

CHAPTER 99**(SB 191)**

AN ACT relating to substance use disorders.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

(1) *For the purposes of this section only:*

- (a) *"Employee" means a person who has failed a drug screen related to employment; and*
- (b) *"Employer" means an employer who elects to employ a person who has failed a drug screen related to employment.*

(2) *The purpose of this section is to foster economic opportunities for individuals with histories of substance use disorder and to encourage employer participation in substance use disorder treatment programs.*

(3) *The Cabinet for Health and Family Services shall, in conjunction with the Office of Drug Control Policy, promulgate any administrative regulations necessary to implement an employer-facilitated substance use disorder treatment program for employees who have failed an employment-related drug screen. The administrative regulations, at a minimum, shall include provisions:*

- (a) *Enumerating elements necessary in an employer's drug policy if the employer elects to participate in an employer-facilitated substance use disorder treatment program;*
- (b) *Mandating an initial clinical assessment of the employee by a qualified health professional and creation of a written treatment plan;*
- (c) *Containing referral information for clinical assessments of employees, education, and treatment options;*
- (d) *Requiring the employee provide its employer with proof of the employee's active participation in a licensed drug education and substance use disorder treatment program and demonstrated successful compliance with the recommendations of the initial clinical assessment; and*
- (e) *Establishing follow-up drug testing for the employee.*

(4) *The Cabinet for Health and Family Services in conjunction with the Office of Drug Control Policy shall:*

- (a) *Promote voluntary participation for all employers regardless of the number of employees; and*
- (b) *Develop and deliver resources and training for employers including the following information:*
 - 1. *The definition of substance use disorder as defined in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;*
 - 2. *Signs and symptoms of a substance use disorder;*
 - 3. *A list of licensed treatment options for substance use disorder;*
 - 4. *Information about acceptable use of treatment records covered by the federal Health Insurance Portability and Accountability Act;*
 - 5. *Information about substance use disorder treatment, return to use, and supportive work environments for treatment and recovery; and*
 - 6. *A list of qualified health professionals that an employer may use to provide onsite drug abuse prevention education and substance use disorder treatment services for employees.*

(5) *To participate in a treatment program the employee shall:*

- (a) *Provide the employer with a signed consent authorizing the employer to provide and receive documentation confirming the employee's participation and completion of substance use treatment services;*
- (b) *Comply with the employer's drug policy; and*

- (c) *Comply with the administrative regulations promulgated by the Cabinet for Health and Family Services in conjunction with the Office of Drug Control Policy.*
- (6) *To participate in the program an employer shall:*
- (a) *Develop and distribute to persons it employs a written drug policy, procedure, or protocol including, without limit, a test or series of tests to objectively measure substances that can create substance use disorders, that is in compliance with state and federal law;*
 - (b) *Require an employee to participate in recommended drug education and licensed substance use disorder treatment services as a condition of employment;*
 - (c) *Have the right to discipline or terminate an employee who does not comply with the agreed treatment services or the employer's drug policy;*
 - (d) *Comply with the administrative regulations promulgated by the Cabinet for Health and Family Services, and the Office of Drug Control Policy; and*
 - (e) *Secure all records and information concerning an employee's drug test results, treatment assessments, and treatment reports in a confidential manner and shall maintain this information separately from the employee's personnel file. The employer shall share this information:*
 1. *a. Internally only with those in the employee's chain-of-authority who need the information to perform responsibilities related to supervision or support of the employee; and*
 - b. Externally only when the employee has provided specific written authorization to disclose specific facts to specific parties for a specific purpose; or*
 2. *As ordered by the court.*
- (7) *An employer may:*
- (a) *Pay for all or part of the employee's substance use disorder education and treatment services; and*
 - (b) *Accept a voluntary wage assignment from the employee to pay for part of the employee's substance use disorder treatment. The wage assignment shall not reduce the employee's remaining net compensation below the federal minimum wage during any pay period.*
- (8) *If an employer complies with the requirements of this section:*
- (a) *The employer shall not be liable for a civil action alleging negligent hiring, negligent retention, or negligent supervision for a negligent act by the employee as a result of the employee's substance use disorder unless it can be shown that the employer violated subsection (6) of this section, or knew or should have known, that the employee had a recurrence of his or her substance use disorder and was acting under the influence of the substance at the time of the alleged negligent act;*
 - (b) *The employer's participation or nonparticipation in a drug education and substance use disorder treatment program shall not be admissible as evidence in an action against the employer, the employer's agent, or the employer's employee except that it may be admitted as evidence of the participating employer's liability limitation, mitigation of damages, or as evidence of a participating employer's noncompliance with subsection (6) of this section; and*
 - (c) *Referral and treatment for drug education and substance use disorder treatment by the employer shall not be sufficient to constitute compliance with this section unless the employee has complied with all other requirements of this statute and associated administrative regulations.*
- (9) *This section shall not form the basis of any individual private right of action and subsection (8)(a) of this section shall operate as an affirmative defense for which an employer bears the burden of proving compliance. However, nothing in this section shall bar a plaintiff from commencing a cause of action for any common law claim for any injury to person or property or for wrongful death in any civil action alleging negligent hiring, negligent retention, or negligent supervision, against an employer.*
- ➔SECTION 2. A NEW SECTION OF KRS 309.080 TO 309.089 IS CREATED TO READ AS FOLLOWS:
- (1) *An applicant for certification as a certified alcohol and drug counselor associate I shall pay the board the initial fee for certification, and shall:*
- (a) *Be at least eighteen (18) years of age;*

