including equipment, machinery, attachments, repair and
9 replacement parts, and any materials incorporated into the construction,
10 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
11 petroleum gas, or natural gas used to operate the facilities. The exemption
12 shall apply, but not be limited to: waterer and feeding systems; ventilation,
13 aeration, and heating systems; processing and storage systems; production
14 systems such as ponds, tanks, and raceways; harvest and transport equipment
15 and systems; and alarm systems. In addition, the exemption shall apply
16 whether or not the seller is under contract to deliver, assemble, and
17 incorporate into real estate the equipment, machinery, attachments, repair and
18 replacement parts, and any materials incorporated into the construction,
19 renovation, or repair of the facilities;
- 20 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the
21 production of hides, breeding stock, meat, and cervid by-products, and the
22 following items used in this pursuit:
- 23 (a) Feed and feed additives;
 - 24 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
 - 25 (c) On-site facilities, including equipment, machinery, attachments, repair and
26 replacement parts, and any materials incorporated into the construction,
27 renovation, or repair of the facilities. In addition, the exemption shall apply

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

5 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor
6 vehicle, including any towed unit, used exclusively in interstate commerce for
7 the conveyance of property or passengers for hire, provided the motor vehicle
8 is licensed for use on the highway and its declared gross vehicle weight with
9 any towed unit is forty-four thousand and one (44,001) pounds or greater.
10 Nominal intrastate use shall not subject the property to the taxes imposed by
11 this chapter; and

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

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

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

26 (33) Drugs and over-the counter drugs, as defined in KRS 139.472, that are purchased
27 by a person regularly engaged in the business of farming and used in the treatment

1 of cattle, sheep, goats, swine, poultry, ratite birds, llamas, alpacas, buffalo, aquatic
2 organisms, or cervids;

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

- 5 1. Fulfilled by a construction contract for a sewer or water project with:
- 6 a. A municipally owned water utility organized under KRS Chapter
7 96;
- 8 b. A water district or water commission formed or organized under
9 KRS Chapter 74;
- 10 c. A sanitation district established under KRS Chapter 220 or formed
11 pursuant to KRS Chapter 65;
- 12 d. A nonprofit corporation created under KRS 58.180 to act on behalf
13 of a governmental agency in the acquisition and financing of
14 public projects;
- 15 e. Regional wastewater commissions formed under KRS Chapter
16 278;
- 17 f. A municipally owned joint sewer agency formed under KRS
18 Chapter 76; or
- 19 g. Any other governmental agency; and
- 20 2. The building materials, fixtures, or supplies:
- 21 a. Will be permanently incorporated into a structure or improvement
22 to real property, or will be completely consumed, in fulfilling a
23 construction contract for the purpose of furnishing water or sewer
24 services to the general public; and
- 25 b. Would be exempt if purchased directly by the entities listed in
26 subparagraph 1. of this paragraph.

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

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

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

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

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

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

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

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

25 **(38)**~~(37)~~ Medicinal cannabis as defined in KRS 218B.010 when sold, used, stored, or
26 consumed in accordance with KRS Chapter 218B.

27 ➔Section 5. There is hereby appropriated General Fund moneys in the amount of

1 \$2,000,000 in fiscal year 2024-2025 to the Learning and Results Services budget
2 unit within the Department of Education to provide menstrual discharge collection
3 devices for students.

4 ➔Section 6. This Act takes effect August 1, 2024.