

1 AN ACT relating to alcohol and drug counselors.

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

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

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

6 *(a) "Employee" means a person who has failed a drug screen related to*  
7 *employment; and*

8 *(b) "Employer" means an employer who elects to employ a person who has*  
9 *failed a drug screen related to employment.*

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

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

18 *(a) Enumerating elements necessary in an employer's drug policy if the*  
19 *employer elects to participate in an employer-facilitated substance use*  
20 *disorder treatment program;*

21 *(b) Mandating an initial clinical assessment of the employee by a qualified*  
22 *health professional and creation of a written treatment plan;*

23 *(c) Containing referral information for clinical assessments of employees,*  
24 *education, and treatment options;*

25 *(d) Requiring the employee provide its employer with proof of the employee's*  
26 *active participation in a licensed drug education and substance use disorder*  
27 *treatment program and demonstrated successful compliance with the*

1 recommendations of the initial clinical assessment; and

2 (e) Establishing follow-up drug testing for the employee.

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

5 (a) Promote voluntary participation for all employers regardless of the number  
6 of employees; and

7 (b) Develop and deliver resources and training for employers including the  
8 following information:

9 1. The definition of substance use disorder as defined in the current  
10 edition of the American Psychiatric Association's Diagnostic and  
11 Statistical Manual of Mental Disorders;

12 2. Signs and symptoms of a substance use disorder;

13 3. A list of licensed treatment options for substance use disorder;

14 4. Information about acceptable use of treatment records covered by the  
15 federal Health Insurance Portability and Accountability Act;

16 5. Information about substance use disorder treatment, return to use,  
17 and supportive work environments for treatment and recovery; and

18 6. A list of qualified health professionals that an employer may use to  
19 provide onsite drug abuse prevention education and substance use  
20 disorder treatment services for employees.

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

22 (a) Provide the employer with a signed consent authorizing the employer to  
23 provide and receive documentation confirming the employee's participation  
24 and completion of substance use treatment services;

25 (b) Comply with the employer's drug policy; and

26 (c) Comply with the administrative regulations promulgated by the Cabinet for  
27 Health and Family Services in conjunction with the Office of Drug Control

1           Policy.

2   (6) To participate in the program an employer shall:

3           (a) Develop and distribute to persons it employs a written drug policy,  
4           procedure, or protocol including, without limit, a test or series of tests to  
5           objectively measure substances that can create substance use disorders, that  
6           is in compliance with state and federal law;

7           (b) Require an employee to participate in recommended drug education and  
8           licensed substance use disorder treatment services as a condition of  
9           employment;

10          (c) Have the right to discipline or terminate an employee who does not comply  
11          with the agreed treatment services or the employer's drug policy;

12          (d) Comply with the administrative regulations promulgated by the Cabinet for  
13          Health and Family Services, and the Office of Drug Control Policy; and

14          (e) Secure all records and information concerning an employee's drug test  
15          results, treatment assessments, and treatment reports in a confidential  
16          manner and shall maintain this information separately from the employee's  
17          personnel file. The employer shall share this information:

18            1. a. Internally only with those in the employee's chain-of-authority  
19            who need the information to perform responsibilities related to  
20            supervision or support of the employee; and

21            b. Externally only when the employee has provided specific written  
22            authorization to disclose specific facts to specific parties for a  
23            specific purpose; or

24            2. As ordered by the court.

25   (7) An employer may:

26            (a) Pay for all or part of the employee's substance use disorder education and  
27            treatment services; and

1        (b) Accept a voluntary wage assignment from the employee to pay for part of  
2        the employee's substance use disorder treatment. The wage assignment  
3        shall not reduce the employee's remaining net compensation below the  
4        federal minimum wage during any pay period.

5        (8) If an employer complies with the requirements of this section:

6        (a) The employer shall not be liable for a civil action alleging negligent hiring,  
7        negligent retention, or negligent supervision for a negligent act by the  
8        employee as a result of the employee's substance use disorder unless it can  
9        be shown that the employer violated subsection (6) of this section, or knew  
10       or should have known, that the employee had a recurrence of his or her  
11       substance use disorder and was acting under the influence of the substance  
12       at the time of the alleged negligent act;

13       (b) The employer's participation or nonparticipation in a drug education and  
14       substance use disorder treatment program shall not be admissible as  
15       evidence in an action against the employer, the employer's agent, or the  
16       employer's employee except that it may be admitted as evidence of the  
17       participating employer's liability limitation, mitigation of damages, or as  
18       evidence of a participating employer's noncompliance with subsection (6) of  
19       this section; and

20       (c) Referral and treatment for drug education and substance use disorder  
21       treatment by the employer shall not be sufficient to constitute compliance  
22       with this section unless the employee has complied with all other  
23       requirements of this statute and associated administrative regulations.

