

CHAPTER 64**(SB 61)**

AN ACT relating to the licensure of fee-based pastoral counselors.

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

➔Section 1. KRS 202A.400 is amended to read as follows:

- (1) No monetary liability and no cause of action shall arise against any mental health professional for failing to predict, warn of or take precautions to provide protection from a patient's violent behavior, unless the patient has communicated to the mental health professional an actual threat of physical violence against a clearly identified or reasonably identifiable victim, or unless the patient has communicated to the mental health professional an actual threat of some specific violent act.
- (2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under the limited circumstances specified in subsection (1) of this section. The duty to warn a clearly or reasonably identifiable victim shall be discharged by the mental health professional if reasonable efforts are made to communicate the threat to the victim, and to notify the police department closest to the patient's and the victim's residence of the threat of violence. When the patient has communicated to the mental health professional an actual threat of some specific violent act and no particular victim is identifiable, the duty to warn has been discharged if reasonable efforts are made to communicate the threat to law enforcement authorities. The duty to take reasonable precaution to provide protection from violent behavior shall be satisfied if reasonable efforts are made to seek civil commitment of the patient under this chapter.
- (3) No monetary liability and no cause of action shall arise against any mental health professional for confidences disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.
- (4) For purposes of this section, "mental health professional" means:
 - (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in conducting mental health services;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States engaged in conducting mental health services;
 - (c) A psychologist, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
 - (d) A registered nurse licensed under the provisions of KRS Chapter 314 engaged in providing mental health services;
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 engaged in providing mental health services;
 - (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 engaged in providing mental health services;
 - (g) A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 engaged in providing mental health services;
 - (h) An art therapist certified under KRS 309.130 engaged in providing mental health services; or
 - (i) A ~~fee-based~~ pastoral counselor *licensed*~~certified~~ under the provisions of KRS 335.600 to 335.699 engaged in providing mental health services.

➔Section 2. KRS 210.366 is amended to read as follows:

- (1) As used in this section:
 - (a) "Board" means the Kentucky Board of Social Work, Kentucky Board of Licensure of Marriage and Family Therapists, Kentucky Board of Licensed Professional Counselors, Kentucky Board of *Licensure for*~~Certification of Fee-Based~~ Pastoral Counselors, Kentucky Board of Certification of Alcohol and

Drug Counselors, Kentucky Board of Examiners of Psychology, and Kentucky Board of Licensure for Occupational Therapy; and

- (b) "Training program in suicide assessment, treatment, and management" means an empirically supported training program approved by the boards that contains suicide assessment including screening and referral, suicide treatment, and suicide management. A board may approve a training program that excludes one (1) of the elements if the element is inappropriate for the profession in question or inappropriate for the level of licensure or credentialing of that profession based on the profession's scope of practice. A training program that includes only screening and referral elements shall be at least three (3) hours in length. All other training programs approved under this section shall be at least six (6) hours in length.
- (2) Beginning January 1, 2015, each of the following professionals certified or licensed under KRS Title XXVI shall, at least once every six (6) years, complete a training program in suicide assessment, treatment, and management that is approved, in administrative regulations, by the respective boards:
- (a) A social worker, marriage and family therapist, professional counselor, or ~~fee-based~~ pastoral counselor certified or licensed under KRS Chapter 335;
 - (b) An alcohol and drug counselor certified under KRS Chapter 309;
 - (c) A psychologist licensed or certified under KRS Chapter 319; and
 - (d) An occupational therapist licensed under KRS Chapter 319A.
- (3) (a) Except as provided in paragraph (b) of this subsection, a professional listed in subsection (2) of this section must complete the first training required by this section by July 2016.
- (b) A professional listed in subsection (2) of this section applying for initial licensure or certification on or after June 25, 2013, may delay completion of the first training required by this section for six (6) years after initial licensure or certification if he or she can demonstrate successful completion of a six (6) hour academic training program in suicide assessment, treatment, and management that:
- 1. Was completed no more than six (6) years prior to the application for initial licensure or certification; and
 - 2. Is listed on the best practices registry of the American Foundation for Suicide Prevention and the Suicide Prevention Resource Center.
- (4) The hours spent completing a training program in suicide assessment, treatment, and management under this section count toward meeting any applicable continuing education requirements for each profession.
- (5) A board may, by administrative regulation, specify minimum training and experience that is sufficient to exempt a professional from the training requirements in subsection (2) of this section.
- (6) (a) The cabinet shall develop a model list of training programs in suicide assessment, treatment, and management.
- (b) When developing the model list, the cabinet shall:
- 1. Consider suicide assessment, treatment, and management training programs of at least six (6) hours in length listed on the best practices registry of the American Foundation for Suicide Prevention and the Suicide Prevention Resource Center; and
 - 2. Consult with the boards, public and private institutions of higher education, experts in suicide assessment, treatment, and management, and affected professional associations.
- (c) The cabinet shall report the model list of training programs to the Interim Joint Committee on Health and Welfare no later than December 15, 2014.
- (7) Nothing in this section may be interpreted to expand or limit the scope of practice of any profession regulated under KRS Title XXVI.
- (8) The cabinet and the boards affected by this section shall adopt any administrative regulations necessary to implement this section.

