

1 AN ACT relating to respiratory care.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 314A IS CREATED TO
4 READ AS FOLLOWS:

5 *An advanced practice respiratory therapist who is employed by a health facility as*
6 *defined in KRS 216B.015 may determine whether or not a patient is dead in*
7 *accordance with the requirements of KRS 446.400. The advanced practice respiratory*
8 *therapist shall notify the patient's attending physician or other appropriate practitioner*
9 *of the death in accordance with the facility's policy. The advanced practice respiratory*
10 *therapist is authorized to sign the provisional report of death as furnished by the state*
11 *registrar of vital statistics.*

12 ➔SECTION 2. KRS 314A.010 IS REPEALED AND REENACTED TO READ
13 AS FOLLOWS:

14 *As used in this chapter:*

15 *(1) "Accredited program" means a training program accredited by CoARC that*
16 *qualifies the graduate to sit for the registry examination or the entry level*
17 *examination administered by NBRC or its equivalent;*

18 *(2) "Advanced practice respiratory care" means the performance of services by an*
19 *advanced practice respiratory therapist, under prospective medical direction, in*
20 *the diagnosis and treatment of patients with cardiopulmonary diseases or*
21 *conditions in a setting in which the advance practice respiratory therapist is*
22 *engaged in providing direct patient care, including prescribing legend drugs, and*
23 *ordering, administering, and directing the administration of drugs, treatments,*
24 *and medical devices;*

25 *(3) "Advanced practice respiratory therapist" means an individual who holds a*
26 *current and active license issued pursuant to this chapter that authorizes the*
27 *practice of advanced practice respiratory care;*

- 1 (4) "Board" means the Kentucky Board of Respiratory Care;
- 2 (5) "Certification period" means an uninterrupted two (2) year period ending on
3 December 31 of the year preceding a licensee's renewal deadline. The
4 certification period is established as the timeframe for each applicant or licensee
5 to earn any required continuing education;
- 6 (6) "CoARC" means the Commission on Accreditation for Respiratory Care or its
7 equivalent;
- 8 (7) "Continuing education" means educational activities primarily designed to keep
9 respiratory therapists and advanced practice respiratory therapists informed of
10 developments in the respiratory care field or any special areas of practice
11 engaged in by those persons;
- 12 (8) "Direct supervision" means supervision of a student respiratory therapist by a
13 respiratory therapist or an advanced practice respiratory therapist with a current
14 and active license issued pursuant to this chapter who shall be on the premises
15 where respiratory care services are provided and available for immediate
16 consultation at all times the student respiratory therapist is engaged in direct
17 patient care;
- 18 (9) "Documented competency" means adherence to guidelines established by health
19 facilities, medical staff, or accreditation agencies. These guidelines shall be in
20 accordance with national standards of practice deemed appropriate by the
21 American Association for Respiratory Care or its equivalent;
- 22 (10) "Expired" means a licensure status that applies to a licensee following a
23 licensee's failure to file a timely and complete renewal application;
- 24 (11) "Inactive" means a licensure status that applies to a licensee who:
25 (a) Made a successful initial application to place his or her license in inactive
26 status; or
27 (b) Filed a timely renewal application with the appropriate fee indicating the

1 licensee's request to renew his or her inactive status;

2 (12) "Legend drug" means any drug defined by the Federal Food, Drug and Cosmetic
3 Act, as amended, to require its label to bear the statement "Caution: Federal law
4 prohibits dispensing without prescription";

5 (13) "License" or "licensure" means the board's official authorization to practice
6 respiratory care for the time specified by the board in accordance with this
7 chapter;

8 (14) "Medical director" means a licensed physician who is knowledgeable in the
9 diagnosis, treatment, and assessment of respiratory problems and whose
10 responsibilities are established by statutes and administrative regulations
11 governing the operation of facilities licensed under KRS Chapter 216B, as well as
12 statutes and administrative regulations dealing with hospice, home health, and
13 other settings where respiratory care services may be delivered;

14 (15) "NBRC" means the National Board for Respiratory Care, Incorporated, or its
15 equivalent;

16 (16) "Physiologic ventilatory support" means to bring fresh air for gas exchange into
17 the lungs and to allow for the exhalation of air that contains carbon dioxide;

18 (17) "Practice of respiratory care" means the procedures employed in the therapy,
19 management, rehabilitation, gathering of assessment information, or other
20 procedures administered to patients with deficiencies or abnormalities that affect
21 their cardiopulmonary system and associated aspects of cardiopulmonary and
22 other system functions. This includes but is not limited to the:

23 (a) Provision of respiratory care procedures to ensure the safety, comfort,
24 personal hygiene, and protection of patients, and the performance of
25 disease prevention and restorative measures;

26 (b) Administration of pharmacologic and therapeutic agents related to the
27 cardiopulmonary care necessary for treatment, disease prevention, or

1 rehabilitation regimes prescribed by a physician, physician assistant,
2 advanced practice registered nurse, or advanced practice respiratory
3 therapist;

4 (c) Observation of signs and symptoms of cardiopulmonary illness, reactions to
5 treatment, or general physical condition, along with a determination of
6 whether these signs, symptoms, reactions, behavior, or general appearance
7 exhibit abnormal characteristics;

8 (d) Performance of standard procedures according to observed abnormalities,
9 or reporting them to the physician in charge or other caretakers; and

10 (e) Initiation of standard or emergency procedures;

11 (18) "Prospective medical direction" means protocols, guidelines, training, and
12 education for the setting in which the advance practice respiratory therapist is
13 engaged to provide direct patient care, approved by the medical director for that
14 setting or a physician designated by a medical director who provides care in that
15 setting;

