

**CHAPTER 20****( HB 344 )**

AN ACT relating to Kentucky All Schedule Prescription Electronic Reporting.

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

➔Section 1. KRS 218A.240 is amended to read as follows:

- (1) All police officers and deputy sheriffs directly employed full-time by state, county, city, urban-county, or consolidated local governments, the Department of Kentucky State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.
- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health and Family Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths; to enter upon premises at all times for the purpose of making inspections; to seize evidence; to interrogate all persons; to require the production of prescriptions, of books, papers, documents, or other evidence; to employ special investigators; and to expend funds for the purpose of obtaining evidence and to use data obtained under KRS 218A.202 in any administrative proceeding before the cabinet.
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health and Family Services.
- (4) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
  - (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
  - (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
  - (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his or her costs, including a reasonable attorney's fee.
  - (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.420, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his or her percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) The Cabinet for Health and Family Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.
- (7)
  - (a) The Cabinet for Health and Family Services shall proactively use the data compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a state licensing board listed in KRS 218A.205 if a report or analysis conducted under this subsection indicates that further investigation about improper, inappropriate or illegal

prescribing or dispensing may be necessary by the board. The board shall consider each report and may, after giving due consideration to areas of practice, specialties, board certifications, and appropriate standards of care, request and receive a follow-up report or analysis containing relevant information as to the prescriber or dispenser and his or her patients.

- (b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure, the Board of Nursing, the Office of Drug Control Policy, and the Board of Pharmacy, to be used to generate public trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850. The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system. Except as provided in subsection (8) of this section, these trend reports shall not identify an individual prescriber, dispenser, or patient. Peace officers authorized to receive data under KRS 218A.202 may request trend reports not specifically published pursuant to this paragraph except that the report shall not identify an individual prescriber, dispenser, or patient.
- (8) If the cabinet deems it to be necessary and appropriate, upon the request of a state licensing board listed in KRS 218A.205, the cabinet shall provide the requesting board with the identity of prescribers, dispensers, and patients used to compile a specific trend report.
- (9) Any hospital or other health care facility may petition the cabinet to review data from the electronic system specified in KRS 218A.202 as it relates to employees of that facility to determine if inappropriate prescribing or dispensing practices are occurring. The cabinet may initiate any investigation in such cases as he or she determines is appropriate, and may request the assistance from the hospitals or health care facilities in the investigation.
- (10) *If the office or clinic of a practitioner abruptly closes or is subject to emergency closure or other enforcement action resulting in a suspension or termination of the practitioner's controlled substance prescribing privileges, the Cabinet for Health and Family Services or applicable professional licensing board may use data from the electronic system established under KRS 218A.202 to issue notification as soon as practicable to the practitioner's patients to help prevent the disruption of medical treatment and promote continuity of care.*

➔Section 2. KRS 218A.245 is amended to read as follows:

- (1) The secretary of the Cabinet for Health and Family Services may enter into reciprocal agreements or a contract, either directly with any other state or states of the United States or any jurisdiction, county, or political subdivision thereof, or with an organization administering the exchange of interstate data on behalf of the prescription monitoring program of one (1) or more states or jurisdictions, to share prescription drug monitoring information if the other prescription drug monitoring program or data exchange program is compatible with the program in Kentucky. If the secretary elects to evaluate the prescription drug monitoring program of another state, jurisdiction, or organization as authorized by this section, priority shall be given to a state or jurisdiction that is contiguous with the borders of the Commonwealth or an organization that offers connectivity with a contiguous state or jurisdiction.
- (2) In determining compatibility, the secretary shall consider:
  - (a) The essential purposes of the program and the success of the program in fulfilling those purposes;
  - (b) The safeguards for privacy of patient records and its success in protecting patient privacy;
  - (c) The persons authorized to view the data collected by the program;
  - (d) The schedules of controlled substances monitored;
  - (e) The data required to be submitted on each prescription or dispensing;
  - (f) Any implementation criteria deemed essential for a thorough comparison; and
  - (g) The costs and benefits to the Commonwealth in mutually sharing particular information available in the Commonwealth's database with the program under consideration.
- (3) The secretary shall review any agreement on an annual basis to determine its continued compatibility with the Kentucky prescription drug monitoring program.
- (4) ~~The secretary shall prepare an annual report to the Governor and the Legislative Research Commission that summarizes any agreement under this section and that analyzes the effectiveness of that agreement in monitoring the prescribing and dispensing of controlled substances in the Commonwealth.~~

~~(5)~~—]Any agreement between the cabinet and another state, jurisdiction, or organization shall prohibit the sharing of information about a Kentucky resident, practitioner, pharmacist, or other prescriber or dispenser for any purpose not otherwise authorized by this section or KRS 218A.202.

**Signed by Governor March 17, 2020.**