➔Section 3. KRS 335.600 is amended to read as follows:

The purpose of KRS 335.600 to 335.699 and KRE 506 is to protect the public safety and welfare by providing for the *licensure*~~[certification]~~ and regulation of persons engaged in the practice of ~~[fee-based]~~ pastoral counseling. As such, it is not the intent of KRS 335.600 to 335.699 and KRE 506 to advance or inhibit religion, to in any way affect the performance of ordinary duties or functions of the clergy, or to foster excessive government entanglement with religion.

➔Section 4. KRS 335.605 is amended to read as follows:

As used in KRS 335.600 to 335.699, unless the context requires otherwise:

- (1) "Board" means the Kentucky Board of *Licensure for*~~[Certification of Fee-Based]~~ Pastoral Counselors;
- (2) "*Kentucky licensed*~~[Certified fee-based]~~ pastoral counselor" or "*license*~~[certificate]~~ holder" means an ordained minister or the denominational equivalent who:
 - (a) Has completed a master of divinity degree and an advanced degree program in pastoral counseling, or an equivalent course of study approved by the board, from an accredited seminary or other accredited educational institution;
 - (b) Is *licensed*~~[certified]~~ by the board; and
 - (c) *Engages in*~~[Receives fees or other compensation for]~~ the practice of pastoral counseling;
- (3) "~~[Fee-based]~~ Pastoral counseling" means the practice of pastoral counseling at an advanced level, equivalent to the standards of practice set by the American Association of Pastoral Counselors for the "fellow" level, that involves integrating spiritual resources with insights from the behavioral sciences~~[-, in exchange for a fee or other compensation]~~; and
- (4) "Ordained minister or the denominational equivalent" means a person who has been called, elected, or otherwise authorized by a church, synagogue, denomination, or faith group through ordination, consecration, or equivalent means, to exercise within and on the behalf of the denomination or faith group specific religious leadership and service that furthers its purpose and mission.

➔Section 5. KRS 335.610 is amended to read as follows:

The Kentucky Board of *Licensure for*~~[Certification of Fee-Based]~~ Pastoral Counselors is hereby created.

- (1) The board shall be composed of five (5) members who shall be appointed by the Governor to serve four (4) year terms.
 - (a) Four (4) members shall be *Kentucky licensed*~~[certified fee-based]~~ pastoral counselors actively engaged in the practice or teaching of pastoral counseling.
 - (b) One (1) member shall be a citizen at large who is not associated with, or financially interested in, the practice or business of ~~[fee-based]~~ pastoral counseling.
- (2) All reappointments to the board and vacancies on the board shall be filled by the Governor from a list of three (3) nominees for each vacancy, submitted by the executive committee of the Kentucky Association of Pastoral Counselors. In selecting the three (3) nominees to be submitted to the Governor, the executive committee shall consider all nominations, including self-nominations, from all~~[fee-based]~~ pastoral counselors *licensed*~~[certified]~~ under the provisions of KRS 335.600 to 335.699.
- (3) No member shall serve more than two (2) consecutive terms.
- (4) The chair of the board may not serve more than two (2) years.
- (5) *Each member shall serve until his or her successor is appointed and qualified.*

➔Section 6. KRS 335.615 is amended to read as follows:

The board shall meet at least twice a year~~[-, in the spring and the fall]~~. The board shall elect a chair at the fall meeting who shall serve a one (1) year term. The board shall:

- (1) Approve or deny applications for *licensure*~~[certification]~~ submitted according to the provisions of KRS 335.600 to 335.699;
- (2) Approve the examination required of applicants for *licensure*~~[certification]~~, provide for the administration and grading of the examination, and provide for other matters relating to *licensure*~~[certification]~~ in the profession of ~~[fee-based]~~ pastoral counseling as promulgated in administrative regulations;

- (3) Review the credentials of ~~license~~~~[certificate]~~ holders to determine eligibility for ~~license~~~~[certification]~~ renewal, including payment of fees authorized in KRS 335.625;
- (4) ~~License~~~~[Certify]~~ those ~~fee-based~~ pastoral counseling applicants who satisfy the requirements of KRS 335.600 to 335.699, including payment of fees authorized in KRS 335.620;
- (5) Adopt a code of ethics for **Kentucky licensed**~~[certified fee-based]~~ pastoral counselors by promulgation of administrative regulations;
- (6) Promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purposes of KRS 335.600 to 335.699;
- (7) Investigate suspected violations of KRS 335.600 to 335.699;
- (8) Institute and maintain actions to restrain or enjoin persons who violate the ~~licensure~~~~[certification]~~ provisions of KRS 335.600 to 335.699; and
- (9) Submit an annual report to the Governor and to the Legislative Research Commission by January 1 of each year, listing all hearings conducted by the board, any decisions rendered, and a current roster of all **Kentucky licensed**~~[certified fee-based]~~ pastoral counselors.

➔Section 7. KRS 335.620 is amended to read as follows:

- (1) An applicant for ~~licensure~~~~[certification]~~ as a ~~fee-based~~ pastoral counselor shall:
 - (a)~~[(1)]~~ Pay the board an initial fee for ~~licensure~~~~[certification]~~ that shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A;
 - (b)~~[(2)]~~ Be at least twenty-one (21) years of age;
 - (c)~~[(3)]~~ Reside or be employed in the Commonwealth of Kentucky;
 - (d)~~[(4)]~~ Have completed a master of divinity degree or its equivalent with a minimum of ninety (90) hours from a seminary accredited by the Association of Theological Schools or an equivalent course of study as defined by the board by promulgation of administrative regulations;
 - (e)~~[(5)]~~ Have completed each of the following:
 - 1.~~[(a)]~~ At least one thousand three hundred seventy-five (1,375) hours in the practice of supervised pastoral counseling acceptable to the board, subsequent to being granted a master's degree; and
 - 2.~~[(b)]~~ A minimum of two hundred fifty (250) hours of clinical supervision acceptable to the board;
 - (f)~~[(6)]~~ Be an ordained minister or the denominational equivalent, as determined by the applicant's denomination or faith group, and have been endorsed by that denomination or faith group to function as a ~~fee-based~~ pastoral counselor;
 - (g)~~[(7)]~~ Hold an advanced degree or its equivalent beyond the master of divinity degree with special concentration in the theory and practice of pastoral counseling and which requires at least one (1) year of academic work beyond the first professional degree; and
 - (h)~~[(8)]~~ ~~[If the applicant has not received certification before July 1, 1999,]~~Pass a written examination approved by the board.
- (2) ***If an applicant has been issued a certificate in pastoral counseling by the board prior to January 1, 2015, and maintains that certificate in good standing, the board shall issue the applicant a license as a pastoral counselor upon the applicant's payment of a renewal fee and completion of a renewal process as authorized by Section 8 of this Act and as prescribed by the board through the promulgation of administrative regulations.***

➔Section 8. KRS 335.625 is amended to read as follows:

- (1) ~~Licensure~~~~[Certification]~~ issued under KRS 335.615 shall be renewed every three (3) years upon:
 - (a) Payment of a renewal fee established by the board and promulgated by administrative regulation in accordance with KRS Chapter 13A, but not to exceed three hundred dollars (\$300); and
 - (b) Documentation of twenty (20) hours of continuing education completed since the date of last renewal or original issue, whichever is later.

- (2) Any *license*~~[certificate]~~ not renewed within three (3) months of its renewal date shall expire. The board may reinstate the *license*~~[certificate]~~ upon payment of the renewal fee and meeting the continuing education requirement set forth in ~~[subparagraph (b) of]~~ subsection (1)(b) of this section within one (1) year after the renewal date.