16 (19) "Reactivation" means a licensee's return to active status following a licensee's
17 application for reactivation or a licensee's timely and complete renewal
18 application requesting a return to active status. Only a licensee whose license is
19 in inactive status may apply for reactivation of a license;

20 (20) "Respiratory care" includes respiratory therapy, inhalation therapy, or other
21 cardiopulmonary terms;

22 (21) "Respiratory therapist" means a person who holds a current and active license
23 issued pursuant to this chapter that authorizes the practice of respiratory care,
24 and includes the following:

25 (a) A "registered respiratory therapist," which means an individual who has:

26 1. Successfully completed a training program accredited by CoARC;

27 2. Successfully completed the registry examination for registered

- 1 respiratory therapists administered by NBRC; and
- 2 3. If credentialed after July 1, 2002, retained his or her credentialed
- 3 status through ongoing compliance with NBRC continuing
- 4 competency requirements applicable to registered respiratory
- 5 therapists;
- 6 (b) A "certified respiratory therapist," which means an individual who has:
- 7 1. Successfully completed a training program accredited by CoARC;
- 8 2. Successfully completed the entry level certification examination for
- 9 certified respiratory therapists administered by NBRC; and
- 10 3. If credentialed after July 1, 2002, retained his or her credentialed
- 11 status through ongoing compliance with NBRC continuing
- 12 competency requirements applicable to certified respiratory therapists;
- 13 (c) An individual previously designated as a registered respiratory therapist or
- 14 certified respiratory therapist who has not retained his or her credential
- 15 through ongoing compliance with NBRC continuing competency
- 16 requirements;
- 17 (d) A "graduate respiratory therapist," which means an individual who:
- 18 1. Has graduated from an approved educational program;
- 19 2. Has been issued a temporary license by the board; and
- 20 3. Is eligible to sit for the entry level certification examination that will
- 21 be administered by NBRC; and
- 22 (e) A "student respiratory therapist," which means an individual enrolled in an
- 23 education and training program accredited by CoARC:
- 24 1. For respiratory therapists and whose sponsoring educational
- 25 institution assumes responsibility for the supervision of and services
- 26 rendered by the student respiratory therapist while the student is
- 27 functioning in a clinical training capacity; or

1 2. Who is also employed for compensation to provide respiratory care
 2 services as established in Section 6 of this Act; and

3 (22) "Suspend" or "suspension" means a disciplinary action that requires a licensee
 4 to cease practice for a specified period, after which the licensee may return to
 5 active unrestricted practice without the necessity of a reinstatement or
 6 reactivation application.

7 ➔Section 3. KRS 314A.100 is amended to read as follows:

8 (1) A respiratory ~~therapist~~~~care practitioner~~ may perform respiratory care procedures
 9 under medical direction with documented competency, in accordance with agency
 10 or facility guidelines and only in accordance with the prescription of a physician,
 11 physician assistant, advanced practice registered nurse, or advanced practice
 12 respiratory therapist. The procedures shall include[,] but not be limited to[,] the
 13 assessment and therapeutic use of the following:

14 (a) Medical gases, exclusive of general anesthesia;

15 (b) Aerosols, humidification, and environmental control systems;

16 (c) Pharmacologic agents related to cardiopulmonary procedures, unless
 17 prohibited by the medical staff of the licensed health-care facility;

18 (d) Mechanical or physiological ventilatory support;

19 (e) Bronchopulmonary hygiene and[,] maintenance of the natural airways;

20 (f) Insertion without cutting tissues and maintenance of artificial airways; and

21 (g) Specific assessment and testing procedures such as drawing and analyzing of
 22 arterial blood gases employed in the medical measurement and monitoring of
 23 cardiac function as it relates to pulmonary pathophysiology.

24 (2) The practice of respiratory care may be performed in hospitals or in other settings
 25 where respiratory care is to be provided in accordance with a prescription of a
 26 physician, physician assistant, advanced practice registered nurse, or advanced
 27 practice respiratory therapist. In addition, respiratory care may be provided during

1 the transportation of a patient~~[,]~~ or under any circumstances where an emergency
2 necessitates respiratory care.

3 (3) The respiratory **therapist**~~[care practitioner]~~ may transcribe and implement~~[a~~
4 ~~physician's]~~ written or verbal orders **of a physician, physician assistant, advanced**
5 **practice registered nurse, or advanced practice respiratory therapist** pertaining to
6 the practice of respiratory care procedures as defined in this section.

7 (4) The respiratory **therapist's and advanced practice respiratory therapist's**~~[care~~
8 ~~practitioner's]~~ scope of practice shall include practice standards and guidelines as
9 developed **for their respective roles** by the American Association for Respiratory
10 Care~~[,]~~ or its equivalent, and as incorporated by the board through promulgation of
11 administrative regulations in accordance with KRS Chapter 13A.

12 **(5) An advanced practice respiratory therapist with documented competency may**
13 **provide services and procedures under prospective medical direction and in**
14 **accordance with protocols and guidelines beyond those allowed for a respiratory**
15 **therapist, including, if related to cardiopulmonary care:**

16 **(a) Patient assessment;**

17 **(b) Care management;**

18 **(c) Medication management;**

19 **(d) Ordering the administration of airway tests;**

20 **(e) Airway procedures;**

21 **(f) Hemodynamic and diagnostic procedures;**

22 **(g) Advanced cardiopulmonary procedures;**

23 **(h) Education;**

24 **(i) Prevention;**

25 **(j) Continuity of care; and**

26 **(k) Prescribing legend drugs to a patient following consideration of a complete**
27 **medical history and bona fide medical examination.**

1 ➔Section 4. KRS 314A.105 is amended to read as follows:

- 2 (1) This chapter does not prohibit:
- 3 (a) The performance of respiratory care which is an integral part of the program
- 4 of study by students enrolled in an accredited program;
- 5 (b) Self-care by the patient nor the gratuitous care by a friend or member of the
- 6 family who does not represent or hold himself or herself out to be a
- 7 respiratory therapist or advanced practice respiratory therapist~~care~~
- 8 ~~practitioner~~;
- 9 (c) Respiratory care services provided in the case of an emergency;
- 10 (d) Persons from engaging in cardiopulmonary research;
- 11 (e) The performance of respiratory care by trained paramedical personnel; and
- 12 (f) Volunteer health practitioners providing services under KRS 39A.350 to
- 13 39A.366.

