

1       AN ACT relating to artificial intelligence and declaring an emergency.

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

3       ➔ SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO

4    READ AS FOLLOWS:

5    *As used in Sections 1 to 3 of this Act:*

6    *(1) "Administrative support":*

7       *(a) Means tasks performed to assist a licensed professional in the delivery of*  
8       *therapy or psychotherapy services that do not involve therapeutic*  
9       *communication; and*

10      *(b) Includes but is not limited to:*

11       *1. Managing appointment scheduling and reminders;*  
12       *2. Processing billing and insurance claims; and*  
13       *3. Drafting general communications related to therapy logistics that do*  
14       *not include therapeutic communication or advice;*

15      *(2) "Artificial intelligence" has the same meaning as in KRS 42.722;*

16      *(3) "Consent":*

17       *(a) Means a clear, explicit affirmative act by an individual that:*

18       *1. Unambiguously communicates the individual's express, freely given,*  
19       *informed, voluntary, specific, and unambiguous written agreement,*  
20       *including a written agreement provided by electronic means; and*  
21       *2. Is revocable by the individual; and*

22       *(b) Does not include an agreement that is obtained by:*

23       *1. The acceptance of a general or broad terms of use agreement or a*  
24       *similar document that contains descriptions of artificial intelligence*  
25       *along with other unrelated information;*  
26       *2. An individual hovering over, muting, pausing, or closing a given piece*  
27       *of digital content; or*

1           3. Deceptive actions;2       (4) "Department" means the Department of Professional Licensing in the Public  
3           Protection Cabinet;4       (5) "Licensed professional":5           (a) Means an individual who holds a valid license or certificate issued by any  
6           agency of this Commonwealth to provide therapy or psychotherapy services,  
7           including:8           1. A licensed psychologist licensed under the provisions of KRS Chapter  
9           319;10           2. A licensed clinical social worker licensed under the provisions of KRS  
11           335.100;12           3. A certified social worker licensed under the provisions of KRS  
13           335.080;14           4. A professional counselor credentialed under the provisions of KRS  
15           335.500 to 335.599;16           5. A marriage and family therapist licensed under the provisions of KRS  
17           335.500 to 335.599;18           6. A licensed alcohol and drug counselor licensed under the provisions  
19           of KRS 309.080 to 309.089 authorized to provide therapy or  
20           psychotherapy services;21           7. An art therapist certified under KRS 309.130;22           8. An advanced practice registered nurse licensed under the provisions of  
23           KRS Chapter 314 engaged in providing mental health services; and24           9. Any other professional authorized by this Commonwealth through a  
25           license or certificate to provide therapy or psychotherapy services; and26           (b) Does not include a physician;27       (6) "Peer support" means services provided by individuals with lived experience of

1        mental health conditions or recovery from substance use that are intended to  
2        offer encouragement, understanding, and guidance without clinical intervention;

3        (7) "Permitted use of artificial intelligence" means the use of artificial intelligence  
4        tools or systems by a licensed professional to assist in providing administrative  
5        support or supplementary support in therapy or psychotherapy services where the  
6        licensed professional maintains full responsibility for all interactions, outputs,  
7        and data use associated with the system and satisfies the requirements of Section  
8        2 of this Act;

9        (8) "Relevant board" means the applicable state board that licenses, certifies,  
10        regulates, or oversees the specific type of licensed professional;

11        (9) "Religious counseling" means counseling provided by clergy members, pastoral  
12        counselors, or other religious leaders acting within the scope of their religious  
13        duties if the services are explicitly faith-based and are not represented as clinical  
14        mental health services or therapy or psychotherapy services;

15        (10) "Supplementary support" includes but is not limited to the:

16        (a) Preparing and maintaining of client records, including therapy notes;  
17        (b) Analyzing of anonymized data to track client progress or identify trends,  
18        subject to review by a licensed professional; and  
19        (c) Identifying and organizing of external resources or referrals for client use;

20        (11) "Therapeutic communication":

21        (a) Means any verbal, nonverbal, or written interaction conducted in a clinical  
22        or professional setting that is intended to diagnose, treat, or address an  
23        individual's mental, emotional, or behavioral health concern; and

24        (b) Includes but is not limited to:

25        1. Direct interactions with clients for the purpose of understanding or  
26        reflecting their thoughts, emotions, or experiences;  
27        2. Providing guidance, therapeutic strategies, or interventions designed

**to achieve mental health outcomes;**

**3. Offering emotional support, reassurance, or empathy in response to psychological or emotional distress;**

**4. Collaborating with clients to develop or modify therapeutic goals or treatment plans; and**

5. Offering behavioral feedback intended to promote psychological growth or address mental health conditions; and

**(12) "Therapy or psychotherapy services":**

(a) Means services provided to diagnose, treat, or improve an individual's mental health or behavioral health; and

**(b) Does not include religious counseling or peer support.**

12 ➔ SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO  
13 READ AS FOLLOWS:

14 (1) A licensed professional:

(a) Shall not use artificial intelligence to assist in providing supplementary support in therapy or psychotherapy services where the client's therapeutic session is recorded or transcribed unless:

1. The patient or the patient's legally authorized representative is informed in writing of the following:

*a. That artificial intelligence will be used; and*

**b. The specific purpose of the artificial intelligence tool or system that will be used; and**

**2. The patient or the patient's legally authorized representative provides consent to the use of artificial intelligence;**

(b) May use artificial intelligence only to the extent it is a permitted use of artificial intelligence and the use meets the requirements of this section;

(c) Shall not allow artificial intelligence to:

- 1        1. Make independent therapeutic decisions;
- 2        2. Directly interact with clients in any form of therapeutic
- 3        communication;
- 4        3. Generate therapeutic recommendations or treatment plans without
- 5        review and approval by the licensed professional; or
- 6        4. Detect emotions or mental state; and

7        (2) An individual, corporation, or entity shall not provide, advertise, or otherwise

8        offer therapy or psychotherapy services, including through the use of internet-

9        based artificial intelligence, to the public in this Commonwealth unless the

10        therapy or psychotherapy services are performed by an individual who is a

11        licensed professional.

12        (3) All records kept by a licensed professional and all communications between an

13        individual seeking therapy or psychotherapy services and a licensed professional

14        shall be confidential and shall not be disclosed except as required by KRS

15        210.235.

16        ➔ SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO  
17        READ AS FOLLOWS:

18        (1) Any individual, corporation, or entity found to be in violation of Sections 1 to 3 of  
19        this Act shall pay a civil penalty to the department in an amount not to exceed ten  
20        thousand dollars (\$10,000) per violation, as determined by the department, with  
21        penalties assessed based on the degree of harm and the circumstances of the  
22        violation.

23        (2) A civil penalty shall be:

- 24        (a) Assessed by the department after a hearing is held by the relevant board;  
25        and
- 26        (b) Paid within sixty (60) days after the date of an order by the relevant board  
27        imposing the civil penalty.

1        (3) The relevant board shall have authority to investigate any actual, alleged, or  
2        suspected violation of Sections 1 to 3 of this Act.

3        (4) Sections 1 to 3 of this Act do not apply to religious counseling, peer support, or  
4        self-help materials and educational resources that are available to the public and  
5        do not purport to offer therapy or psychotherapy services.

6        ➔Section 4.      Whereas the General Assembly seeks to protect vulnerable  
7        Kentuckians from harm caused by artificial intelligence, an emergency is declared to  
8        exist, and this Act takes effect upon its passage and approval by the Governor or upon its  
9        otherwise becoming a law.