AN ACT relating to public agencies and declaring an emergency.

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

Section 1. KRS 61.810 is amended to read as follows:

(1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:

(a) Deliberations for decisions of the Kentucky Parole Board;

(b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;

(c) Discussions of proposed or pending litigation against or on behalf of the public agency;

(d) Grand and petit jury sessions;

(e) Collective bargaining negotiations between public employers and their employees or their representatives;

(f) Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;

(g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;

(h) State and local cabinet meetings and executive cabinet meetings;

(i) Committees of the General Assembly other than standing committees;

(j) Deliberations of judicial or quasi-judicial bodies regarding individual

adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;

(k) ***That portion of a meeting devoted to a discussion of a specific public record exempted from disclosure under subsection (1)(i) of Section 3 of this Act. However, that portion of any public agency meeting shall not be closed to a member of the Kentucky General Assembly;***

(l) Meetings which federal or state law specifically require to be conducted in privacy; and

(m)[~~(l)~~] Meetings which the Constitution provides shall be held in secret.

(2) Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

Section 2. KRS 61.815 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

(a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;

(b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;

(c) No final action may be taken at a closed session; and

(d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

(2) Public agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k),~~[and]~~ (l)**,** ***and (m)*** of subsection (1) of KRS 61.810 shall be excluded from the requirements of subsection (1) of this section.

Section 3. KRS 61.878 is amended to read as follows:

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

(c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and

maintained:

a. In conjunction with an application for or the administration of a loan or grant;

b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) ***1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:***

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

2. As used in this paragraph, "terrorist act" means a criminal act intended to:

a. Intimidate or coerce a public agency or all or part of the civilian population;

b. Disrupt a system identified in subparagraph 1.f. of this

paragraph; or

c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Office for Security Coordination and the Attorney General;

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs;

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law;

(j) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(k)[~~(j)~~] Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(l)[~~(k)~~] All public records or information the disclosure of which is prohibited by federal law or regulation; and

(m)[~~(l)~~] Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the

right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Section 4. KRS 313.130 is amended to read as follows:

The board may issue a private admonishment, reprimand, or place on probation, or may revoke, suspend, refuse to renew, or refuse to issue a license to any dentist for any of the following causes:

(1) Conviction of any felony or conviction of only those misdemeanors involving moral turpitude, in which case the record of conviction or a copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence.

(2) Renting or lending to any person his license or diploma to be used as a license or diploma, or illegally or fraudulently obtaining a license from the board.

(3) Unprofessional conduct, gross ignorance, or inefficiency in his profession or failure to accumulate a sufficient number of points for continuing dental education as prescribed by the board under the provisions of KRS 313.080.

(4) Violating any of the provisions of this chapter or any lawful order, rule, or regulation made or issued under the provisions of this chapter.

(5) Addiction to a drug habit.

(6) Chronic or persistent alcoholism.

(7) Such physical or mental disability, or other condition, that continued practice would be dangerous to patients or to the public.

A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)***(m)***~~[(l)]~~. A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.

Section 5. KRS 319.082 is amended to read as follows:

(1) The board may suspend, revoke, or refuse to issue or renew a license; may accept an assurance of voluntary compliance; restrict, or place a credential holder on probation; or issue an administrative reprimand or private admonishment upon proof that the credential holder has:

(a) Committed any act involving moral turpitude, dishonesty, or corruption, relating to the practice of psychology, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of such a crime, the judgment and sentence is presumptive evidence at the ensuing disciplinary hearing of the guilt of the licensee or applicant of the crime described in the indictment or information and of the person's violation of the statute on which it is based. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the

conviction and all proceedings in which the sentence has been deferred or suspended;

(b) Misrepresented or concealed a material fact in obtaining a license, or in reinstatement thereof;

(c) Committed any unfair, false, misleading, or deceptive act or practice;

(d) Been incompetent or negligent in the practice of psychology;

(e) Practiced psychology while under the suspension, revocation, or restriction of the individual's license to practice by competent authority in any state, federal, or foreign jurisdiction;

(f) Violated any state statute or administrative regulation governing the practice of psychology;

(g) Unlawfully failed to cooperate with the board by:

1. Not furnishing any papers or documents requested by the board;
2. Not furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;
3. Not appearing before the board at the time and place designated; or
4. Not properly responding to subpoenas issued by the board;

(h) Failed to comply with an order issued by the board or an assurance of voluntary compliance;

(i) Aided or abetted an unlicensed person to practice when a license or certificate is required;

(j) Grossly overcharged for professional services;

(k) Practiced beyond the scope demonstrated by an appropriate combination of knowledge, skill, experience, training, and education;

(l) Failed to provide adequate supervision for certified psychologists, licensed psychological associates, applicants for licensure, or other staff;

(m) Been convicted of any misdemeanor or felony relating to the practice of

psychology. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended;

(n) Physically abused or had sexual contact with a patient, client, student, or supervisee;

(o) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a client, patient, or student, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010 with a client, patient, student, or supervisee;

(p) Improperly divulged confidential information;

(q) Exercised undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;

(r) Showed an inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition; or

(s) Failed to comply with the requirements of the board for continuing education.