14 (2) Nothing in this section shall limit, preclude, or otherwise restrict the practices of

15 other licensed personnel in carrying out their duties under the terms of their license.

16 ➔SECTION 5. KRS 314A.110 IS REPEALED AND REENACTED TO READ

17 AS FOLLOWS:

18 **(1) To be eligible for initial licensure as a respiratory therapist, the applicant shall**

19 **have a registered respiratory therapist (RRT) or certified respiratory therapist**

20 **(CRT) credential issued by NBRC.**

21 **(2) A temporary license may be issued by the board to a graduate respiratory**

22 **therapist for a period not to exceed six (6) months from graduation. A temporary**

23 **license is available only once per individual and is not eligible for renewal or**

24 **reinstatement. The holder of a temporary license who does not successfully pass**

25 **an NBRC entry-level certification examination within six (6) months shall cease**

26 **and desist performing any services as a graduate respiratory therapist. Failure to**

27 **comply shall subject the individual to prosecution for unlicensed practice.**

- 1 (3) (a) In order for a student respiratory therapist to be employed for compensation
2 to provide respiratory care services, he or she shall apply to the board for a
3 limited license to practice as a student respiratory therapist. The limited
4 license shall permit the student respiratory therapist to perform respiratory
5 care procedures for which he or she has received training under the direct
6 supervision of a respiratory therapist or an advanced practice respiratory
7 therapist who holds an active license issued by the board. The limited
8 license to practice as a student respiratory therapist excludes the
9 performance of continuous mechanical or physiological ventilatory support
10 and blood gas analysis.
- 11 (b) 1. The limited license to practice as a student respiratory therapist may
12 be granted only to individuals actively enrolled in an accredited
13 program and for a period not to exceed three (3) years.
- 14 2. The holder of a limited license shall cease and desist performing any
15 services as a student respiratory therapist immediately upon the
16 cessation of active enrollment in the accredited program identified in
17 the student respiratory therapist's licensure application for any
18 reason.
- 19 (c) The limited license is not required for individuals actively enrolled in an
20 accredited program while performing uncompensated clinical activities
21 required by the program.
- 22 (4) Respiratory therapists duly authorized to practice in another state and in good
23 standing in that state and with NBRC, and who have an RRT or a CRT credential
24 or its equivalent, may be conferred a license by endorsement by the board if the
25 requirements for licensure or certification in that state are substantially equal to
26 the requirements of this section.
- 27 (5) (a) A respiratory therapist applying for licensure who:

- 1 1. Received the NBRC CRT or RRT credential prior to July 1, 2002,
2 shall retain his or her NBRC designation as a CRT or RRT; or
- 3 2. Received the CRT or RRT credential from NBRC after July 1, 2002,
4 shall retain his or her CRT or RRT credential as long as the
5 respiratory therapist has fulfilled and maintained compliance with the
6 NBRC's continuing competency program requirements.
- 7 (b) Persons holding a license through the limited mechanism of grandfather
8 status and those respiratory therapists receiving their CRT or RRT
9 credential after July 1, 2002, who do not fulfill and maintain compliance
10 with NBRC's continuing competency requirements shall solely be
11 designated as respiratory therapists.
- 12 (6) To be eligible for initial or renewal licensure as an advanced practice respiratory
13 therapist, the applicant shall first have a current active respiratory therapist
14 license issued by the board. The applicant shall also successfully complete a
15 CoARC accredited graduate level education, a training program for advanced
16 practice respiratory care, and shall successfully:
- 17 (a) Complete an NBRC advanced practice respiratory therapist competency
18 exam; or
- 19 (b) Have and maintain all of the following credentials offered by NBRC:
- 20 1. Registered respiratory therapist;
21 2. Registered pulmonary function technologist;
22 3. Adult critical care specialist;
23 4. Certified asthma educator; and
24 5. Neonatal pediatric respiratory care specialist.
- 25 (7) Advanced practice respiratory therapists duly authorized to practice in other
26 states and in good standing with the relevant state licensure entity and NBRC,
27 and who have an RRT or a CRT credential or its equivalent, may be conferred an

1 *advanced practice respiratory therapist license by endorsement by the board if the*
 2 *requirements for licensure or certification in that state are substantially equal to*
 3 *the requirements of this section.*

4 ➔Section 6. KRS 314A.112 is amended to read as follows:

5 To be eligible for limited *licensure to practice as a student respiratory*
 6 *therapist*~~[mandatory certification as a respiratory care practitioner]~~, the applicant shall
 7 meet the criteria established under this chapter and any administrative regulation
 8 promulgated to carry out~~[the provisions of]~~ this chapter. *A limited license to practice as*
 9 *a student respiratory therapist shall not be reinstated or renewed. If an individual*
 10 *previously granted a limited license changes accredited programs or practice setting,*
 11 *the initial limited license shall be deactivated upon the cessation of enrollment in the*
 12 *initial accredited program or change of practice setting, and a separate application for*
 13 *a limited license to practice as a student respiratory therapist shall be required as a*
 14 *prerequisite for employment for compensation to provide respiratory care services.*