- (b) *Have obtained a high school diploma or high school equivalency diploma;*
 - (c) *Have completed forty (40) classroom hours of board-approved curriculum, twenty (20) hours of which shall have been obtained in the previous two (2) years, that includes:*
 - 1. *Screening assessment and engagement;*
 - 2. *Treatment planning, collaboration, and referral;*
 - 3. *Counseling; and*
 - 4. *Professional and ethical responsibilities;*
 - (d) *Be under the ongoing supervision of a board-approved supervisor for no less than two (2) hours, two (2) times a month in the practice of drug and alcohol counseling; and*
 - (e) *Submit a signed statement agreeing to practice by the code of ethical standards adopted by the board.*
- (2) *During the first twelve (12) months after an initial certificate has been issued, a certified alcohol and drug counselor associate I shall complete at least thirty (30) additional classroom hours of board-approved curriculum as specified in subsection (1)(c)1. to 4. of this section.*

➔SECTION 3. A NEW SECTION OF KRS 309.080 TO 309.089 IS CREATED TO READ AS FOLLOWS:

An applicant for certification as a certified alcohol and drug counselor associate II shall pay the board the initial fee for certification, and shall:

- (1) *Be certified by the board as a certified alcohol and drug counselor associate I for a period of at least eight (8) months;*
- (2) *Have four hundred (400) hours of documented chemical dependency counseling-related compensated work or supervised internship experience of which a minimum of eighty (80) hours shall be in chemical dependency counseling and all of which shall have been under the direct supervision of:*
 - (a) *A certified alcohol and drug counselor who has at least two (2) years of post-certification experience and has attended the board-sponsored supervision training; or*
 - (b) *A licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training; and*
- (3) *Have seventy (70) hours of approved classroom hours of board-approved curriculum of which twenty (20) hours shall have been obtained in the previous two (2) years and shall be in addition to the classroom hours required in Section 2 of this Act for a certified alcohol and drug counselor associate I.*

➔Section 4. KRS 309.080 is amended to read as follows:

