

CHAPTER 483 (HB 629)

AN ACT relating to Commonwealth legal actions, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 48 IS CREATED 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;*
 - (d) *The General Assembly recognizes that the Attorney General of the Commonwealth of Kentucky has filed or been a party to actions by virtue of the public office he holds, and has recovered certain assets or funds of approximately forty-five million dollars (\$45,000,000), plus interest, for or on behalf of the citizens of the Commonwealth in the cases of Commonwealth of Kentucky, ex rel., Attorney General, Albert B. Chandler, III v. Anthem Insurance Companies, Inc., Southeastern Group, Inc., Southeastern United Medigroup, Inc., Franklin Circuit Court, Division I, Civil Action No. 97-CI-01566, and Southeastern United Medigroup, Inc., Southeastern Group, Inc., and Anthem Insurance Companies, Inc., v. Commonwealth of Kentucky, Department of Insurance, Franklin Circuit Court, Division II, Civil Action No. 97-CI-00405;*
 - (e) *The terms of the settlement of those actions referenced in subsection (1)(d) of this section serve a public purpose and require that the proceeds of settlement be used "to address the unmet health care needs of Kentucky citizens";*
 - (f) *In accordance with the terms of the settlement referenced in subsection (1)(d) of this section, a foundation has been or is to be formed and appointments to that foundation made after receiving recommendations from an advisory board whose appointments will be made from nominees of the Attorney General;*
 - (g) *While it may be important that, in certain circumstances, funds or assets received retain their character, identity, and purpose, it is also important that the process by which funds are administered and the individuals named to serve on the advisory board and the foundation in the settlement referenced in subsection (1)(d) of this section be open to public scrutiny and be required to make reports and be accountable to the public; and*

- (h) *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 to the settlement referenced in subsection (1)(d) of this section, and to the advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity, created by court order or otherwise, to administer the settlement proceeds to provide for the "unmet health care needs of Kentucky citizens"; and*
- (b) *Except for the settlement referenced in subsection (1)(d) of this section, the provisions of subsection (4) 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;*
- (c) *Except as otherwise provided in paragraphs (a) and (b) of this subsection, the provisions of subsection (5) 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) *The advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity, created by court order or otherwise, in accordance with the settlement outlined in subsection (1)(d) of this section, shall be deemed a public trust, and shall:*
- (a) *Be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884, and the Kentucky Open Meetings Act, KRS 61.805 to 61.850;*
- (b) *Be audited on an annual basis by the Auditor of Public Accounts;*
- (c) *Provide any records, documents, written reports, and audits to the Governor, Auditor of Public Accounts, and the Legislative Research Commission, as may be requested;*
- (d) *Provide representatives of the organization or entity to testify before any committee of the General Assembly, when requested, concerning the work and financial condition of the organization or entity;*

- (e) *Encourage the Franklin Circuit Court to authorize the Governor to appoint two (2) at-large members to the board of directors of the foundation created by the settlement agreement; and*
- (f) *Provide written notice of any disbursement of funds or assets to the co-chairs of the Interim Joint Committee on Appropriations and Revenue, the secretary of the Finance and Administration Cabinet, and the state controller at least fourteen (14) days prior to making disbursement. Within forty-five (45) days after receipt of the notice of disbursement of funds or assets in accordance with this subsection, the Interim Joint Committee on Appropriations and Revenue may hold a hearing on the disbursement. If requested by the Interim Joint Committee on Appropriations and Revenue, members of the advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity making disbursement and the person, organization, or other entity receiving the disbursement shall appear and give testimony concerning the proposed disbursement. Following the hearing, the Interim Joint Committee on Appropriations and Revenue shall make findings concerning whether or not the disbursement:*

1. *Is consistent with the nature, character, and purpose for which the funds were recovered; and*
2. *Is in the best interest of the Commonwealth.*

A copy of the findings shall be publicly released and mailed or otherwise delivered to the entity or organization seeking disbursement, the secretary of the Finance and Administration Cabinet, and the state controller.