15 ➔Section 7. KRS 314A.115 is amended to read as follows:

16 A person applying for *active status* renewal of his *or her respiratory therapist license or*
 17 *advanced practice respiratory therapist license*~~[mandatory certificate]~~ shall show
 18 evidence of completion of continuing professional education~~[in respiratory care]~~ as
 19 prescribed by the board in administrative regulations *promulgated in accordance with*
 20 *KRS Chapter 13A.*

21 ➔Section 8. KRS 314A.200 is amended to read as follows:

- 22 (1) There is hereby created a Board of Respiratory Care which shall consist of seven
 23 (7) voting members appointed by the Governor:~~[]~~
- 24 (a) Four (4) members shall be respiratory *therapists*~~[care practitioners]~~ holding
 25 *an active license*~~[a valid mandatory certificate]~~ and practicing in Kentucky;
- 26 (b) Two (2) members shall be pulmonologists who are licensed and practicing
 27 physicians in Kentucky; and

- 1 (c) One (1) member shall be a citizen at large who is not associated with or
2 financially interested in respiratory care.
- 3 (2) Members shall be appointed to the board for terms of three (3) years, expiring on
4 October 30 of the third year. ~~A~~~~No~~ person shall **not** be appointed to serve more
5 than two (2) consecutive terms.
- 6 (3) By May 30 of years in which **the term of a respiratory therapist board member**
7 **will**~~respiratory care practitioner terms~~ expire, the Kentucky Society for
8 Respiratory Care shall submit to the Governor a list of names of candidates
9 qualified for the appointment of respiratory **therapist board member**~~care~~
10 ~~practitioner~~, in numbers not less than twice the numbers of appointments to be
11 made, from which the Governor shall make each appointment or appointments by
12 October 31 of that year. The Governor shall also appoint the pulmonologist and
13 citizen at-large members by October 31 of any year in which a term expires.
- 14 (4) A vacancy on the board shall be filled by the Governor as provided under
15 subsection (1) of this section. The appointment shall be for the remaining portion of
16 the member's term.
- 17 (5) The Governor or board may remove a member from the board for cause or as
18 provided under administrative regulations promulgated by the board in accordance
19 with KRS Chapter 13A.
- 20 (6) The board shall reorganize annually and select a chairperson. Four (4) voting
21 members of the board shall constitute a quorum to do business. The board shall
22 hold at least one (1) regular meeting each year. Additional meetings may be held
23 upon the call of the chairperson or at the written request of any two (2) members of
24 the board. All meetings of the board shall be open and public to the extent permitted
25 by law, **subject to KRS 61.805 to 61.850 and 61.870 to 61.884.**
- 26 ➔Section 9. KRS 314A.205 is amended to read as follows:
- 27 (1) The board shall administer, coordinate, and enforce~~the provisions of~~ this chapter,

1 evaluate the qualifications of applicants, and may issue subpoenas, examine
 2 witnesses, and administer oaths, and shall investigate persons engaging in practices
 3 which violate~~[the provisions of]~~ this chapter.

4 (2) The board shall conduct hearings in accordance with KRS Chapter 13B and keep
 5 records and minutes as shall be necessary to an orderly dispatch of business.

6 (3) The board shall promulgate administrative regulations **in accordance with KRS**
 7 **Chapter 13A** to carry out~~[the provisions of]~~ this chapter.

8 (4) Every person who holds a **license**~~[mandatory certificate]~~ to practice respiratory care
 9 in this state shall be governed and controlled by the rules of professional conduct
 10 promulgated by the board.

11 (5) The enumeration of specific powers elsewhere in this chapter shall not be construed
 12 as a limitation of the general powers conferred by this section.

13 (6) The board shall fix appropriate and reasonable fees for **licensure**~~[mandatory~~
 14 ~~certification,]~~ and~~[shall]~~ periodically review and modify these fees as necessary.

15 ➔Section 10. KRS 314A.215 is amended to read as follows:

16 (1) The board members shall receive a compensation of **one hundred**~~[fifty]~~ dollars
 17 **(\$100)**~~[\$50]~~ per day for their services~~[,]~~ and per diem and traveling expenses to
 18 the extent authorized by board policy.

19 (2) The board shall employ and, at its pleasure, discharge a secretary and such
 20 attorneys, inspectors, clerks, and any other employees as shall be deemed
 21 necessary, and shall outline their duties and fix their compensation. The amount of
 22 per diem and mileage paid to employees shall be provided by board policy.

23 (3) All money received by the board shall be deposited in the State Treasury into a
 24 separate trust fund for the board. The board shall be financed solely and
 25 individually from income accruing to it from fees, **licenses**~~[mandatory certificates]~~,
 26 and other charges collected by the board.