As used in KRS 309.080 to 309.089, unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of Alcohol and Drug Counselors;
- (2) *"Certified alcohol and drug counselor associate I" means a person certified by the board who meets the requirements of Section 2 of this Act;*
- (3) *"Certified alcohol and drug counselor associate II" means a person certified by the board who meets the requirements of Section 3 of this Act;*
- (4) "Certified alcohol and drug counselor" means a person certified by the board who meets the requirements in KRS 309.083;
- (5)~~(3)~~ "Certificate holder" means an alcohol and drug counselor who is certified pursuant to KRS 309.080 to 309.089;
- (6)~~(4)~~ "Licensed clinical alcohol and drug counselor" means a person licensed by the board who meets the requirements of KRS 309.0832;
- (7)~~(5)~~ "Licensed clinical alcohol and drug counselor associate" means a person licensed by the board who meets the requirements of KRS 309.0833;
- (8)~~(6)~~ "Licensee" means a clinical alcohol and drug counselor who is licensed pursuant to KRS 309.080 to 309.089;

~~(9)(7)~~ "Practice of alcohol and drug counseling":

- (a) Means the assessment and counseling of an individual, family, or group dealing with an alcohol or drug problem or addiction; and
- (b) Does not include the diagnosis or treatment of a mental health condition, or the administration or interpretation of psychological tests;

~~(10)(8)~~ "Registered alcohol and drug peer support specialist" means a person registered by the board who meets the requirements in KRS 309.0831; and

~~(11)(9)~~ "Registrant" means an alcohol and drug peer support specialist who is registered pursuant to KRS 309.080 to 309.089.

➔Section 5. KRS 309.0805 is amended to read as follows:

- (1) No person shall use the title "licensed clinical alcohol and drug counselor," "licensed clinical alcohol and drug counselor associate," "certified alcohol and drug counselor," "***certified alcohol and drug counselor associate II***," "***certified alcohol and drug counselor associate I***," or "registered alcohol and drug peer support specialist," or hold himself or herself out as a "licensed clinical alcohol and drug counselor," "licensed clinical alcohol and drug counselor associate," "certified alcohol and drug counselor," or "registered alcohol and drug peer support specialist" unless he or she is licensed, certified, or registered pursuant to KRS 309.080 to 309.089.
- (2) Nothing in KRS 309.080 to 309.089 shall 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, marriage and family therapists, art therapists, nurses, or students in accredited training programs in those professions, and nothing in KRS 309.080 to 309.089 shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which they hold themselves out to the public.
- (3) Nothing in KRS 309.080 to 309.089 shall be construed to alter, amend, or interfere with the practice of those who render counseling services, including but not limited to employment counseling, job placement counseling, vocational rehabilitation counseling, pastoral counseling based on any tenet of one's religious beliefs, or school counseling.
- (4) Nothing in KRS 309.080 to 309.089 shall apply to the activities and services of a student intern or trainee who is pursuing a program of studies in alcohol and drug counseling at an accredited institution of higher education, if these activities are performed under the supervision or direction of an approved supervisor and the activities are part of the supervised program of studies.

➔Section 6. KRS 309.0813 is amended to read as follows:

The board shall:

- (1) Promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089;
- (2) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing a code of ethics, standards of practice, and continuing education for licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, ***certified alcohol and drug counselor associates II***, ***certified alcohol and drug counselor associates I***, and registered alcohol and drug peer support specialists;
- (3) Approve and disapprove, at least ***once every other month***~~[twice a year]~~, those persons who shall be licensed, certified, or registered under KRS 309.080 to 309.089;
- (4) Approve the examination required of applicants for licensure or certification as alcohol and drug counselors and applicants for registration as alcohol and drug peer support specialists, and promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and grading of the examination;
- (5) Promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor;
- (6) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing grounds and procedures for denying, suspending, failing to reissue, or revoking a license, certificate, or registration, and issuing reprimands and admonishments pursuant to KRS 309.080 to 309.089;

