

1 AN ACT relating to controlled substances.

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

3 ➔Section 1. KRS 218A.010 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "Administer" means the direct application of a controlled substance, whether by
6 injection, inhalation, ingestion, or any other means, to the body of a patient or
7 research subject by:
- 8 (a) A practitioner or by his or her authorized agent under his or her immediate
9 supervision and pursuant to his or her order; or
- 10 (b) The patient or research subject at the direction and in the presence of the
11 practitioner;
- 12 (2) "Anabolic steroid" means any drug or hormonal substance chemically and
13 pharmacologically related to testosterone that promotes muscle growth and includes
14 those substances listed in KRS 218A.090(5) but does not include estrogens,
15 progestins, and anticosteroids;
- 16 (3) "Cabinet" means the Cabinet for Health and Family Services;
- 17 (4) **"Carfentanil" means any substance containing any quantity of carfentanil, or**
18 **any of its salts, isomers, or salts of isomers;**
- 19 ~~(5)~~ "Child" means any person under the age of majority as specified in KRS 2.015;
- 20 ~~(6)~~~~(5)~~ "Cocaine" means a substance containing any quantity of cocaine, its salts,
21 optical and geometric isomers, and salts of isomers;
- 22 ~~(7)~~~~(6)~~ "Controlled substance" means methamphetamine, or a drug, substance, or
23 immediate precursor in Schedules I through V and includes a controlled substance
24 analogue;
- 25 ~~(8)~~~~(7)~~ (a) "Controlled substance analogue," except as provided in paragraph (b) of
26 this subsection, means a substance:
- 27 1. The chemical structure of which is substantially similar to the structure

- 1 of a controlled substance in Schedule I or II; and
- 2 2. Which has a stimulant, depressant, or hallucinogenic effect on the
- 3 central nervous system that is substantially similar to or greater than the
- 4 stimulant, depressant, or hallucinogenic effect on the central nervous
- 5 system of a controlled substance in Schedule I or II; or
- 6 3. With respect to a particular person, which such person represents or
- 7 intends to have a stimulant, depressant, or hallucinogenic effect on the
- 8 central nervous system that is substantially similar to or greater than the
- 9 stimulant, depressant, or hallucinogenic effect on the central nervous
- 10 system of a controlled substance in Schedule I or II.

11 (b) Such term does not include:

- 12 1. Any substance for which there is an approved new drug application;
- 13 2. With respect to a particular person, any substance if an exemption is in
- 14 effect for investigational use for that person pursuant to federal law to
- 15 the extent conduct with respect to such substance is pursuant to such
- 16 exemption; or
- 17 3. Any substance to the extent not intended for human consumption before
- 18 the exemption described in subparagraph 2. of this paragraph takes
- 19 effect with respect to that substance;

20 ~~(9)~~ "Counterfeit substance" means a controlled substance which, or the container

21 or labeling of which, without authorization, bears the trademark, trade name, or

22 other identifying mark, imprint, number, or device, or any likeness thereof, of a

23 manufacturer, distributor, or dispenser other than the person who in fact

24 manufactured, distributed, or dispensed the substance;

25 ~~(10)~~ "Dispense" means to deliver a controlled substance to an ultimate user or

26 research subject by or pursuant to the lawful order of a practitioner, including the

27 packaging, labeling, or compounding necessary to prepare the substance for that

1 delivery;

2 ~~(11)~~~~(10)~~ "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or
3 V controlled substance to or for the use of an ultimate user;

4 ~~(12)~~~~(11)~~ "Distribute" means to deliver other than by administering or dispensing a
5 controlled substance;

6 ~~(13)~~~~(12)~~ "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of
7 administration available as a single unit;

8 ~~(14)~~~~(13)~~ "Drug" means:

9 (a) Substances recognized as drugs in the official United States Pharmacopoeia,
10 official Homeopathic Pharmacopoeia of the United States, or official National
11 Formulary, or any supplement to any of them;

12 (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or
13 prevention of disease in man or animals;

14 (c) Substances (other than food) intended to affect the structure or any function of
15 the body of man or animals; and

16 (d) Substances intended for use as a component of any article specified in this
17 subsection.

18 It does not include devices or their components, parts, or accessories;

19 **(15) "Fentanyl" means a substance containing any quantity of fentanyl, or any of its**
20 **salts, isomers, or salts of isomers;**

21 **(16) "Fentanyl derivative" means a substance containing any quantity of any**
22 **chemical compound, except compounds specifically scheduled as controlled**
23 **substances by statute or by administrative regulation pursuant to this chapter,**
24 **which is structurally derived from 1-ethyl-4-(N-phenylamido) piperidine:**

25 **(a) By substitution:**

26 **1. At the 2-position of the 1-ethyl group with a phenyl, furan, thiophene,**
27 **or ethyloxotetrazole ring system; and**

1 2. Of the terminal amido hydrogen atom with an alkyl, alkoxy,
2 cycloalkyl, or furanyl group; and

3 (b) Which may be further modified in one (1) or more of the following ways:

4 1. By substitution on the N-phenyl ring to any extent with alkyl, alkoxy,
5 haloalkyl, hydroxyl, or halide substituents;

6 2. By substitution on the piperadine ring to any extent with alkyl, allyl,
7 alkoxy, hydroxy, or halide substituents at the 2-, 3-, 5-, and/or 6-
8 positions;

9 3. By substitution on the piperadine ring to any extent with a phenyl,
10 alkoxy, or carboxylate ester substituent at the 4- position; or

11 4. By substitution on the 1-ethyl group to any extent with alkyl, alkoxy,
12 or hydroxy substituents;

13 (17)~~(14)~~ "Good faith prior examination," as used in KRS Chapter 218A and for
14 criminal prosecution only, means an in-person medical examination of the patient
15 conducted by the prescribing practitioner or other health-care professional routinely
16 relied upon in the ordinary course of his or her practice, at which time the patient is
17 physically examined and a medical history of the patient is obtained. "In-person"
18 includes telehealth examinations. This subsection shall not be applicable to hospice
19 providers licensed pursuant to KRS Chapter 216B;

20 (18)~~(15)~~ "Hazardous chemical substance" includes any chemical substance used or
21 intended for use in the illegal manufacture of a controlled substance as defined in
22 this section or the illegal manufacture of methamphetamine as defined in KRS
23 218A.1431, which:

24 (a) Poses an explosion hazard;

25 (b) Poses a fire hazard; or

26 (c) Is poisonous or injurious if handled, swallowed, or inhaled;

27 (19)~~(16)~~ "Heroin" means a substance containing any quantity of heroin, or any of its

1 salts, isomers, or salts of isomers;

2 ~~(20)~~~~(17)~~ "Hydrocodone combination product" means a drug with:

3 (a) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of
4 its salts, per one hundred (100) milliliters or not more than fifteen (15)
5 milligrams per dosage unit, with a fourfold or greater quantity of an
6 isoquinoline alkaloid of opium; or

7 (b) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of
8 its salts, per one hundred (100) milliliters or not more than fifteen (15)
9 milligrams per dosage unit, with one (1) or more active, nonnarcotic
10 ingredients in recognized therapeutic amounts;

11 ~~(21)~~~~(18)~~ "Immediate precursor" means a substance which is the principal compound
12 commonly used or produced primarily for use, and which is an immediate chemical
13 intermediary used or likely to be used in the manufacture of a controlled substance
14 or methamphetamine, the control of which is necessary to prevent, curtail, or limit
15 manufacture;

