

AN ACT relating to causes of action in which the state has an interest and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 6 IS CREATED TO READ AS FOLLOWS:

(1) The Speaker of the House of Representatives and the President of the Senate, in their official capacities, shall have standing to intervene in, and participate as agents of the Commonwealth of Kentucky and the Kentucky General Assembly as a party in, any judicial proceeding in which the constitutionality of any Kentucky statute or constitutional provision is challenged, if the Governor or the Attorney General:

(a) Declines to defend a statute or constitutional provision;

(b) Defends a statute or constitutional provision in a manner deemed inadequate by the Speaker or the President; or

(c) Declines to present as affirmative defenses interests in the law that the General Assembly relied upon when voting to enact the statute or constitutional provision.

(2) If the Speaker or the President intervenes under subsection (1) of this section, he or she shall be a party to the judicial proceeding in addition to the Governor and Attorney General or, if intervening under paragraph (a) of subsection (1) of this section, instead of the Governor or Attorney General.

➔Section 2. KRS 48.005 is amended to read as follows:

(1) The General Assembly hereby finds and declares that:

(a) Public accountability for funds or other assets recovered in a legal action by or on behalf of the general public, the Commonwealth, or its duly elected statewide constitutional officers is appropriate and required, whether the character of the assets or funds recovered is public or private;

- (b) Accountability for assets or funds recovered by duly elected statewide constitutional officers is essential to the public trust, and is even more critical when that officer was a party to the action that resulted in the recovery by virtue of the public office he or she holds;
 - (c) Public accountability demands the applicability of the Kentucky Open Records Law, KRS 61.870 to 61.884, and the Kentucky Open Meetings Law, KRS 61.805 to 61.850, so that the actions of individuals or agencies who are charged with the administration of funds or other assets are conducted in full view, and are open to public scrutiny; and
 - (d) The power to appropriate funds for public purposes is solely within the purview of the legislative branch of government, and the General Assembly, as a steward of the budgetary process, shall take steps to assure that future settlements are handled in a manner that assures maximum accountability to the citizens of the Commonwealth and their duly elected legislative representatives.
- (2) Therefore, any other provision of the common law or statutory law to the contrary notwithstanding:
- (a) The provisions of subsection (3) of this section shall apply whenever the Attorney General or other duly elected statewide constitutional officer is a party or has entered his appearance in a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or a person, organization, or entity created by the Attorney General or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes;

- (b) Except as otherwise provided in paragraph (a) of this subsection, the provisions of subsection (4) of this section shall apply when any funds or assets of any kind or nature whatsoever, including but not limited to public funds as defined in KRS 446.010 and private funds or assets are recovered by judgment or settlement of a legal action by or on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions filed by a duly elected statewide constitutional officer under that officer's statutory or common law authority.
- (3) Whenever the Attorney General or other duly elected statewide constitutional officer is a party to or has entered his appearance in, a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or by a person, organization, or entity created by the Attorney General, or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes, those funds shall be deposited in the State Treasury and the funds or assets administered and disbursed by the Office of the Controller.
- (4) The Office of Attorney General may first recover its reasonable costs of litigation, as determined by the court and approved by the secretary of the Finance and Administration Cabinet. After recovering the reasonable costs of litigation, any required consumer restitution or payments shall be made. All remaining funds shall be deposited in the general fund surplus account. Any costs recovered under this subsection shall be reported to the Interim Joint Committee on Appropriations and Revenue.
- (5) The common law, including the common law authority of any duly elected statewide constitutional officer, is specifically abrogated to the extent it is

inconsistent with the provisions of this section.

- (6) Notwithstanding any statute or common law to the contrary, and except as provided in this subsection, an elected statewide constitutional officer or any other state official or agency shall not file or participate as a plaintiff, petitioner, party, intervening party, attorney, or amicus curiae in any litigation challenging the constitutionality of this section. State funds and employee time shall not be expended by any person or agency in support of such a challenge. If the constitutionality of this section is challenged, the Finance and Administration Cabinet shall be the sole named respondent in that litigation, and shall consult with the Legislative Research Commission regarding defense of that litigation.

(7) A statewide constitutional officer shall inform the court of the provisions of this section prior to entering into an agreed order in a legal action to which this section applies.

(8) The Speaker of the House of Representatives and the President of the Senate shall each have the right to intervene in any legal action to ensure compliance with this section.

➔Section 3. There being cases presently being considered in courts involving the constitutionality of Kentucky laws and constitutional provisions, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.