27 ➔SECTION 11. KRS 314A.220 IS REPEALED AND REENACTED TO READ

1 AS FOLLOWS:

- 2 (1) The board shall issue a license to all applicants who meet the requirements of this
3 chapter and who pay to the board the initial licensure fee prescribed by the board
4 in administrative regulations promulgated in accordance with KRS Chapter 13A.
- 5 (2) Licensure fees for a respiratory therapist license or advanced practice respiratory
6 therapist license shall be prescribed by administrative regulation promulgated by
7 the board in accordance with KRS Chapter 13A.
- 8 (3) (a) Each respiratory therapist license or advanced practice respiratory therapist
9 license shall expire on January 30 every two (2) years. All licenses not
10 renewed by January 30 of the second year following the date of issuance
11 shall be deemed expired.
- 12 (b) Licensure of respiratory therapists and advanced practice respiratory
13 therapists is subject to Section 7 of this Act. Licenses issued by the board
14 shall expire and shall not be renewed in active status unless the renewal
15 applicant attests to the board his or her compliance with Section 7 of this
16 Act, including a statement regarding the total number of continuing
17 education units earned during the certification period.
- 18 (c) A person with an expired license who applies for reinstatement within five
19 (5) years from the date of the expiration shall not be required to submit to
20 any examination as a condition to reinstatement. A reinstatement applicant
21 shall show compliance with the current continuing education requirement
22 in force at the time of the license reinstatement application.
- 23 (d) A person shall not practice respiratory care in this state unless the
24 individual holds an active license.
- 25 (e) A person with an expired license who seeks to return to active status after
26 five (5) years from the date of expiration shall meet current standards for
27 initial licensure, except for individuals who have fulfilled and maintained

1 compliance with the NBRC's continuing competency requirements, who
2 may apply for reinstatement of an expired license at any time pursuant to
3 this chapter and the administrative regulations promulgated by the board in
4 accordance with KRS Chapter 13A.

5 (4) (a) A suspended license is subject to expiration and shall be renewed in inactive
6 status in accordance with this chapter. The renewal shall not entitle the
7 licensee, while the license remains suspended, to engage in the practice of
8 respiratory care or in any other activity or conduct in violation of the
9 suspension order.

10 (b) A license revoked on disciplinary grounds shall not be renewed, and is
11 subject to reinstatement during a five (5) year period from the date of the
12 revocation order, pursuant to the terms of the revocation order, this chapter,
13 and the administrative regulations promulgated by the board.

14 (c) After five (5) years of revoked status, a licensee seeking to return to active
15 status shall meet current standards for initial licensure, except for
16 individuals who have fulfilled and maintained compliance with the NBRC's
17 continuing competency requirements, who may apply for reinstatement of a
18 revoked license at any time permitted pursuant to the terms of the
19 revocation order, this chapter, and the administrative regulations
20 promulgated by the board.

21 (d) An applicant for reactivation shall provide evidence of continuing education
22 in accordance with the administrative regulations promulgated by the
23 board.

24 (e) In a disciplinary order issued pursuant to Section 12 of this Act, the board
25 may require individualized conditions for return to practice following a
26 period of suspension or revocation.

27 ➔Section 12. KRS 314A.225 is amended to read as follows:

- 1 (1) The board may refuse to issue a license~~[certificate]~~, or may suspend, revoke,
2 impose probationary conditions upon, impose an administrative fine, issue a written
3 reprimand or admonishment, deny reactivation or reinstatement, or any
4 combination thereof regarding any license~~[certificate holder]~~ upon proof that the
5 licensee~~[certificate holder]~~ has:
- 6 (a) Committed any crime, act of dishonesty, or corruption, if in accordance with
7 KRS Chapter 335B. If the act constitutes a crime, conviction in a criminal
8 proceeding is not a condition precedent to disciplinary action. Upon
9 conviction of the crime, the judgment and sentence are presumptive evidence
10 at the ensuing disciplinary hearing of the guilt of the licensee~~[certificate~~
11 ~~holder]~~ or applicant. Conviction includes all instances in which a plea of no
12 contest is the basis of conviction;
- 13 (b) Misrepresented or concealed a material fact in obtaining, renewing or
14 reinstating a license~~[certificate]~~;
- 15 (c) Committed any unfair, false, misleading, or deceptive act or practice;
- 16 (d) Been incompetent or negligent in the practice of respiratory care;
- 17 (e) Violated any state statute or administrative regulation governing the practice
18 of respiratory care or any activities undertaken by a respiratory therapist or
19 advanced practice respiratory therapist~~[care practitioner]~~, which shall
20 include violation of KRS 304.39-215 and conduct that is subject to the
21 penalties under KRS 304.99-060(4) or (5);
- 22 (f) Failed to comply with an order issued by the board or an assurance of
23 voluntary compliance;
- 24 (g) Violated the code of ethics as set forth in administrative regulations
25 promulgated by the board; or
- 26 (h) Violated any applicable provision of any federal or state law, if in accordance
27 with KRS Chapter 335B.

- 1 (2) One (1) year from the date of revocation, any person whose license~~[certificate]~~ has
2 been revoked may petition the board for reinstatement. The board shall investigate
3 the petition and may reinstate the license~~[certificate]~~ upon a finding that the
4 individual has complied with any terms prescribed by that board and is again able to
5 competently engage in the practice of respiratory care.
- 6 (3) The board may reconsider, modify, or reverse its probation, suspensions, or other
7 disciplinary actions.
- 8 (4) The surrender, suspension, revocation, denial of reinstatement, or expiration of a
9 license~~[certificate]~~ shall not serve to deprive the board of jurisdiction to proceed
10 with disciplinary action under this chapter.
- 11 ➔Section 13. KRS 314A.230 is amended to read as follows:
- 12 (1) A treating respiratory therapist or advanced practice respiratory therapist~~[care~~
13 ~~practitioner]~~ who provides or facilitates the use of telehealth shall ensure:
- 14 (a) That the informed consent of the patient, or another appropriate person with
15 authority to make the health care treatment decision for the patient, is
16 obtained before services are provided through telehealth; and
- 17 (b) That the confidentiality of the patient's medical information is maintained as
18 required by this chapter and other applicable law. At a minimum,
19 confidentiality shall be maintained through appropriate processes, practices,
20 and technology as designated by the board and that conform to applicable
21 federal law.
- 22 (2) The board shall promulgate administrative regulations in accordance with KRS
23 Chapter 13A to implement this section and as necessary to:
- 24 (a) Prevent abuse and fraud through the use of telehealth services;
25 (b) Prevent fee-splitting through the use of telehealth services; and
26 (c) Utilize telehealth in the provision of respiratory care services and in the
27 provision of continuing education.