16 ~~(22)~~~~(19)~~ "Intent to manufacture" means any evidence which demonstrates a person's
17 conscious objective to manufacture a controlled substance or methamphetamine.
18 Such evidence includes but is not limited to statements and a chemical substance's
19 usage, quantity, manner of storage, or proximity to other chemical substances or
20 equipment used to manufacture a controlled substance or methamphetamine;

21 ~~(23)~~~~(20)~~ "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and
22 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical,
23 positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer"
24 means the optical or geometric isomer;

25 ~~(24)~~~~(21)~~ "Manufacture," except as provided in KRS 218A.1431, means the production,
26 preparation, propagation, compounding, conversion, or processing of a controlled
27 substance, either directly or indirectly by extraction from substances of natural

1 origin or independently by means of chemical synthesis, or by a combination of
 2 extraction and chemical synthesis, and includes any packaging or repackaging of the
 3 substance or labeling or relabeling of its container except that this term does not
 4 include activities:

- 5 (a) By a practitioner as an incident to his or her administering or dispensing of a
 6 controlled substance in the course of his or her professional practice;
- 7 (b) By a practitioner, or by his or her authorized agent under his supervision, for
 8 the purpose of, or as an incident to, research, teaching, or chemical analysis
 9 and not for sale; or
- 10 (c) By a pharmacist as an incident to his or her dispensing of a controlled
 11 substance in the course of his or her professional practice;

12 ~~(25)~~~~(22)~~ "Marijuana" means all parts of the plant Cannabis sp., whether growing or
 13 not; the seeds thereof; the resin extracted from any part of the plant; and every
 14 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its
 15 seeds or resin or any compound, mixture, or preparation which contains any
 16 quantity of these substances. The term "marijuana" does not include:

- 17 (a) Industrial hemp **that is in the possession, custody, or control of a person who**
 18 **holds a license issued by the Department of Agriculture permitting that**
 19 **person to cultivate, handle, or process industrial hemp**~~as defined in KRS~~
 20 ~~260.850~~;
- 21 **(b) Industrial hemp products that do not include any living plants, viable seeds,**
 22 **leaf materials, or floral materials;**

23 ~~(c)~~~~(b)~~ The substance cannabidiol, when transferred, dispensed, or administered
 24 pursuant to the written order of a physician practicing at a hospital or
 25 associated clinic affiliated with a Kentucky public university having a college
 26 or school of medicine;~~or~~

27 ~~(d)~~~~(e)~~ For persons participating in a clinical trial or in an expanded access

1 program, a drug or substance approved for the use of those participants by the
2 United States Food and Drug Administration;

3 (e) A cannabidiol product derived from industrial hemp, as defined in KRS
4 260.850; or

5 (f) A cannabidiol product approved as a prescription medication by the United
6 States Food and Drug Administration;

7 (26)~~[(23)]~~ "Medical history," as used in KRS Chapter 218A and for criminal prosecution
8 only, means an accounting of a patient's medical background, including but not
9 limited to prior medical conditions, prescriptions, and family background;

10 (27)~~[(24)]~~ "Medical order," as used in KRS Chapter 218A and for criminal prosecution
11 only, means a lawful order of a specifically identified practitioner for a specifically
12 identified patient for the patient's health-care needs. "Medical order" may or may
13 not include a prescription drug order;

14 (28)~~[(25)]~~ "Medical record," as used in KRS Chapter 218A and for criminal prosecution
15 only, means a record, other than for financial or billing purposes, relating to a
16 patient, kept by a practitioner as a result of the practitioner-patient relationship;

17 (29)~~[(26)]~~ "Methamphetamine" means any substance that contains any quantity of
18 methamphetamine, or any of its salts, isomers, or salts of isomers;

19 (30)~~[(27)]~~ "Narcotic drug" means any of the following, whether produced directly or
20 indirectly by extraction from substances of vegetable origin, or independently by
21 means of chemical synthesis, or by a combination of extraction and chemical
22 synthesis:

23 (a) Opium and opiate, and any salt, compound, derivative, or preparation of
24 opium or opiate;

25 (b) Any salt, compound, isomer, derivative, or preparation thereof which is
26 chemically equivalent or identical with any of the substances referred to in
27 paragraph (a) of this subsection, but not including the isoquinoline alkaloids

1 of opium;

2 (c) Opium poppy and poppy straw;

3 (d) Coca leaves, except coca leaves and extracts of coca leaves from which
4 cocaine, ecgonine, and derivatives of ecgonine or their salts have been
5 removed;

6 (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

7 (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

8 (g) Any compound, mixture, or preparation which contains any quantity of any of
9 the substances referred to in paragraphs (a) to (f) of this subsection;

10 ~~(31)~~~~(28)~~ "Opiate" means any substance having an addiction-forming or addiction-
11 sustaining liability similar to morphine or being capable of conversion into a drug
12 having addiction-forming or addiction-sustaining liability. It does not include,
13 unless specifically designated as controlled under KRS 218A.030, the
14 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
15 (dextromethorphan). It does include its racemic and levorotatory forms;

16 ~~(32)~~~~(29)~~ "Opium poppy" means the plant of the species papaver somniferum L., except
17 its seeds;

18 ~~(33)~~~~(30)~~ "Person" means individual, corporation, government or governmental
19 subdivision or agency, business trust, estate, trust, partnership or association, or any
20 other legal entity;

21 ~~(34)~~~~(31)~~ "Physical injury" has the same meaning it has in KRS 500.080;

22 ~~(35)~~~~(32)~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after
23 mowing;

24 ~~(36)~~~~(33)~~ "Pharmacist" means a natural person licensed by this state to engage in the
25 practice of the profession of pharmacy;

26 ~~(37)~~~~(34)~~ "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific
27 investigator, optometrist as authorized in KRS 320.240, advanced practice

1 registered nurse as authorized under KRS 314.011, or other person licensed,
2 registered, or otherwise permitted by state or federal law to acquire, distribute,
3 dispense, conduct research with respect to, or to administer a controlled substance
4 in the course of professional practice or research in this state. "Practitioner" also
5 includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered
6 nurse authorized under KRS 314.011 who is a resident of and actively practicing in
7 a state other than Kentucky and who is licensed and has prescriptive authority for
8 controlled substances under the professional licensing laws of another state, unless
9 the person's Kentucky license has been revoked, suspended, restricted, or probated,
10 in which case the terms of the Kentucky license shall prevail;

11 ~~(38)~~~~(35)~~ "Practitioner-patient relationship," as used in KRS Chapter 218A and for
12 criminal prosecution only, means a medical relationship that exists between a
13 patient and a practitioner or the practitioner's designee, after the practitioner or his
14 or her designee has conducted at least one (1) good faith prior examination;

15 ~~(39)~~~~(36)~~ "Prescription" means a written, electronic, or oral order for a drug or
16 medicine, or combination or mixture of drugs or medicines, or proprietary
17 preparation, signed or given or authorized by a medical, dental, chiropody,
18 veterinarian, optometric practitioner, or advanced practice registered nurse, and
19 intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
20 disease in man or other animals;

21 ~~(40)~~~~(37)~~ "Prescription blank," with reference to a controlled substance, means a
22 document that meets the requirements of KRS 218A.204 and 217.216;

23 ~~(41)~~~~(38)~~ "Presumptive probation" means a sentence of probation not to exceed the
24 maximum term specified for the offense, subject to conditions otherwise authorized
25 by law, that is presumed to be the appropriate sentence for certain offenses
26 designated in this chapter, notwithstanding contrary provisions of KRS Chapter
27 533. That presumption shall only be overcome by a finding on the record by the