(2) Private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)***(m)***~~[(l)]~~ and shall not constitute disciplinary action, but may be used by the board for statistical purposes or in subsequent disciplinary action against the credential holder or applicant.

(3) No unlawful act or violation of any provision of this chapter by any credential holder employed or supervised by a licensed psychologist shall be cause for the revocation of the supervisor's license, unless the board finds that the licensed psychologist had knowledge of it.

(4) Three (3) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate his or her petition and may reinstate his or her license upon finding that the former licensee has complied with the provisions of this chapter and administrative regulations promulgated by the board and is again able to engage in the practice of psychology with reasonable skill, competency, and safety to the public.

(5) The board may, at its own discretion, reconsider, modify, or reverse its probations, suspensions, revocations, restrictions, or refusals to issue or renew licenses at any time.

Section 6. KRS 327.070 is amended to read as follows:

(1) The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B may take any one (1) or a combination of the following actions against any licensee, certificate holder, or applicant:

(a) Refuse to license or certify any applicant;

(b) Refuse to renew the license or certificate of any person;

(c) Suspend or revoke or place on probation the license or certificate of any person;

(d) Impose restrictions on the scope of practice of any person;

(e) Issue an administrative reprimand to any person;

(f) Issue a private admonishment to any person; and

(g) Impose fines for violations of this chapter not to exceed two thousand five hundred dollars ($2,500).

(2) The following acts by a licensee, certificate holder, or applicant may be considered cause for disciplinary action:

(a) Indulgence in excessive use of alcoholic beverages or abusive use of controlled substances;

(b) Engaging in, permitting, or attempting to engage in or permit the performance of substandard patient care by himself or by persons working under his supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;

(c) Having engaged in or attempted to engage in a course of lewd or immoral conduct with any person:

1. While that person is a patient of a health care facility defined by KRS 216B.015 where the physical therapist or physical therapist's assistant provides physical therapy services; or

2. While that person is a patient or client of the physical therapist or physical therapist's assistant;

(d) Having sexual contact, as defined by KRS 510.010(7), without the consent of both parties, with an employee or coworker of the licensee or certificate holder;

(e) Sexually harassing an employee or coworker of the licensee or certificate holder;

(f) Conviction of a felony or misdemeanor in the courts of this state or any other state, territory, or country which affects his ability to continue to practice competently and safely on the public. "Conviction," as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

(g) Obtaining or attempting to obtain a license or certificate by fraud or material misrepresentation or making any other false statement to the board;

(h) Engaging in fraud or material deception in the delivery of professional services, including reimbursement, or advertising services in a false or misleading manner;

(i) Evidence of gross negligence or gross incompetence in his practice of

physical therapy;

(j) Documentation of being declared mentally disabled by a court of competent jurisdiction and not thereafter having had his rights restored;

(k) Failing or refusing to obey any lawful order or administrative regulation of the board;

(l) Promoting for personal gain an unnecessary device, treatment, procedure, or service, or directing or requiring a patient to purchase a device, treatment, procedure, or service from a facility or business in which he has a financial interest; and

(m) Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.

(3) A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)***(m)***~~[(l)]~~. A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.

Section 7. KRS 342.347 is amended to read as follows:

(1) The commissioner or his designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds or self-insured groups and shall have free access to books and documents relating to the self-insurance activities of the entity. The commissioner shall so examine each self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)***(k)***~~[(j)]~~.

(2) All individual self-insured employers and self-insurance groups shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year. For self-

insurance groups, the financial statement shall include an actuarial opinion by a member or fellow of the Casualty Actuarial Society and a supporting reserve study regarding reserves for claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods used. Such documentation shall include, but not be limited to, the following:

(a) Case reserves on known cases by accident period, both for losses and allocated loss adjustment expenses;

(b) Estimates of claims that have been incurred but not reported by accident period for both losses and allocated loss adjustment expenses;

(c) The method of discounting and the discount rate selected for case reserves and incurred but not reported losses; and

(d) Estimates of ultimate losses and allocated loss adjustment expenses for the prospective accident period and unallocated loss adjustment reserves.

(3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the commissioners' designees, and expert assistance as necessarily incurred in the examination.

(4) The Department of Insurance shall approve the form and contents of excess insurance policies and upon request of the commissioner shall review the application for approval of any self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.

(5) Not less often than biennially the commissioner of the Department of Insurance shall review the activities, procedures, administrative regulations, and policies of the Department of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the

oversight of self-insureds so that payment of liabilities to workers under this chapter is assured.

Section 8. Whereas Kentucky's homeland security should be enhanced as fast as possible, 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.