1 (3) For purposes of this section, "telehealth" means the use of interactive audio, video,
 2 or other electronic media to deliver health care. It includes the use of electronic
 3 media for diagnosis, consultation, treatment, transfer of health or medical data, and
 4 continuing education.

5 ➔Section 14. KRS 314A.990 is amended to read as follows:

6 (1) Any person who violates~~[any of the provisions of]~~ this chapter shall be guilty of a
 7 misdemeanor punishable by imprisonment in the county jail not exceeding six (6)
 8 months, or by a fine not exceeding one thousand dollars (\$1,000), or by both.

9 (2) When any person other than a respiratory **therapist or advanced practice**
 10 **respiratory therapist**~~[care practitioner]~~ holding a valid **license**~~[mandatory~~
 11 ~~certificate]~~ has engaged in any act or practice which constitutes an offense against
 12 this chapter, the Franklin Circuit Court, on application of the board, may issue an
 13 injunction or other appropriate order restraining such conduct.

14 **(3) For any violation of this chapter where the board may revoke, suspend, probate,**
 15 **reprimand, admonish, or fine a license or licensee in accordance with this**
 16 **chapter, or may deny licensure, reactivation, or reinstatement, the board may, in**
 17 **lieu of or in addition to other remedies, impose a civil penalty against the violator**
 18 **of not more than five thousand dollars (\$5,000) per violation.**

19 ➔Section 15. KRS 164.0401 is amended to read as follows:

20 For the purposes of KRS 164.0401 to 164.0407:

21 (1) "Council" means the Council on Postsecondary Education;

22 (2) "Dedicated funds" means a gift, grant, or donation to the fund that is subject to
 23 restrictions imposed by a private grantor under KRS 164.0401 to 164.0407;

24 (3) "Eligible healthcare credential" means:

25 (a) An alcohol and drug counselor license, clinical alcohol and drug counselor
 26 license, clinical alcohol and drug counselor associate license, professional art
 27 therapist license, professional art therapist associate license, or community

- 1 health worker certificate issued pursuant to KRS Chapter 309;
- 2 (b) Any emergency medical services license or certificate issued pursuant to KRS
3 Chapter 311A;
- 4 (c) Any medical imaging, radiation, or other license issued pursuant to KRS
5 Chapter 311B;
- 6 (d) A dental hygienist or dental assistant license issued pursuant to KRS Chapter
7 313;
- 8 (e) Any nursing license or certificate issued pursuant to KRS Chapter 314 or
9 registration as a state registered nursing aide with the Kentucky Board of
10 Nursing;
- 11 (f) A respiratory therapist license~~[care practitioner certificate]~~ issued pursuant to
12 KRS Chapter 314A;
- 13 (g) Any psychology license or certificate issued pursuant to KRS Chapter 319;
- 14 (h) Any occupational therapy license issued pursuant to KRS Chapter 319A;
- 15 (i) Any behavior analyst license issued pursuant to KRS Chapter 319C;
- 16 (j) Any physical therapy certificate or license issued pursuant to KRS Chapter
17 327;
- 18 (k) Any social worker, marriage and family therapist, or professional counselor
19 certificate or license issued pursuant to KRS Chapter 335;
- 20 (l) A physician assistant license issued pursuant to KRS Chapter 311; and
- 21 (m) A dietitian license or nutritionist certificate issued pursuant to KRS Chapter
22 310;
- 23 (4) "Grantor" means an individual or an entity that gifts, grants, or donates moneys to
24 the Kentucky healthcare workforce investment fund established in KRS 164.0402;
- 25 (5) "Healthcare partner" means a grantor to the Kentucky healthcare workforce
26 investment fund that is:
- 27 (a) A healthcare provider as defined in KRS 367.4081;

- 1 (b) A healthcare facility licensed by and operating in Kentucky;
- 2 (c) A qualified mental health professional as defined in KRS 202A.011; or
- 3 (d) Any healthcare or healthcare-related association, individual, or corporation
- 4 doing business in and incorporated under the laws of the Commonwealth;
- 5 (6) "Healthcare program" means an education or training program that is a specific
- 6 requirement to an eligible healthcare credential, including but not limited to a high
- 7 school healthcare vocational program;
- 8 (7) "Historically underserved county" means a county of the Commonwealth with
- 9 enhanced workforce demands, as demonstrated by:
- 10 (a) Objective healthcare workforce data that demonstrates needs and demands
- 11 upon its healthcare workforce that exceed the statewide average; and
- 12 (b) Final unemployment figures calculated by the Department of Workforce
- 13 Development demonstrating a countywide rate of unemployment that exceeds
- 14 the statewide unemployment rate of the Commonwealth:
- 15 1. In the most recent five (5) consecutive calendar years; or
- 16 2. By two hundred percent (200%) in the most recent calendar year; and
- 17 (8) "Kentucky resident" is a Kentucky resident as defined by the council pursuant to
- 18 KRS 164.020(8).