1 sentencing court of substantial and compelling reasons why the defendant cannot be
2 safely and effectively supervised in the community, is not amenable to community-
3 based treatment, or poses a significant risk to public safety;

4 ~~(42)~~~~[(39)]~~ "Production" includes the manufacture, planting, cultivation, growing, or
5 harvesting of a controlled substance;

6 ~~(43)~~~~[(40)]~~ "Recovery program" means an evidence-based, nonclinical service that assists
7 individuals and families working toward sustained recovery from substance use and
8 other criminal risk factors. This can be done through an array of support programs
9 and services that are delivered through residential and nonresidential means;

10 ~~(44)~~~~[(41)]~~ "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the
11 plant presently classified botanically as *Salvia divinorum*, whether growing or not,
12 the seeds thereof, any extract from any part of that plant, and every compound,
13 manufacture, derivative, mixture, or preparation of that plant, its seeds, or its
14 extracts, including salts, isomers, and salts of isomers whenever the existence of
15 such salts, isomers, and salts of isomers is possible within the specific chemical
16 designation of that plant, its seeds, or extracts. The term shall not include any other
17 species in the genus *salvia*;

18 ~~(45)~~~~[(42)]~~ "Second or subsequent offense" means that for the purposes of this chapter an
19 offense is considered as a second or subsequent offense, if, prior to his or her
20 conviction of the offense, the offender has at any time been convicted under this
21 chapter, or under any statute of the United States, or of any state relating to
22 substances classified as controlled substances or counterfeit substances, except that
23 a prior conviction for a nontrafficking offense shall be treated as a prior offense
24 only when the subsequent offense is a nontrafficking offense. For the purposes of
25 this section, a conviction voided under KRS 218A.275 or 218A.276 shall not
26 constitute a conviction under this chapter;

27 ~~(46)~~~~[(43)]~~ "Sell" means to dispose of a controlled substance to another person for

1 consideration or in furtherance of commercial distribution;

2 ~~(47)~~~~(44)~~ "Serious physical injury" has the same meaning it has in KRS 500.080;

3 ~~(48)~~~~(45)~~ "Synthetic cannabinoids or piperazines" means any chemical compound which
4 is not approved by the United States Food and Drug Administration or, if approved,
5 which is not dispensed or possessed in accordance with state and federal law, that
6 contains Benzylpiperazine (BZP); Trifluoromethylphenylpiperazine (TFMPP); 1,1-
7 Dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210); 1-Butyl-3-(1-
8 naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol (HU-211); or any
9 compound in the following structural classes:

10 (a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole
11 structure with substitution at the nitrogen atom of the indole ring by an alkyl,
12 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
13 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further
14 substituted in the indole ring to any extent and whether or not substituted in
15 the naphthyl ring to any extent. Examples of this structural class include but
16 are not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081,
17 JWH-122, JWH-200, and AM-2201;

18 (b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole
19 structure with substitution at the nitrogen atom of the indole ring by an alkyl,
20 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
21 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further
22 substituted in the indole ring to any extent and whether or not substituted in
23 the phenyl ring to any extent. Examples of this structural class include but are
24 not limited to JWH-167, JWH-250, JWH-251, and RCS-8;

25 (c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with
26 substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl,
27 alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl,

1 or 2-(4-morpholinyl)ethyl group whether or not further substituted in the
2 indole ring to any extent and whether or not substituted in the phenyl ring to
3 any extent. Examples of this structural class include but are not limited to
4 AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

5 (d) Cyclohexylphenols: Any compound containing a 2-(3-
6 hydroxycyclohexyl)phenol structure with substitution at the 5-position of the
7 phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl,
8 cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl
9 group whether or not substituted in the cyclohexyl ring to any extent.
10 Examples of this structural class include but are not limited to CP 47,497 and
11 its C8 homologue (cannabicyclohexanol);

12 (e) Naphthylmethylindeles: Any compound containing a 1H-indol-3-yl-(1-
13 naphthyl)methane structure with substitution at the nitrogen atom of the indole
14 ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-
15 methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not
16 further substituted in the indole ring to any extent and whether or not
17 substituted in the naphthyl ring to any extent. Examples of this structural class
18 include but are not limited to JWH-175, JWH-184, and JWH-185;

19 (f) Naphthoypyrroles: Any compound containing a 3-(1-naphthoypyrrole
20 structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl,
21 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
22 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further
23 substituted in the pyrrole ring to any extent and whether or not substituted in
24 the naphthyl ring to any extent. Examples of this structural class include but
25 are not limited to JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;

26 (g) Naphthylmethylindenes: Any compound containing a 1-(1-
27 naphthylmethyl)indene structure with substitution at the 3-position of the

1 indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
2 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether
3 or not further substituted in the indene ring to any extent and whether or not
4 substituted in the naphthyl ring to any extent. Examples of this structural class
5 include but are not limited to JWH-176;

6 (h) Tetramethylcyclopropanoylindoles: Any compound containing a 3-(1-
7 tetramethylcyclopropoyl)indole structure with substitution at the nitrogen
8 atom of the indole ring by an alkyl, haloalkyl, cycloalkylmethyl,
9 cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl
10 group, whether or not further substituted in the indole ring to any extent and
11 whether or not further substituted in the tetramethylcyclopropyl ring to any
12 extent. Examples of this structural class include but are not limited to UR-144
13 and XLR-11;

14 (i) Adamantoylindoles: Any compound containing a 3-(1-adamantoyl)indole
15 structure with substitution at the nitrogen atom of the indole ring by an alkyl,
16 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
17 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further
18 substituted in the indole ring to any extent and whether or not substituted in
19 the adamantyl ring system to any extent. Examples of this structural class
20 include but are not limited to AB-001 and AM-1248; or

21 (j) Any other synthetic cannabinoid or piperazine which is not approved by the
22 United States Food and Drug Administration or, if approved, which is not
23 dispensed or possessed in accordance with state and federal law;

24 ~~(49)~~~~(46)~~ "Synthetic cathinones" means any chemical compound which is not approved
25 by the United States Food and Drug Administration or, if approved, which is not
26 dispensed or possessed in accordance with state and federal law (not including
27 bupropion or compounds listed under a different schedule) structurally derived from

1 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl,
2 or thiophene ring systems, whether or not the compound is further modified in one
3 (1) or more of the following ways:

4 (a) By substitution in the ring system to any extent with alkyl, alkylendioxy,
5 alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further
6 substituted in the ring system by one (1) or more other univalent substituents.
7 Examples of this class include but are not limited to 3,4-
8 Methylenedioxcathinone (bk-MDA);

9 (b) By substitution at the 3-position with an acyclic alkyl substituent. Examples of
10 this class include but are not limited to 2-methylamino-1-phenylbutan-1-one
11 (buphedrone);

12 (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or
13 methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a
14 cyclic structure. Examples of this class include but are not limited to
15 Dimethylcathinone, Ethcathinone, and α -Pyrrolidinopropiophenone (α -PPP);
16 or

17 (d) Any other synthetic cathinone which is not approved by the United States
18 Food and Drug Administration or, if approved, is not dispensed or possessed
19 in accordance with state or federal law;

20 ~~(50)~~~~(47)~~ "Synthetic drugs" means any synthetic cannabinoids or piperazines or any
21 synthetic cathinones;

22 ~~(51)~~~~(48)~~ "Telehealth" has the same meaning it has in KRS 311.550;

23 ~~(52)~~~~(49)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances
24 contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or
25 synthetic substances, derivatives, and their isomers with similar chemical structure
26 and pharmacological activity such as the following:

27 (a) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

1 (b) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and

2 (c) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

3 ~~(53)~~~~(50)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture,
4 distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute,
5 dispense, or sell a controlled substance;

6 ~~(54)~~~~(51)~~ "Transfer" means to dispose of a controlled substance to another person
7 without consideration and not in furtherance of commercial distribution; and

8 ~~(55)~~~~(52)~~ "Ultimate user" means a person who lawfully possesses a controlled substance
9 for his or her own use or for the use of a member of his or her household or for
10 administering to an animal owned by him or her or by a member of his or her
11 household.