- (4) *Except for the settlement referenced in subsection (1)(d) of this section, 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 Charitable Asset Administration Board created under this section. As used in this section "CAAB" means the Charitable Asset Administration Board.*

- (a) *The CAAB shall consist of the following members, who shall be confirmed by the Senate under KRS 11.160, and who shall serve at the pleasure of the duly elected statewide constitutional officer making the appointment during that constitutional officer's term of office:*
 1. *Three (3) members to be appointed by the Governor;*
 2. *Three (3) members to be appointed by the Attorney General; and*
 3. *Three (3) members to be appointed by the Auditor of Public Accounts.*

- (b) *Each duly elected statewide constitutional officer under paragraph (a) of this subsection shall appoint at least one (1) member who has a background in the administration of charitable, eleemosynary, benevolent, educational, or similar type trust assets, but shall not be currently involved in any activity that would violate the provisions of KRS 11A.040, as they relate to the performance of the appointee's duties on the CAAB.*
- (c) *All appointees to the CAAB shall comply with the provisions of the Executive Branch Code of Ethics found in KRS Chapter 11A.*
- (d) *A vacancy in the membership of the CAAB shall be filled in the same manner and under the same conditions as the initial appointment to the board.*
- (e) *The CAAB shall:*
- 1. Be a nonprofit, de jure, quasi-governmental corporation subject to the Kentucky Open Records Law, KRS 61.870 to 61.884, and Kentucky Open Meetings Law, KRS 61.800 to 61.850;*
 - 2. Have any and all general corporate, trust, or other powers reasonable or necessary to fulfill the requirements and purposes of the CAAB;*
 - 3. Be audited on an annual basis by the Auditor of Public Accounts;*
 - 4. Provide any documents, written reports, and audits to the Legislative Research Commission as may be requested; and*
 - 5. Provide representatives of the organization or entity to testify before any committee of the Kentucky General Assembly when requested concerning the work and financial condition of the CAAB.*
- (f) *The CAAB shall have full authority over the administration, control, and disbursement of any funds recovered under this subsection. The CAAB shall receive, analyze, administer, disburse, and preserve the identity, character, and nature and the charitable, eleemosynary, benevolent, educational, or similar public purpose of the funds or assets received consistent with this subsection and the authority for administering the funds recovered as set forth in the:*
- 1. Articles of incorporation and bylaws of the corporation;*
 - 2. Partnership agreement or other business association agreement;*
 - 3. Contractual agreement;*
 - 4. Governing documents of the public or private foundation;*
 - 5. Charitable trust documents;*
 - 6. Terms of the constructive trust;*
 - 7. Orders of a state or federal court;*
 - 8. State or federal law or regulation; or*
 - 9. Any other governing documents necessary to properly administer the funds recovered.*

- (g) *The CAAB may hold public hearings, if necessary, concerning the proper administration or disbursement of trust assets received and to be administered under this subsection.*
- (h) *1. After the effective date of this Act, all charitable, eleemosynary, benevolent, educational, or similar type trust funds or assets, to which this subsection applies, recovered by way of judgment, settlement, or otherwise, shall be transferred to the CAAB for administration of those funds or assets consistent with their charitable, eleemosynary, benevolent, educational, or similar public purpose and the provisions of this subsection.*
- 2. For those legal actions settled prior to the effective date of this Act, except for the settlement outlined in subsection (1)(d) of this section to which subsection (3) of this section shall apply, where charitable, eleemosynary, benevolent, educational, or similar type trust funds or assets, are recovered by way of judgment or settlement, and to which this subsection would otherwise be applicable, the federal and state courts where those actions are pending are encouraged to transfer any trust funds or assets remaining after administration to the CAAB.*
- (5) (a) *Any other provision of the common law or statutory law to the contrary notwithstanding, and except as otherwise provided in this section, 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 when 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 shall be deemed public funds, and shall be deposited into an account maintained by the Finance and Administration Cabinet.*
- (b) *No funds to which this subsection applies when deposited in an account maintained by the Finance and Administration Cabinet shall be disbursed without a specific legislative appropriation of the deposited funds by the General Assembly while in regular or special legislative session.*
- (6) *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.*
- (7) *The provisions of this section shall not apply to actions by or on behalf of the Commonwealth or its duly elected statewide constitutional officers, if the recovery sought and received is for specific individuals identified as parties to the action either by individual Social Security number, other individual identifying number, or by the individual's proper name.*
- (8) *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.