19 ➔Section 16. KRS 216.2920 is amended to read as follows:

20 As used in KRS 216.2920 to 216.2929, unless the context requires otherwise:

- 21 (1) "Ambulatory facility" means an outpatient facility, including an ambulatory
- 22 surgical facility, freestanding or mobile technology unit, or an urgent treatment
- 23 center, that is not part of a hospital and that provides one (1) or more ambulatory
- 24 procedures to patients not requiring hospitalization;
- 25 (2) "Cabinet" means the Cabinet for Health and Family Services;
- 26 (3) "Charge" means all amounts billed by a hospital or ambulatory facility, including
- 27 charges for all ancillary and support services or procedures, prior to any adjustment

- 1 for bad debts, charity contractual allowances, administrative or courtesy discounts,
2 or similar deductions from revenue. However, if necessary to achieve comparability
3 of information between providers, charges for the professional services of hospital-
4 based or ambulatory-facility-based physicians shall be excluded from the
5 calculation of charge;
- 6 (4) "Facility" means any hospital, health care service, freestanding birthing center, or
7 other health care facility, whether operated for profit or not;
- 8 (5) "Health care provider" or "provider" means any pharmacist as defined pursuant to
9 KRS Chapter 315, and any of the following independent practicing practitioners:
- 10 (a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;
11 (b) Chiropractors licensed pursuant to KRS Chapter 312;
12 (c) Dentists licensed pursuant to KRS Chapter 313;
13 (d) Optometrists licensed pursuant to KRS Chapter 320;
14 (e) Physician assistants regulated pursuant to KRS Chapter 311;
15 (f) Nurse practitioners licensed pursuant to KRS Chapter 314;~~and~~
- 16 (g) **Advanced practice respiratory therapists licensed pursuant to KRS Chapter**
17 **314A; and**
- 18 **(h)** Other health-care practitioners as determined by the Cabinet for Health and
19 Family Services by administrative regulation promulgated pursuant to KRS
20 Chapter 13A;
- 21 (6) "Hospital" means a facility licensed pursuant to KRS Chapter 216B as either an
22 acute-care hospital, psychiatric hospital, rehabilitation hospital, or chemical
23 dependency treatment facility;
- 24 (7) "Procedures" means those surgical, medical, radiological, diagnostic, or therapeutic
25 procedures performed by a provider, as periodically determined by the cabinet in
26 administrative regulations promulgated pursuant to KRS Chapter 13A as those for
27 which reports to the cabinet shall be required. "Procedures" also includes

1 procedures that are provided in hospitals or other ambulatory facilities, or those that
2 require the use of special equipment, including fluoroscopic equipment, computer
3 tomographic scanners, magnetic resonance imagers, mammography, ultrasound
4 equipment, or any other new technology as periodically determined by the cabinet;

5 (8) "Quality" means the extent to which a provider renders care that obtains for patients
6 optimal health outcomes; and

7 (9) "Secretary" means the secretary of the Cabinet for Health and Family Services.

8 ➔Section 17. KRS 216.380 is amended to read as follows:

9 (1) The licensure category of critical access hospital is hereby created for existing
10 licensed acute-care hospitals which qualify under this section for that status.

11 (2) It shall be unlawful to operate or maintain a critical access hospital without first
12 obtaining a license from the Cabinet for Health and Family Services. An acute-care
13 hospital converting to a critical access hospital shall not require a certificate of
14 need. A certificate of need shall not be required for services provided on a
15 contractual basis in a critical access hospital. A certificate of need shall not be
16 required for an existing critical access hospital to increase its acute-care bed
17 capacity to twenty-five (25) beds.

18 (3) Except as provided in subsection (4) of this section, only a hospital licensed as a
19 general acute-care hospital may be relicensed as a critical access hospital if:

20 (a) The hospital is located in a county in a rural area that is:

21 1. Located more than a thirty-five (35) mile drive, or, where the terrain is
22 mountainous or only secondary roads are available, located more than a
23 fifteen (15) mile drive, from another acute-care hospital or critical
24 access hospital; or

25 2. Certified by the secretary as a necessary provider of health care services
26 to area residents;

27 (b) For the purposes of paragraph (a) of this subsection, a hospital shall be

1 considered to be located in a rural area if the hospital is not in a county which
2 is part of a standard metropolitan statistical area, the hospital is located in a
3 rural census tract of a metropolitan statistical area as determined under the
4 most recent modification of the Goldsmith Modification, or is designated by
5 the state as a rural provider. The secretary shall designate a hospital as a rural
6 provider if the hospital is not located in a county which has the largest county
7 population of a standard metropolitan statistical area;

8 (c) Except as provided in paragraph (d) of this subsection, the hospital provides
9 not more than twenty-five (25) acute care inpatient beds for providing acute
10 inpatient care for a period that does not exceed, as determined on an annual,
11 average basis, ninety-six (96) hours; *and*

12 (d) ~~If~~ The hospital is operating swing beds under which the hospital's inpatient
13 hospital facilities are used for the provision of extended care services, the
14 hospital may be designated as a critical access hospital so long as the total
15 number of beds that may be used at any time for furnishing of either extended
16 care services or acute inpatient services does not exceed twenty-five (25)
17 beds. For the purposes of this section, any bed of a unit of the hospital that is
18 licensed as a nursing facility at the time the hospital applies to the state for
19 designation as a critical care access hospital shall not be counted.

20 (4) The secretary for health and family services may designate a facility as a critical
21 access hospital if the facility:

22 (a) Was a hospital that ceased operations on or after ten (10) years prior to April
23 21, 2000; or

24 (b) Was a hospital that was converted to a licensed ambulatory health center or
25 other type of licensed health clinic or health center and, as of the effective
26 date of that conversion, meets the criteria for licensure as a critical access
27 hospital under this subsection or subsection (3) of this section.