12 ➔Section 2. KRS 218A.020 is amended to read as follows:

13 (1) The Cabinet for Health and Family Services shall administer this chapter and may
14 by regulation add substances to or delete or reschedule all substances enumerated in
15 the schedules set forth in this chapter. In making a determination regarding a
16 substance, the Cabinet for Health and Family Services may consider the following:

17 (a) The actual or relative potential for abuse;

18 (b) The scientific evidence of its pharmacological effect, if known;

19 (c) The state of current scientific knowledge regarding the substance;

20 (d) The history and current pattern of abuse;

21 (e) The scope, duration, and significance of abuse;

22 (f) The risk to the public health;

23 (g) The potential of the substance to produce psychic or physiological dependence
24 liability; and

25 (h) Whether the substance is an immediate precursor of a substance already
26 controlled under this chapter.

27 (2) After considering the factors enumerated in subsection (1) of this section, the

1 Cabinet for Health and Family Services may adopt a regulation controlling the
2 substance if it finds the substance has a potential for abuse.

3 (3) If any substance is designated, rescheduled, or deleted as a controlled substance
4 under federal law and notice thereof is given to the Cabinet for Health and Family
5 Services, the Cabinet for Health and Family Services may similarly control the
6 substance under this chapter by regulation.

7 (4) The Cabinet for Health and Family Services shall exclude any nonnarcotic
8 substance from a schedule if the substance may be lawfully sold over the counter
9 without prescription under the provisions of the Federal Food, Drug and Cosmetic
10 Act, or the Federal Comprehensive Drug Abuse Prevention and Control Act of
11 1970, or the Kentucky Revised Statutes (for the purposes of this section the
12 Kentucky Revised Statutes shall not include any regulations issued thereunder).

13 (5) The Office of Drug Control Policy may request that the Cabinet for Health and
14 Family Services schedule any substance that would meet the criteria to be
15 scheduled pursuant to this chapter~~[a substance substantially similar to a synthetic~~
16 ~~cannabinoid or piperazine or a synthetic cathinone]~~. The cabinet shall consider the
17 request utilizing the criteria established by this section and shall issue a written
18 response within sixty (60) days of the scheduling request delineating the cabinet's
19 decision to schedule or not schedule the substance and the basis for the cabinet's
20 decision. The cabinet's response shall be provided to the Legislative Research
21 Commission and shall be a public record.

22 ➔Section 3. KRS 218A.050 is amended to read as follows:

23 Unless otherwise rescheduled by administrative regulation of the Cabinet for Health and
24 Family Services, the controlled substances listed in this section are included in Schedule
25 I:

26 (1) Any material, compound, mixture, or preparation which contains any quantity of the
27 following opiates, including their isomers, esters, ethers, salts, and salts of isomers,

1 esters, and ethers, unless specifically excepted, whenever the existence of these
2 isomers, esters, ethers, or salts is possible within the specific chemical designation:
3 Acetylfentanyl; Acetylmethadol; Allylprodine; Alphacetylmethadol;
4 Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol;
5 Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide;
6 Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol;
7 Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene;
8 Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone;
9 Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol;
10 Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide;
11 Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram;
12 Racemoramide; Trimeperidine; 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-
13 piperidinylidene]-benzenesulfonamide (W-18); 4-chloro-N-[1-(2-phenylethyl)-2-
14 piperidinylidene]-benzenesulfonamide (W-15); **or any fentanyl derivative**;

15 (2) Any material, compound, mixture, or preparation which contains any quantity of the
16 following opium derivatives, including their salts, isomers, and salts of isomers,
17 unless specifically excepted, whenever the existence of these salts, isomers, or salts
18 of isomers is possible within the specific chemical designation: Acetorphine;
19 Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-
20 Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin;
21 Hydromorphinol; Methyldesorphine; Methyldihydromorphine; Morphine
22 methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine;
23 Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon;

24 (3) Any material, compound, mixture, or preparation which contains any quantity of the
25 following hallucinogenic substances, their salts, isomers, or salts of isomers, unless
26 specifically excepted, whenever the existence of these salts, isomers, and salts of
27 isomers is possible within the specific chemical designation: 3, 4-

1 methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4,
 2 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-
 3 methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide;
 4 Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl
 5 benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2
 6 Methylamino-1-phenylpropan-1-one (including but not limited to Methcathinone,
 7 Cat, and Ephedrone); synthetic drugs; or salvia;

8 (4) Any material, compound, mixture, or preparation which contains any quantity of the
 9 following substance having a depressant effect on the central nervous system,
 10 including its salts, isomers, and salts of isomers, unless specifically excepted,
 11 whenever the existence of these salts, isomers, or salts of isomers is possible within
 12 the specific chemical designation: gamma hydroxybutyric acid; and

13 (5) Any material, compound, mixture, or preparation which contains any quantity of the
 14 following substances:

15 (a) 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2,5H-
 16 NBOMe);

17 (b) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
 18 (2,5I-NBOMe);

19 (c) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
 20 (2,5B-NBOMe); or

21 (d) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
 22 (2,5C-NBOMe).

23 ➔Section 4. KRS 218A.1410 is amended to read as follows:

24 (1) A person is guilty of importing heroin, carfentanil, fentanyl, or fentanyl
 25 derivatives when he or she knowingly and unlawfully transports any quantity of
 26 heroin, carfentanil, fentanyl, or fentanyl derivatives into the Commonwealth by
 27 any means with the intent to sell or distribute the heroin, carfentanil, fentanyl, or

1 *fentanyl derivatives*.

2 (2) The provisions of this section are intended to be a separate offense from others in
3 this chapter, and shall be punished in addition to violations of this chapter occurring
4 during the same course of conduct.

5 (3) Importing heroin, *carfentanil, fentanyl, or fentanyl derivatives* is a Class C felony,
6 and the defendant shall not be released on probation, shock probation, conditional
7 discharge, or parole until he or she has served at least fifty percent (50%) of the
8 sentence imposed.

9 ➔Section 5. KRS 218A.1412 is amended to read as follows:

10 (1) A person is guilty of trafficking in a controlled substance in the first degree when he
11 or she knowingly and unlawfully traffics in:

12 (a) Four (4) grams or more of cocaine;

13 (b) Two (2) grams or more of ~~heroin, fentanyl, or~~ methamphetamine;

14 (c) Ten (10) or more dosage units of a controlled substance that is classified in
15 Schedules I or II and is a narcotic drug, or a controlled substance analogue;

16 (d) Any quantity of *heroin, fentanyl, carfentanil, or fentanyl derivatives*;
17 lysergic acid diethylamide; phencyclidine; gamma hydroxybutyric acid
18 (GHB), including its salts, isomers, salts of isomers, and analogues; or
19 flunitrazepam, including its salts, isomers, and salts of isomers; or

20 (e) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of
21 this subsection in an amount less than the amounts specified in those
22 paragraphs.