➔Section 9. KRS 335.630 is amended to read as follows:

- (1) The provisions of KRS 335.600 to 335.699 shall not apply to persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes, including, but not limited to, physicians, social workers, psychologists, nurses, marriage and family therapists, art therapists, or students within accredited training programs of these professions. *Except as provided in subsection (2) of this section*, nothing in KRS 335.600 to 335.699 shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which these persons hold themselves out to the public.
- (2) No person shall use the title "*Kentucky licensed*~~[certified fee based]~~ pastoral counselor" or "*KLPC*," or any title or abbreviation that is substantially the same, or hold himself or herself out as *having this status* or as a *Kentucky licensed*~~[certified fee based]~~ pastoral counselor, unless *licensed*~~[certified]~~ by the board.
- (3) Nothing in KRS 335.600 to 335.699 shall be construed to alter, amend, or interfere with the practice of employment counseling, job placement counseling, or school counseling.
- (4) Nothing in KRS 335.600 to 335.699 shall be construed as regulating or limiting the ministry or services of a minister, including pastoral care and counseling, otherwise authorized by a church, denomination, or faith group to perform the ordinary duties or functions of the clergy.
- (5) Nothing in KRS 335.600 to 335.699 shall be construed to apply to the activities and services of a student or trainee in pastoral counseling who is pursuing a program of studies in pastoral counseling at an accredited institution of higher learning if the activities are performed under supervision and constitute a part of the supervised program of study, and if the person is designated a pastoral counseling intern or student in training.
- (6) The provisions of KRS 335.600 to 335.699 shall not apply to Christian Science practitioners.

➔Section 10. KRS 335.635 is amended to read as follows:

Any person or organization, including the board upon its own volition, may file with the board a written complaint alleging violation of any provision of KRS 335.600 to 335.699. The board shall cause the complaint to be investigated.

- (1) If the investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before refusing to renew, revoking, reprimanding, imposing probation or an administrative fine, or any combination of actions regarding any *license*~~[certificate]~~ holder.
- (2) After denying an application for *licensure*~~[certification]~~ under KRS 335.600 to 335.699, the board may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.
- (3) The board may reconsider, modify, or reverse its decision on any disciplinary action.
- (4) Any party aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.

➔Section 11. KRS 335.640 is amended to read as follows:

A person whose *license*~~[certificate]~~ has been revoked may apply for reinstatement no earlier than one (1) year from the date of revocation, in accordance with the procedures established by the board by administrative regulation under KRS Chapter 13A.

➔Section 12. KRS 335.650 is amended to read as follows:

The Board of *Licensure for*~~[Certification of Fee Based]~~ Pastoral Counselors fund is hereby created in the State Treasury. All funds received by the board under the provisions of KRS 335.600 to 335.699 shall be deposited with the State Treasurer for credit to the board fund. The fund shall be invested as all other state funds are invested, and income from investment of the fund shall be credited to the fund. The balance remaining in the fund at the end of any fiscal year shall not lapse to the general fund. The money in the board fund shall be appropriated to the board and shall be used for the purpose of carrying out the provisions of KRS 335.600 to 335.699.

➔Section 13. KRS 335.699 is amended to read as follows:

If the board finds any applicant or ~~license~~~~certificate~~ holder whom it regulates under KRS 335.600 to 335.699 has violated the provisions of KRS 335.600 to 335.699 or any administrative regulation promulgated under the authority granted to the board, the board may issue an order imposing one (1) or more of the following penalties:

- (1) Denial of an application for ~~licensure~~~~certification~~, either temporarily or permanently;
- (2) Revocation of a ~~license~~~~certificate~~ or an application for ~~licensure~~~~certification~~, either temporarily or permanently;
- (3) Imposition of an administrative fine not to exceed one thousand dollars (\$1,000);
- (4) Imposition of a requirement for supervision of the applicant or ~~license~~~~certificate~~ holder;
- (5) Restriction of the ~~license~~~~certificate~~ holder's ability to supervise others; and
- (6) Issuance of a reprimand.