- (7) Hold a hearing pursuant to KRS Chapter 13B upon the request of an aggrieved licensee, licensee associate, certificate holder, or registrant, or an applicant for a license, certificate, or registration;
- (8) Employ needed personnel and establish their duties and compensation;
- (9) Maintain a register of licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists;
- (10) Keep a complete record of the board's proceedings;
- (11) Investigate suspected or alleged violations of KRS 309.080 to 309.089 and the administrative regulations promulgated pursuant to KRS 309.080 to 309.089;
- (12) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing an initial licensure fee, certification fee, registration fee, and annual renewal fees not to exceed three hundred dollars (\$300) each;
- (13) Take legal action as necessary to restrain or enjoin violations of KRS 309.080 to 309.089 and the administrative regulations promulgated pursuant to KRS 309.080 to 309.089;
- (14) Submit an annual report to the Governor and the Legislative Research Commission by January 1 of each year, which lists all hearings conducted by the board and the decisions rendered; and
- (15) Collect and deposit all fees, fines, and other moneys owed to the board into the State Treasury to the credit of the revolving fund established in KRS 309.082.

➔Section 7. KRS 309.083 is amended to read as follows:

An applicant for certification as an alcohol and drug counselor shall pay the board the initial fee for certification, and shall:

- (1) Be at least eighteen (18) years of age;
- (2) Have obtained a baccalaureate degree, ***unless the applicant is certified by the board as a certified alcohol and drug counselor associate II;***
- (3) Have completed ***the minimum work experience and supervision requirements for alcohol and drug counselors by the International Certification and Reciprocity Consortium with supervised hours being*** ~~six thousand (6,000) hours of board approved experience working with persons having a substance use disorder, three hundred (300) hours of which shall have been~~ under the direct supervision of:
 - (a) A certified alcohol and drug counselor who has at least two (2) years of post-certification experience ***and has attended the board-sponsored supervision training;*** or
 - (b) A licensed clinical alcohol and drug counselor who has at least ***twelve (12) months*** ~~two (2) years~~ of post-licensure experience ***or has attended the board-sponsored supervision training;***
- (4) ***Meet all minimum supervision, education, and training requirements of the International Certification and Reciprocity Consortium for the Alcohol and Drug Counselor (ADC)*** ~~Have completed at least two hundred seventy (270) classroom hours of board approved curriculum~~;
- (5) Have passed a written examination ***for alcohol and drug counselors*** that has been approved by the International Certification ***and*** Reciprocity Consortium ~~on Alcoholism and Drug Abuse~~;
- (6) Have signed an agreement to abide by the standards of practice and code of ethics approved by the board;
- (7) Have completed at least six (6) hours of ethics training; three (3) hours of domestic violence training; and two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;
- (8) Have submitted two (2) letters of reference from certified or licensed clinical alcohol and drug counselors;
- (9) Live or work at least a majority of the time in Kentucky; and
- (10) Have complied with the requirements for the training program in suicide assessment, treatment, and management in KRS 210.366 and any administrative regulations promulgated thereunder.

➔Section 8. KRS 309.0831 is amended to read as follows:

An applicant for registration as an alcohol and drug peer support specialist shall pay the board an initial fee for registration, and shall:

- (1) Be at least eighteen (18) years of age;
- (2) Have obtained a high school diploma or equivalent;
- (3) Have completed five hundred (500) hours of board-approved experience working with persons having a substance use disorder, twenty-five (25) hours of which shall have been under the direct supervision of:
 - (a) A certified alcohol and drug counselor who has at least two (2) years post-certification experience ***and has attended the board-sponsored supervision training***; or
 - (b) A licensed clinical alcohol and drug counselor ***who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training***;
- (4) Have completed at least ***forty (40)***~~sixty (60)~~ classroom hours of board-approved curriculum;
- (5) Have passed a written examination that has been approved by the board;
- (6) Have signed an agreement to abide by the standards of practice and code of ethics approved by the board;
- (7) Attest to being in recovery for a minimum of ***one (1) year***~~two (2) years~~ from a substance-related disorder;
- (8) Have completed at least sixteen (16) hours of ethics training; three (3) hours of domestic violence training; two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus; ten (10) hours of advocacy training; ten (10) hours of training in mentoring and education; and ten (10) hours of training in recovery support;
- (9) Have submitted two (2) letters of reference from certified alcohol and drug counselors or licensed clinical alcohol and drug counselors;
- (10) Live or work at least a majority of the time in Kentucky; and
- (11) Have complied with the requirements for the training program in suicide assessment, treatment, and management in KRS 210.366 and any administrative regulations promulgated thereunder.