24       (9) This section shall not form the basis of any individual private right of action and  
25       subsection (8)(a) of this section shall operate as an affirmative defense for which  
26       an employer bears the burden of proving compliance. However, nothing in this  
27       section shall bar a plaintiff from commencing a cause of action for any common

1        *law claim for any injury to person or property or for wrongful death in any civil*  
 2        *action alleging negligent hiring, negligent retention, or negligent supervision,*  
 3        *against an employer.*

4        ➔Section 2. KRS 309.083 is amended to read as follows:

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

- 7        (1) Be at least eighteen (18) years of age;
- 8        (2) Have obtained a baccalaureate degree;
- 9        (3) Have completed six thousand (6,000) hours of board-approved experience working  
 10       with persons having a substance use disorder, three hundred (300) hours of which  
 11       shall have been under the direct supervision of:
- 12       (a) A certified alcohol and drug counselor who has at least two (2) years of post-  
 13       certification experience; or
- 14       (b) A licensed clinical alcohol and drug counselor who has at least two (2) years  
 15       of post-licensure experience;
- 16       (4) *Meet all education and supervision requirements of the International*  
 17       *Certification and Reciprocity Consortium for the Alcohol and Drug Counselor*  
 18       *(ADC)*~~[Have completed at least two hundred seventy (270) classroom hours of~~  
 19       ~~board-approved curriculum];~~
- 20       (5) Have passed a written examination that has been approved by the International  
 21       Certification Reciprocity Consortium~~[on Alcoholism and Drug Abuse];~~
- 22       (6) Have signed an agreement to abide by the standards of practice and code of ethics  
 23       approved by the board;
- 24       (7) Have completed at least six (6) hours of ethics training; three (3) hours of domestic  
 25       violence training; and two (2) hours of training in the transmission, control,  
 26       treatment, and prevention of the human immunodeficiency virus;
- 27       (8) Have submitted two (2) letters of reference from certified or licensed clinical

1 alcohol and drug counselors;

2 (9) Live or work at least a majority of the time in Kentucky; and

3 (10) Have complied with the requirements for the training program in suicide  
4 assessment, treatment, and management in KRS 210.366 and any administrative  
5 regulations promulgated thereunder.

6 ➔Section 3. KRS 309.0832 is amended to read as follows:

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

9 (1) Be at least eighteen (18) years of age;

10 (2) Have obtained from a regionally accredited college or university or a college or  
11 university accredited by an agency recognized by the United States Department of  
12 Education:

13 (a) A sixty (60) hour master's degree in a behavioral science with clinical  
14 application;

15 (b) A thirty (30) hour advanced placement master's degree in a behavioral science  
16 with clinical application; or

17 (c) A doctoral degree in a behavioral science with clinical application;

18 (3) Meet all education and supervision requirements of the International  
19 Certification and Reciprocity Consortium for the Advanced Alcohol and Drug  
20 Counselor (AADC);

21 (4) Have completed at least one hundred eighty (180) classroom hours of alcohol and  
22 drug counselor specific board-approved curriculum;

23 (5)~~(4)~~ Have passed a written examination as specified by the board in administrative  
24 regulation;

25 (6)~~(5)~~ Have signed an agreement to abide by the standards of practice and code of  
26 ethics approved by the board;

27 (7)~~(6)~~ Have completed at least six (6) hours of ethics training; three (3) hours of

1 domestic violence training; and two (2) hours training in the transmission, control,  
2 treatment, and prevention of the human immunodeficiency virus, in addition to the  
3 educational requirements in subsection (2) of this section;

4 ~~(8)~~~~(7)~~ Have submitted two (2) letters of reference from certified alcohol and drug  
5 counselors or licensed clinical alcohol and drug counselors;

6 ~~(9)~~~~(8)~~ Live or work at least a majority of the time in Kentucky;

7 ~~(10)~~~~(9)~~ Have complied with the requirements for the training program in suicide  
8 assessment, treatment, and management in KRS 210.366 and any administrative  
9 regulations promulgated thereunder; and

10 ~~(11)~~~~(10)~~ Have completed two thousand (2,000) hours of board-approved experience  
11 working with persons having a substance use disorder, three hundred (300) hours of  
12 which shall have been under the direct supervision of a licensed clinical alcohol and  
13 drug counselor.

14 ➔Section 4. KRS 309.0833 is amended to read as follows:

15 (1) An applicant for licensure as a licensed clinical alcohol and drug counselor  
16 associate shall:

17 (a) Pay the board the initial fee for licensure;

18 (b) Complete the requirements under KRS 309.0832(1) to (9); and

19 (c) Obtain a board-approved supervisor of record.

20 (2) Upon completion of the hours of board-approved experience specified in KRS  
21 309.0832~~(11)~~~~(10)~~, a licensed clinical alcohol and drug counselor associate may  
22 apply to the board for licensure as a licensed clinical alcohol and drug counselor.