➔Section 14. KRS 645.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, unless the context requires otherwise:

- (1) "Convalescent leave" means an authorized release not to exceed ninety (90) days of a child admitted to a hospital under this chapter;
- (2) "Danger to self or others" means that it is shown by substantial proof that in the near future the child may attempt suicide or may cause substantial physical harm or threat of substantial physical harm to self or others, as evidenced by recent threats or overt acts, including acts by which the child deprives self or others of the basic means of survival, including reasonable shelter, food or clothing. In determining whether a child presents a danger to self, factors to be considered shall include, but shall not be limited to, an established pattern of past dangerous behavior;
- (3) "Hospital" means a licensed private or public institution, health care facility, or part thereof, approved by the cabinet to treat children who are mentally ill;
- (4) "Least restrictive alternative" means the treatment and conditions of treatment for a child which, separately and in combination:
 - (a) Are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child; and
 - (b) Involve no inpatient care restrictions on physical movement except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury.

In determining the least restrictive alternative, factors to be considered shall include, but not be limited to, the likelihood, based on the child's prior outpatient treatment, that the child will benefit from outpatient treatment;
- (5) "Mental health facility" means a residential or nonresidential service providing children psychological or psychiatric treatment for emotional, mental, or behavioral problems;
- (6) "Mental health group home" means a community-based facility established to serve not less than four (4) nor more than eight (8) mentally ill children with a treatment program developed and supervised by a qualified mental health professional. Mental health group homes shall not be adjacent to or part of a residential treatment facility or a hospital;
- (7) "Mental health professional" means:
 - (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in conducting mental health services;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States engaged in conducting mental health services;
 - (c) A psychologist, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
 - (d) A registered nurse licensed under the provisions of KRS Chapter 314 engaged in providing mental health services;
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 engaged in providing mental health services;

- (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 engaged in providing mental health services;
 - (g) A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 engaged in providing mental health services;
 - (h) An art therapist certified under KRS 309.130 engaged in providing mental health services; or
 - (i) A ~~fee-based~~ pastoral counselor **licensed**~~certified~~ under the provisions of KRS 335.600 to 335.699 engaged in providing mental health services; and
- (8) "Mentally ill child" means that considering the child's age and development, the child has a substantially impaired capacity to use self-control, judgment or discretion in the conduct of the child's affairs and social relations, the child's behavior is maladaptive or the child exhibits recognized emotional symptoms which can be related to physiological, psychological or social factors.

➔Section 15. KRE 0506 is amended to read as follows:

- (a) Definitions. As used in this rule:
 - (1) A "counselor" includes:
 - (A) A certified school counselor who meets the requirements of the Kentucky Board of Education and who is duly appointed and regularly employed for the purpose of counseling in a public or private school of this state;
 - (B) A sexual assault counselor, who is a person engaged in a rape crisis center, as defined in KRS Chapter 421, who has undergone forty (40) hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault;
 - (C) A certified professional art therapist who is engaged to conduct art therapy under KRS 309.130 to 309.1399;
 - (D) A licensed marriage and family therapist as defined in KRS 335.300 who is engaged to conduct marriage and family therapy pursuant to KRS 335.300 to 335.399;
 - (E) A licensed professional clinical counselor or a licensed professional counselor associate as defined in KRS 335.500;
 - (F) An individual who provides crisis response services as a member of the community crisis response team or local community crisis response team under KRS 36.250 to 36.270;
 - (G) A victim advocate as defined in KRS 421.570 except a victim advocate who is employed by a Commonwealth's attorney under KRS 15.760 or a county attorney pursuant to KRS 69.350; and
 - (H) A **Kentucky licensed**~~certified fee-based~~ pastoral counselor as defined in **Section 4 of this Act**~~KRS 335.600~~ who is engaged to conduct~~fee-based~~ pastoral counseling under KRS 335.600 to 335.699.
 - (2) A "client" is a person who consults or is interviewed or assisted by a counselor for the purpose of obtaining professional or crisis response services from the counselor.
 - (3) A communication is "confidential" if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.
- (b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.
- (c) Who may claim the privilege. The privilege may be claimed by the client, his guardian or conservator, or the personal representative of a deceased client. The person who was the counselor (or that person's employer) may claim the privilege in the absence of the client, but only on behalf of the client.
- (d) Exceptions. There is no privilege under this rule for any relevant communication:

ACTS OF THE GENERAL ASSEMBLY

- (1) If the client is asserting his physical, mental, or emotional condition as an element of a claim or defense; or, after the client's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.
- (2) If the judge finds:
 - (A) That the substance of the communication is relevant to an essential issue in the case;
 - (B) That there are no available alternate means to obtain the substantial equivalent of the communication; and
 - (C) That the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.

Signed by Governor April 9, 2014.