23 (2) The amounts specified in subsection (1) of this section may occur in a single
24 transaction or may occur in a series of transactions over a period of time not to
25 exceed ninety (90) days that cumulatively result in the quantities specified in this
26 section.

27 (3) (a) Any person who violates the provisions of subsection (1)(a), (b), (c), or (d) of

1 this section shall be guilty of a Class C felony for the first offense and a Class
2 B felony for a second or subsequent offense.

3 (b) Any person who violates the provisions of subsection (1)(e) of this section:

4 1. Shall be guilty of a Class D felony for the first offense and a Class C
5 felony for a second or subsequent offense; and

6 2. a. Except as provided in subdivision b. of this subparagraph, where
7 the trafficked substance was heroin and the defendant committed
8 the offense while possessing more than one (1) items of
9 paraphernalia, including but not limited to scales, ledgers,
10 instruments and material to cut, package, or mix the final product,
11 excess cash, multiple subscriber identity modules in excess of the
12 number of communication devices possessed by the person at the
13 time of arrest, or weapons, which given the totality of the
14 circumstances indicate the trafficking to have been a commercial
15 activity, shall not be released on parole until he or she has served
16 at least fifty percent (50%) of the sentence imposed.

17 b. This subparagraph shall not apply to a person who has been
18 determined by a court to have had a substance use disorder relating
19 to a controlled substance at the time of the offense. "Substance use
20 disorder" shall have the same meaning as in the current edition of
21 the American Psychiatric Association's Diagnostic and Statistical
22 Manual of Mental Disorders.

23 (c) Any person convicted of a Class C felony offense or higher under this section
24 shall not be released on probation, shock probation, parole, conditional
25 discharge, or other form of early release until he or she has served at least fifty
26 percent (50%) of the sentence imposed in cases where the trafficked substance
27 was heroin, *fentanyl, carfentanil, or fentanyl derivatives.*

1 ➔Section 6. KRS 218A.142 is amended to read as follows:

2 (1) A person is guilty of aggravated trafficking in a controlled substance in the first
3 degree when he or she knowingly and unlawfully traffics in:

4 (a) One hundred (100) grams or more of heroin;

5 (b) *Twenty-eight (28) grams or more of fentanyl; or*

6 (c) *Ten (10) grams or more of carfentanil or fentanyl derivatives.*

7 (2) Aggravated trafficking in a controlled substance in the first degree is a Class B
8 felony, and the defendant shall not be released on probation, shock probation,
9 conditional discharge, or parole until he or she has served at least fifty percent
10 (50%) of the sentence imposed.

11 ➔Section 7. KRS 218A.205 is amended to read as follows:

12 (1) As used in this section:

13 (a) "Reporting agency" includes:

- 14 1. The Department of Kentucky State Police;
- 15 2. The Office of the Attorney General;
- 16 3. The Cabinet for Health and Family Services; and
- 17 4. The applicable state licensing board; and

18 (b) "State licensing board" means:

- 19 1. The Kentucky Board of Medical Licensure;
- 20 2. The Kentucky Board of Nursing;
- 21 3. The Kentucky Board of Dentistry;
- 22 4. The Kentucky Board of Optometric Examiners;
- 23 5. The State Board of Podiatry; and
- 24 6. Any other board that licenses or regulates a person who is entitled to
25 prescribe or dispense controlled substances to humans.

26 (2) (a) When a reporting agency or a law enforcement agency receives a report of
27 improper, inappropriate, or illegal prescribing or dispensing of a controlled

1 substance it may, to the extent otherwise allowed by law, send a copy of the
2 report within three (3) business days to every other reporting agency.

3 (b) A county attorney or Commonwealth's attorney shall notify the Office of the
4 Attorney General and the appropriate state licensing board within three (3)
5 business days of an indictment or a waiver of indictment becoming public in
6 his or her jurisdiction charging a licensed person with a felony offense relating
7 to the manufacture of, trafficking in, prescribing, dispensing, or possession of
8 a controlled substance.

9 (3) Each state licensing board shall, *in consultation with the Kentucky Office of Drug*
10 *Control Policy*, establish the following by administrative regulation for those
11 licensees authorized to prescribe or dispense controlled substances:

12 (a) Mandatory prescribing and dispensing standards related to controlled
13 substances, the requirements of which shall include the diagnostic, treatment,
14 review, and other protocols and standards established for Schedule II
15 controlled substances and Schedule III controlled substances containing
16 hydrocodone under KRS 218A.172 and which may include the exemptions
17 authorized by KRS 218A.172(4);

18 (b) *In accord with the CDC Guideline for Prescribing Opioids for Chronic Pain*
19 *published in 2016, a prohibition on a practitioner issuing a prescription for*
20 *a Schedule II controlled substance for more than a three (3) day supply of a*
21 *Schedule II controlled substance if the prescription is intended to treat pain*
22 *as an acute medical condition, with the following exceptions:*

23 *1. The practitioner, in his or her professional judgment believes that*
24 *more than a three (3) day supply of a Schedule II controlled substance*
25 *is medically necessary to treat the patient's pain as an acute medical*
26 *condition and the practitioner adequately documents the acute*
27 *medical condition and lack of alternative treatment options which*

- 1 justifies deviation from the three (3) day supply limit established in
2 this subsection in the patient's medical records;
- 3 2. The prescription for a Schedule II controlled substance is prescribed
4 to treat chronic pain;
- 5 3. The prescription for a Schedule II controlled substance is prescribed
6 to treat pain associated with a valid cancer diagnosis;
- 7 4. The prescription for a Schedule II controlled substance is prescribed
8 to treat pain while the patient is receiving hospice or end-of-life
9 treatment;
- 10 5. The prescription for a Schedule II controlled substance is prescribed
11 as part of a narcotic treatment program licensed by the Cabinet for
12 Health and Family Services;
- 13 6. The prescription for a Schedule II controlled substance is prescribed
14 to treat pain following a major surgery or the treatment of significant
15 trauma, as defined by the state licensing board in consultation with
16 the Kentucky Office of Drug Control Policy;
- 17 7. The Schedule II controlled substance is dispensed or administered
18 directly to an ultimate user in an inpatient setting; or
- 19 8. Any additional treatment scenario deemed medically necessary by the
20 state licensing board in consultation with the Kentucky Office of Drug
21 Control Policy.