➔Section 9. KRS 309.0832 is amended to read as follows:

An applicant for licensure as a licensed clinical alcohol and drug counselor shall pay the board the initial fee for licensure, and shall:

- (1) Be at least eighteen (18) years of age;
- (2) Have obtained from a regionally accredited college or university or a college or university accredited by an agency recognized by the United States Department of Education:
 - (a) A sixty (60) hour master's degree in a behavioral science with clinical application;
 - (b) A thirty (30) hour advanced placement master's degree in a behavioral science with clinical application; or
 - (c) A doctoral degree in a behavioral science with clinical application;
- (3) ***Meet all education and supervision requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC)***;
- (4) Have completed at least one hundred eighty (180) classroom hours of alcohol and drug counselor specific board-approved curriculum;
- ~~(5)(4)~~ Have passed a written examination as specified by the board in administrative regulation;
- ~~(6)(5)~~ Have signed an agreement to abide by the standards of practice and code of ethics approved by the board;
- ~~(7)(6)~~ Have completed at least six (6) hours of ethics training; three (3) hours of domestic violence training; and two (2) hours training in the transmission, control, treatment, and prevention of the human immunodeficiency virus, in addition to the educational requirements in subsection (2) of this section;
- ~~(8)(7)~~ Have submitted two (2) letters of reference from certified alcohol and drug counselors or licensed clinical alcohol and drug counselors;

- ~~(9)(8)~~ Live or work at least a majority of the time in Kentucky;
- ~~(10)(9)~~ Have complied with the requirements for the training program in suicide assessment, treatment, and management in KRS 210.366 and any administrative regulations promulgated thereunder; and
- ~~(11)(10)~~ Have completed two thousand (2,000) hours of board-approved experience working with persons having a substance use disorder, three hundred (300) hours of which shall have been under the direct supervision of a licensed clinical alcohol and drug counselor.

➔Section 10. KRS 309.0833 is amended to read as follows:

- (1) An applicant for licensure as a licensed clinical alcohol and drug counselor associate shall:
- Pay the board the initial fee for licensure;
 - Complete the requirements under KRS 309.0832(1) to (9); and
 - Obtain a board-approved supervisor of record.
- (2) Upon completion of the hours of board-approved experience specified in KRS 309.0832~~(11)(10)~~, a licensed clinical alcohol and drug counselor associate may apply to the board for licensure as a licensed clinical alcohol and drug counselor.

➔Section 11. KRS 309.088 is amended to read as follows:

- (1) The board may permit an out-of-state licensed clinical alcohol and drug counselor, certified alcohol and drug counselor, *certified alcohol and drug counselor associate II*, *certified alcohol and drug counselor associate I*, or alcohol and drug peer support specialist to obtain a license, certificate, or registration by reciprocity if:
- The out-of-state licensee, certificate holder, or registrant possesses a valid license, certificate, or registration from another jurisdiction that grants the same privileges to persons licensed, certified, or registered by this state as Kentucky grants to persons licensed, certified, or registered by the other jurisdiction;
 - The requirements for licensure, certification, or registration are substantially similar to the requirements in KRS 309.080 to 309.089; and
 - The out-of-state licensee, certificate holder, or registrant seeking licensure, certification, or registration states that he or she has studied, is familiar with, and shall abide by KRS 309.080 to 309.089 and the administrative regulations promulgated thereunder.
- (2) If the requirements for licensure, certification, or registration under KRS 309.080 to 309.089 are more restrictive than the standards of the other jurisdiction, then the out-of-state licensee, certificate holder, or registrant shall comply with the additional requirements in KRS 309.080 to 309.089 to obtain a reciprocal license, certificate, or registration.

➔Section 12. Sections 2 to 11 of this Act shall take effect on March 1, 2021.

Signed by Governor April 24, 2020.