Section 2. KRS 15.020 is amended to read as follows:

The Attorney General is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his written opinion touching any of their official duties, and shall prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law, except when modified by statutory enactment. He shall communicate with the Legislative Research Commission as required by KRS 418.075. ***Except as otherwise provided in subsection (8) of Section 1 of this Act and Section 8 of this Act***, he shall appear for the Commonwealth in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter his appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of him by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his or its official duties, except where it is made the duty of the Commonwealth's attorney or county attorney to represent the Commonwealth. When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment. ***If any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any action, including an ex rel. action where the Attorney General has entered an appearance or is a party according to statutory or common law authority, those funds shall be handled under Section 1 of this Act.***

Section 3. KRS 15.060 is amended to read as follows:

The Attorney General shall:

- (1) With the assistance of the Auditor of Public Accounts and the Revenue Cabinet, investigate the condition of all unsatisfied claims, demands, accounts and judgments in favor of the Commonwealth.
- (2) When he believes that any fraudulent, erroneous or illegal fee bill, account, credit, charge or claim has been erroneously or improperly approved, allowed or paid out of the Treasury to any person, institute the necessary actions to recover the same. To this end he may employ assistants and experts to assist in examining the fee bills, accounts, settlements, credits and claims, and the books, records and papers of any of the officers of the Commonwealth.
- (3) Institute the necessary actions to collect and cause the payment into the Treasury of all unsatisfied claims, demands, accounts and judgments in favor of the Commonwealth, except where specific statutory authority is given the Revenue Cabinet to do so.
- (4) ***Comply with Section 1 of this Act, if any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any legal action, including an ex rel. action in which the Attorney General has entered an appearance or is a party under statutory or common law authority.***

SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

KRS 367.190, 367.200, 367.210, 367.220 and KRS 367.110 to 367.360 to the contrary notwithstanding, if funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth in a legal action, including an ex rel. action in which the Attorney General has entered an appearance or is a party under statutory or common law authority, those funds recovered shall be handled in accordance with Section 1 of this Act.

Section 5. The provisions of subsection (3) of Section 1 of this Act shall apply to the settlement of the actions set out in Section 1(1)(d) of this Act and specifically to the proceeds of a settlement currently in a restricted account in the Finance and Administration Cabinet, titled the "Anthem Settlement Fund" pursuant to Agreed Order, entered on December 16, 1999, in the case of Commonwealth of Kentucky, ex rel., Attorney General Albert B. Chandler, III, v. Anthem Insurance Companies, Inc., Southeastern Group, Inc., Southeastern United Medigroup, Inc., Franklin Circuit Court, Division No. I, 97-CI-01566.

Section 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 7. Because it is critical that funds or assets acquired through litigation by or on behalf of the Commonwealth be properly appropriated by the General Assembly and disbursed in an accountable, orderly and appropriate fashion, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Section 8. Notwithstanding any statute or common law to the contrary, and except as provided in this section, 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 any portion of this Act. State funds and employee time shall not be expended by any person or agency in support of such a challenge. If the constitutionality of any portion of this Act 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.

Section 9. The common law is specifically abrogated to the extent inconsistent with the provisions of Sections 1 to 8 of this Act.

Approved April 21, 2000