22 Nothing in this paragraph shall authorize a state licensing board to
23 promulgate regulations which expand any practitioner's prescriptive
24 authority beyond that which existed prior to the effective date of this Act;

25 (c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour
26 supply of any Schedule II controlled substance or a Schedule III controlled
27 substance containing hydrocodone unless the dispensing is done as part of a

1 narcotic treatment program licensed by the Cabinet for Health and Family
2 Services;

3 ~~(d)~~~~(e)~~ A procedure for temporarily suspending, limiting, or restricting a license
4 held by a named licensee where a substantial likelihood exists to believe that
5 the continued unrestricted practice by the named licensee would constitute a
6 danger to the health, welfare, or safety of the licensee's patients or of the
7 general public;

8 ~~(e)~~~~(d)~~ A procedure for the expedited review of complaints filed against their
9 licensees pertaining to the improper, inappropriate, or illegal prescribing or
10 dispensing of controlled substances that is designed to commence an
11 investigation within seven (7) days of a complaint being filed and produce a
12 charging decision by the board on the complaint within one hundred twenty
13 (120) days of the receipt of the complaint, unless an extension for a definite
14 period of time is requested by a law enforcement agency due to an ongoing
15 criminal investigation;

16 ~~(f)~~~~(e)~~ The establishment and enforcement of licensure standards that conform
17 to the following:

- 18 1. A permanent ban on licensees and applicants convicted after July 20,
19 2012, in this state or any other state of any felony offense relating to
20 controlled substances from prescribing or dispensing a controlled
21 substance;
- 22 2. Restrictions short of a permanent ban on licensees and applicants
23 convicted in this state or any other state of any misdemeanor offense
24 relating to prescribing or dispensing a controlled substance;
- 25 3. Restrictions mirroring in time and scope any disciplinary limitation
26 placed on a licensee or applicant by a licensing board of another state if
27 the disciplinary action results from improper, inappropriate, or illegal

1 prescribing or dispensing of controlled substances; and

2 4. A requirement that licensees and applicants report to the board any
3 conviction or disciplinary action covered by this subsection with
4 appropriate sanctions for any failure to make this required report;

5 ~~(g)~~~~(f)~~ A procedure for the continuous submission of all disciplinary and other
6 reportable information to the National Practitioner Data Bank of the United
7 States Department of Health and Human Services;

8 ~~(h)~~~~(g)~~ If not otherwise required by other law, a process for submitting a query
9 on each applicant for licensure to the National Practitioner Data Bank of the
10 United States Department of Health and Human Services to retrieve any
11 relevant data on the applicant; and

12 ~~(i)~~~~(h)~~ Continuing education requirements beginning with the first full
13 educational year occurring after July 1, 2012, that specify that at least seven
14 and one-half percent (7.5%) of the continuing education required of the
15 licensed practitioner relate to the use of the electronic monitoring system
16 established in KRS 218A.202, pain management, or addiction disorders.

17 (4) **For the purposes of pharmacy dispensing, the medical necessity for a Schedule II**
18 **controlled substance as documented by the practitioner in the patient's medical**
19 **record and the prescription for more than a three (3) day supply of that controlled**
20 **substance are presumed to be valid.**

21 ~~(5)~~ A state licensing board shall employ or obtain the services of a specialist in the
22 treatment of pain and a specialist in drug addiction to evaluate information received
23 regarding a licensee's prescribing or dispensing practices related to controlled
24 substances if the board or its staff does not possess such expertise, to ascertain if the
25 licensee under investigation is engaging in improper, inappropriate, or illegal
26 practices.

27 ~~(6)~~~~(5)~~ Any statute to the contrary notwithstanding, no state licensing board shall

1 require that a grievance or complaint against a licensee relating to controlled
2 substances be sworn to or notarized, but the grievance or complaint shall identify
3 the name and address of the grievant or complainant, unless the board by
4 administrative regulation authorizes the filing of anonymous complaints. Any such
5 authorizing administrative regulation shall require that an anonymous complaint or
6 grievance be accompanied by sufficient corroborating evidence as would allow the
7 board to believe, based upon a totality of the circumstances, that a reasonable
8 probability exists that the complaint or grievance is meritorious.

9 ~~(7)(6)~~ Every state licensing board shall cooperate to the maximum extent permitted
10 by law with all state, local, and federal law enforcement agencies, and all
11 professional licensing boards and agencies, state and federal, in the United States or
12 its territories in the coordination of actions to deter the improper, inappropriate, or
13 illegal prescribing or dispensing of a controlled substance.

14 ~~(8)(7)~~ Each state licensing board shall require a fingerprint-supported criminal
15 record check by the Department of Kentucky State Police and the Federal Bureau of
16 Investigation of any applicant for initial licensure to practice any profession
17 authorized to prescribe or dispense controlled substances.

18 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
19 READ AS FOLLOWS:

20 **(1) A person is guilty of trafficking in a misrepresented controlled substance when he**
21 **or she knowingly and unlawfully sells or distributes any Schedule I controlled**
22 **substance, carfentanil, or fentanyl while misrepresenting the identity of the**
23 **Schedule I controlled substance, carfentanil, or fentanyl being sold or distributed**
24 **as a legitimate pharmaceutical product.**

25 **(2) The provisions of this section are intended to be a separate offense from others in**
26 **this chapter, and shall be punished in addition to violations of this chapter**
27 **occurring during the same course of conduct.**

1 **(3) Trafficking in a misrepresented controlled substance is a Class D felony.**

2 ➔Section 9. KRS 218A.180 is amended to read as follows:

- 3 (1) Except when dispensed directly by a practitioner to an ultimate user, no
4 ~~[methamphetamine or]~~ controlled substance ***listed*** in Schedule II may be dispensed
5 without the written, facsimile, ~~[or]~~ electronic, ***or oral*** prescription of a practitioner.
6 A prescription for a controlled substance ***listed*** in Schedule II may be dispensed by
7 a facsimile prescription only as specified in administrative regulations promulgated
8 by the cabinet. ***A prescription for a controlled substance listed in Schedule II may***
9 ***be dispensed by oral prescription only for immediate administration to a patient***
10 ***enrolled in a hospice program or a resident in a long-term care facility, as***
11 ***defined in KRS 216.535, excluding a family care home or personal care home,***
12 ***and the practitioner determines that immediate administration is necessary, no***
13 ***appropriate alternative treatment is available, and it is not reasonably possible for***
14 ***the prescriber to provide a written prescription.*** No prescription for a controlled
15 substance in Schedule II shall be valid after sixty (60) days from the date issued. No
16 prescription for a controlled substance in Schedule II shall be refilled. All
17 prescriptions for controlled substances classified in Schedule II shall be maintained
18 in a separate prescription file.
- 19 (2) Except when dispensed directly by a practitioner to an ultimate user, a controlled
20 substance included in Schedules III, IV, and V, which is a prescription drug, shall
21 not be dispensed without a written, facsimile, electronic, or oral prescription by a
22 practitioner. The prescription shall not be filled or refilled more than six (6) months
23 after the date issued or be refilled more than five (5) times, unless renewed by the
24 practitioner and a new prescription, written, electronic, or oral shall be required.
- 25 (3) (a) To be valid, a prescription for a controlled substance shall be issued only for a
26 legitimate medical purpose by a practitioner acting in the usual course of his
27 professional practice. Responsibility for the proper dispensing of a controlled

- 1 substance pursuant to a prescription for a legitimate medical purpose is upon
2 the pharmacist who fills the prescription.
- 3 (b) A prescription shall not be issued for a practitioner to obtain a controlled
4 substance for the purpose of general dispensing or administering to patients.
- 5 (4) All written, ~~and~~ facsimile, **and electronic** prescriptions for controlled substances
6 shall be dated and signed by the practitioner on the date issued. **A computer-**
7 **generated prescription that is printed out or faxed by the practitioner shall be**
8 **manually signed. A prescription may be transmitted by facsimile only as specified**
9 **in administrative regulations promulgated by the cabinet. Electronic**
10 **prescriptions shall be created, signed, and transmitted in accordance with the**
11 **requirements of 21 C.F.R. Part 1311** ~~and shall bear the full name and address of~~
12 ~~the patient, drug name, strength, dosage form, quantity prescribed, directions for~~
13 ~~use, and the name, address and registration number of the practitioner~~.
- 14 (5) All ~~oral, facsimile, or electronic~~ prescriptions **for controlled substances** shall
15 include the full name and address of the patient, drug name, strength, dosage form,
16 quantity prescribed, directions for use, and the name, address and registration
17 number of the practitioner.
- 18 (6) All oral prescriptions **for controlled substances** shall be immediately reduced to
19 writing, dated, and signed by the pharmacist.
- 20 (7) A pharmacist refilling any prescription shall record on the prescription or other
21 equivalent record the date, the quantity, and the pharmacist's initials. The
22 maintenance of prescription records under the federal controlled substances laws
23 and regulations containing substantially the same information as specified in this
24 subsection shall constitute compliance with this subsection.
- 25 (8) The pharmacist filling a written, facsimile, electronic, or oral prescription for a
26 controlled substance shall affix to the package a label showing the date of filling,
27 the pharmacy name and address, the serial number of the prescription, the name of

1 the patient, the name of the prescribing practitioner and directions for use and
2 cautionary statements, if any, contained in such prescription or required by law.

3 (9) Any person who violates any provision of this section shall:

4 (a) For the first offense, be guilty of a Class A misdemeanor.

5 (b) For a second or subsequent offense, be guilty of a Class D felony.

6 ➔Section 10. KRS 218A.202 is amended to read as follows:

7 (1) The Cabinet for Health and Family Services shall establish an electronic system for
8 monitoring Schedules II, III, IV, and V controlled substances that are dispensed
9 within the Commonwealth by a practitioner or pharmacist or dispensed to an
10 address within the Commonwealth by a pharmacy that has obtained a license,
11 permit, or other authorization to operate from the Kentucky Board of Pharmacy.
12 The cabinet may contract for the design, upgrade, or operation of this system if the
13 contract preserves all of the rights, privileges, and protections guaranteed to
14 Kentucky citizens under this chapter and the contract requires that all other aspects
15 of the system be operated in conformity with the requirements of this or any other
16 applicable state or federal law.

17 (2) A practitioner or a pharmacist authorized to prescribe or dispense controlled
18 substances to humans shall register with the cabinet to use the system provided for
19 in this section and shall maintain such registration continuously during the
20 practitioner's or pharmacist's term of licensure and shall not have to pay a fee or tax
21 specifically dedicated to the operation of the system.

22 (3) Every dispenser within the Commonwealth who is licensed, permitted, or otherwise
23 authorized to prescribe or dispense a controlled substance to a person in Kentucky
24 shall report to the Cabinet for Health and Family Services the data required by this
25 section, except that reporting shall not be required for:

26 (a) A drug administered directly to a patient in a hospital, a resident of a health
27 care facility licensed under KRS Chapter 216B, a resident of a child-caring

- 1 facility as defined by KRS 199.011, or an individual in a jail, correctional
2 facility, or juvenile detention facility;
- 3 (b) A drug, other than any Schedule II controlled substance or a Schedule III
4 controlled substance containing hydrocodone, dispensed by a practitioner at a
5 facility licensed by the cabinet, provided that the quantity dispensed is limited
6 to an amount adequate to treat the patient for a maximum of forty-eight (48)
7 hours; or
- 8 (c) A drug administered or dispensed to a research subject enrolled in a research
9 protocol approved by an institutional review board that has an active
10 federalwide assurance number from the United States Department of Health
11 and Human Services, Office for Human Research Protections, where the
12 research involves single, double, or triple blind drug administration or is
13 additionally covered by a certificate of confidentiality from the National
14 Institutes of Health.
- 15 (4) Data for each controlled substance that is dispensed shall include but not be limited
16 to the following:
- 17 (a) Patient identifier;
- 18 (b) National drug code of the drug dispensed;
- 19 (c) Date of dispensing;
- 20 (d) Quantity dispensed;
- 21 (e) Prescriber; and
- 22 (f) Dispenser.
- 23 (5) The data shall be provided in the electronic format specified by the Cabinet for
24 Health and Family Services unless a waiver has been granted by the cabinet to an
25 individual dispenser. The cabinet shall establish acceptable error tolerance rates for
26 data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or
27 inaccurate data shall be corrected upon notification by the cabinet if the dispenser

1 exceeds these error tolerance rates.

2 (6) The Cabinet for Health and Family Services shall only disclose data to persons and
3 entities authorized to receive that data under this section. Disclosure to any other
4 person or entity, including disclosure in the context of a civil action where the
5 disclosure is sought either for the purpose of discovery or for evidence, is prohibited
6 unless specifically authorized by this section. The Cabinet for Health and Family
7 Services shall be authorized to provide data to:

8 (a) A designated representative of a board responsible for the licensure,
9 regulation, or discipline of practitioners, pharmacists, or other person who is
10 authorized to prescribe, administer, or dispense controlled substances and who
11 is involved in a bona fide specific investigation involving a designated person;

12 (b) Employees of the Office of the Inspector General of the Cabinet for Health
13 and Family Services who have successfully completed training for the
14 electronic system and who have been approved to use the system, Kentucky
15 Commonwealth's attorneys and assistant Commonwealth's attorneys, county
16 attorneys and assistant county attorneys, a peace officer certified pursuant to
17 KRS 15.380 to 15.404, a certified or full-time peace officer of another state,
18 or a federal peace officer whose duty is to enforce the laws of this
19 Commonwealth, of another state, or of the United States relating to drugs and
20 who is engaged in a bona fide specific investigation involving a designated
21 person;

22 (c) A state-operated Medicaid program in conformity with subsection (7) of this
23 section;

24 (d) A properly convened grand jury pursuant to a subpoena properly issued for the
25 records;

26 (e) A practitioner or pharmacist, or employee of the practitioner's or pharmacist's
27 practice acting under the specific direction of the practitioner or pharmacist,

1 who requests information and certifies that the requested information is for the
2 purpose of:

- 3 1. Providing medical or pharmaceutical treatment to a bona fide current or
4 prospective patient; or
- 5 2. Reviewing and assessing the individual prescribing or dispensing
6 patterns of the practitioner or pharmacist or to determine the accuracy
7 and completeness of information contained in the monitoring system;

8 (f) The chief medical officer of a hospital or long-term-care facility, an employee
9 of the hospital or long-term-care facility as designated by the chief medical
10 officer and who is working under his or her specific direction, or a physician
11 designee if the hospital or facility has no chief medical officer, if the officer,
12 employee, or designee certifies that the requested information is for the
13 purpose of providing medical or pharmaceutical treatment to a bona fide
14 current or prospective patient or resident in the hospital or facility;

15 (g) In addition to the purposes authorized under paragraph (a) of this subsection,
16 the Kentucky Board of Medical Licensure, for any physician who is:

- 17 1. Associated in a partnership or other business entity with a physician who
18 is already under investigation by the Board of Medical Licensure for
19 improper prescribing or dispensing practices;
- 20 2. In a designated geographic area for which a trend report indicates a
21 substantial likelihood that inappropriate prescribing or dispensing may
22 be occurring; or
- 23 3. In a designated geographic area for which a report on another physician
24 in that area indicates a substantial likelihood that inappropriate
25 prescribing or dispensing may be occurring in that area;

26 (h) In addition to the purposes authorized under paragraph (a) of this subsection,
27 the Kentucky Board of Nursing, for any advanced practice registered nurse

1 who is:

- 2 1. Associated in a partnership or other business entity with a physician who
3 is already under investigation by the Kentucky Board of Medical
4 Licensure for improper prescribing or dispensing practices;
- 5 2. Associated in a partnership or other business entity with an advanced
6 practice registered nurse who is already under investigation by the Board
7 of Nursing for improper prescribing practices;
- 8 3. In a designated geographic area for which a trend report indicates a
9 substantial likelihood that inappropriate prescribing or dispensing may
10 be occurring; or
- 11 4. In a designated geographic area for which a report on a physician or
12 another advanced practice registered nurse in that area indicates a
13 substantial likelihood that inappropriate prescribing or dispensing may
14 be occurring in that area;
- 15 (i) A judge or a probation or parole officer administering a diversion or probation
16 program of a criminal defendant arising out of a violation of this chapter or of
17 a criminal defendant who is documented by the court as a substance abuser
18 who is eligible to participate in a court-ordered drug diversion or probation
19 program; or
- 20 (j) A medical examiner engaged in a death investigation pursuant to KRS 72.026.
- 21 (7) The Department for Medicaid Services shall use any data or reports from the system
22 for the purpose of identifying Medicaid providers or recipients whose prescribing,
23 dispensing, or usage of controlled substances may be:
- 24 (a) Appropriately managed by a single outpatient pharmacy or primary care
25 physician; or
- 26 (b) Indicative of improper, inappropriate, or illegal prescribing or dispensing
27 practices by a practitioner or drug seeking by a Medicaid recipient.

- 1 (8) A person who receives data or any report of the system from the cabinet shall not
2 provide it to any other person or entity except as provided in this section, in another
3 statute, or by order of a court of competent jurisdiction and only to a person or
4 entity authorized to receive the data or the report under this section, except that:
- 5 (a) A person specified in subsection (6)(b) of this section who is authorized to
6 receive data or a report may share that information with any other persons
7 specified in subsection (6)(b) of this section authorized to receive data or a
8 report if the persons specified in subsection (6)(b) of this section are working
9 on a bona fide specific investigation involving a designated person. Both the
10 person providing and the person receiving the data or report under this
11 paragraph shall document in writing each person to whom the data or report
12 has been given or received and the day, month, and year that the data or report
13 has been given or received. This document shall be maintained in a file by
14 each agency engaged in the investigation;
- 15 (b) A representative of the Department for Medicaid Services may share data or
16 reports regarding overutilization by Medicaid recipients with a board
17 designated in subsection (6)(a) of this section, or with a law enforcement
18 officer designated in subsection (6)(b) of this section;
- 19 (c) The Department for Medicaid Services may submit the data as evidence in an
20 administrative hearing held in accordance with KRS Chapter 13B;
- 21 (d) If a state licensing board as defined in KRS 218A.205 initiates formal
22 disciplinary proceedings against a licensee, and data obtained by the board is
23 relevant to the charges, the board may provide the data to the licensee and his
24 or her counsel, as part of the notice process required by KRS 13B.050, and
25 admit the data as evidence in an administrative hearing conducted pursuant to
26 KRS Chapter 13B, with the board and licensee taking all necessary steps to
27 prevent further disclosure of the data; and

- 1 (e) A practitioner, pharmacist, or employee who obtains data under subsection
2 (6)(e) of this section may share the report with the patient or person authorized
3 to act on the patient's behalf and place the report in the patient's medical
4 record, with that individual report then being deemed a medical record subject
5 to disclosure on the same terms and conditions as an ordinary medical record
6 in lieu of the disclosure restrictions otherwise imposed by this section.
- 7 (9) The Cabinet for Health and Family Services, all peace officers specified in
8 subsection (6)(b) of this section, all officers of the court, and all regulatory agencies
9 and officers, in using the data for investigative or prosecution purposes, shall
10 consider the nature of the prescriber's and dispenser's practice and the condition for
11 which the patient is being treated.
- 12 (10) The data and any report obtained therefrom shall not be a public record, except that
13 the Department for Medicaid Services may submit the data as evidence in an
14 administrative hearing held in accordance with KRS Chapter 13B.
- 15 (11) Intentional failure by a dispenser to transmit data to the cabinet as required by
16 subsection (3), (4), or (5) of this section shall be a Class B misdemeanor for the first
17 offense and a Class A misdemeanor for each subsequent offense.
- 18 (12) Intentional disclosure of transmitted data to a person not authorized by subsection
19 (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining
20 information under this section not relating to a bona fide specific investigation, shall
21 be a Class B misdemeanor for the first offense and a Class A misdemeanor for each
22 subsequent offense.
- 23 (13) (a) The Commonwealth Office of Technology, in consultation with the Cabinet
24 for Health and Family Services, may submit an application to the United
25 States Department of Justice for a drug diversion grant to fund a pilot or
26 continuing project to study, create, or maintain a real-time electronic
27 monitoring system for Schedules II, III, IV, and V controlled substances.

- 1 (b) The pilot project shall:
- 2 1. Be conducted in two (2) rural counties that have an interactive real-time
- 3 electronic information system in place for monitoring patient utilization
- 4 of health and social services through a federally funded community
- 5 access program; and
- 6 2. Study the use of an interactive system that includes a relational data base
- 7 with query capability.
- 8 (c) Funding to create or maintain a real-time electronic monitoring system for
- 9 Schedules II, III, IV, and V controlled substances may be sought for a
- 10 statewide system or for a system covering any geographic portion or portions
- 11 of the state.
- 12 (14) Provisions in this section that relate to data collection, disclosure, access, and
- 13 penalties shall apply to the pilot project authorized under subsection (13) of this
- 14 section.
- 15 (15) The Cabinet for Health and Family Services may, by promulgating an
- 16 administrative regulation, limit the length of time that data remain in the electronic
- 17 system. Any data removed from the system shall be archived and subject to retrieval
- 18 within a reasonable time after a request from a person authorized to review data
- 19 under this section.
- 20 (16) (a) The Cabinet for Health and Family Services shall work with each board
- 21 responsible for the licensure, regulation, or discipline of practitioners,
- 22 pharmacists, or other persons who are authorized to prescribe, administer, or
- 23 dispense controlled substances for the development of a continuing education
- 24 program about the purposes and uses of the electronic system for monitoring
- 25 established in this section.
- 26 (b) The cabinet shall work with the Kentucky Bar Association for the
- 27 development of a continuing education program for attorneys about the

1 purposes and uses of the electronic system for monitoring established in this
2 section.

3 (c) The cabinet shall work with the Justice and Public Safety Cabinet for the
4 development of a continuing education program for law enforcement officers
5 about the purposes and uses of the electronic system for monitoring
6 established in this section.

7 (17) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with
8 this section, the cabinet shall notify the licensing board or agency responsible for
9 licensing the prescriber or dispenser. The licensing board shall treat the notification
10 as a complaint against the licensee.

11 (18) *The Cabinet for Health and Family Services, Office of Inspector General, shall*
12 *conduct quarterly reviews to identify patterns of potential improper,*
13 *inappropriate, or illegal prescribing or dispensing of a controlled substance. The*
14 *Office of Inspector General may independently investigate and submit findings*
15 *and recommendations to the appropriate boards of licensure or other reporting*
16 *agencies.*

17 (19) The cabinet shall promulgate administrative regulations to implement the provisions
18 of this section. Included in these administrative regulations shall be:

19 (a) An error resolution process allowing a patient to whom a report had been
20 disclosed under subsection (8) of this section to request the correction of
21 inaccurate information contained in the system relating to that patient; and

22 (b) Beginning July 1, 2013, a requirement that data be reported to the system
23 under subsection (3) of this section within one (1) day of dispensing.