- 1 (5) A critical access hospital shall provide the following services:
- 2 (a) Twenty-four (24) hour emergency-room care that the secretary determines is
3 necessary for insuring access to emergency care services in each area served
4 by a critical access hospital; and
- 5 (b) Basic laboratory, radiologic, pharmacy, and dietary services. These services
6 may be provided on a part-time, off-site contractual basis.
- 7 (6) A critical access hospital may provide the following services:
- 8 (a) Swing beds or a distinct unit of the hospital which is a nursing facility in
9 accordance with KRS Chapter 216B and subject to approval under certificate
10 of need;
- 11 (b) Surgery;
- 12 (c) Normal obstetrics;
- 13 (d) Primary care;
- 14 (e) Adult day health care;
- 15 (f) Respite care;
- 16 (g) Rehabilitative and therapeutic services including, but not limited to, physical
17 therapy, respiratory therapy, occupational therapy, speech pathology, and
18 audiology, which may be provided on an off-site contractual basis;
- 19 (h) Ambulatory care;
- 20 (i) Home health services which may be established upon obtaining a certificate
21 of need; and
- 22 (j) Mobile diagnostic services with equipment not exceeding the major medical
23 equipment cost threshold pursuant to KRS Chapter 216B and for which there
24 are no review criteria in the State Health Plan.
- 25 (7) In addition to the services that may be provided under subsection (6) of this section,
26 a critical access hospital may establish the following units in accordance with
27 applicable Medicare regulations and subject to certificate of need approval:

- 1 (a) A psychiatric unit that is a distinct part of the hospital, with a maximum of ten
2 (10) beds; and
- 3 (b) A rehabilitation unit that is a distinct part of the hospital, with a maximum of
4 ten (10) beds notwithstanding any other bed limit contained in law or
5 regulation.
- 6 (8) Psychiatric unit and rehabilitation unit beds operated under subsection (7) of this
7 section shall not be counted in determining the number of beds or the average
8 length of stay of a critical access hospital for purposes of applying the bed and
9 average length of stay limitations under paragraph (c) of subsection (3) of this
10 section.
- 11 (9) The following staffing plan shall apply to a critical access hospital:
- 12 (a) The hospital shall meet staffing requirements as would apply under section
13 1861(e) of Title XVIII of the Federal Social Security Act to a hospital located
14 in a rural area except that:
- 15 1. The hospital need not meet hospital standards relating to the number of
16 hours during a day, or days during a week, in which the hospital shall be
17 open and fully staffed, except insofar as the facility is required to make
18 available emergency services and nursing services available on a
19 twenty-four (24) hour basis; and
- 20 2. The hospital need not otherwise staff the facility except when an
21 inpatient is present; and
- 22 (b) Physician assistants, ~~and~~ nurse practitioners, and advanced practice
23 respiratory therapists may provide inpatient care within the limits of their
24 statutory scope of practice and with oversight by a physician who is not
25 required to be on-site at the hospital.
- 26 (10) A critical access hospital shall have a quality assessment and performance
27 improvement program and procedures for review of utilization of services.

1 (11) A critical access hospital shall have written contracts assuring the following
2 linkages:

3 (a) Secondary and tertiary hospital referral services which shall provide for the
4 transfer of a patient to the appropriate level of care and the transfer of patients
5 to the critical access hospital for recuperative care;

6 (b) Ambulance services;

7 (c) Home health services; and

8 (d) Nursing facility services if not provided on-site.

9 (12) If the critical access hospital is part of a rural health network, the hospital shall have
10 the following:

11 (a) An agreement for patient referral and transfer, development, and use of
12 communications systems including telemetry and electronic sharing of patient
13 data, and emergency and nonemergency transportation; and

14 (b) An agreement for credentialing and quality assurance with a network hospital,
15 peer review organization, or other appropriate and qualified entity identified
16 in the state rural health plan.

17 (13) The Cabinet for Health and Family Services and any insurer or managed care
18 program for Medicaid recipients that contracts with the Department for Medicaid
19 Services for the receipt of Federal Social Security Act Title XIX funds shall provide
20 for reimbursement of services provided to Medicaid recipients in a critical access
21 hospital at rates that are at least equal to those established by the Federal Health
22 Care Financing Administration or Centers for Medicare and Medicaid Services for
23 Medicare reimbursement to a critical access hospital.

24 (14) The Cabinet for Health and Family Services shall promulgate administrative
25 regulations pursuant to KRS Chapter 13A necessary to implement this section.

26 ➔Section 18. KRS 217.015 is amended to read as follows:

27 For the purposes of KRS 217.005 to 217.215:

- 1 (1) "Advertisement" means all representations, disseminated in any manner or by any
2 means, other than by labeling, for the purpose of inducing, or which are likely to
3 induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- 4 (2) "Bread" and "enriched bread" mean only the foods commonly known and described
5 as white bread, white rolls, white buns, enriched white bread, enriched rolls, and
6 enriched white buns, as defined under the federal act. For the purposes of KRS
7 217.136 and 217.137, "bread" or "enriched bread" also means breads that may
8 include vegetables or fruit as an ingredient;
- 9 (3) "Cabinet" means the Cabinet for Health and Family Services or its designee;
- 10 (4) "Color" means but is not limited to black, white, and intermediate grays;
- 11 (5) "Color additive" means a material that:
- 12 (a) Is a dye, pigment, or other substance made by a process of synthesis or similar
13 artifice, or extracted, isolated, or otherwise derived, with or without
14 intermediate or final change of identity, from a vegetable, animal, mineral, or
15 other source. Nothing in this paragraph shall be construed to apply to any
16 pesticide chemical, soil or plant nutrient, or other agricultural chemical solely
17 because of its effect in aiding, retarding, or otherwise affecting, directly or
18 indirectly, the growth or other natural physiological process of produce of the
19 soil and thereby affecting its color, whether before or after harvest; or
- 20 (b) When added or applied to a food, drug, or cosmetic, or to the human body or
21 any part thereof, is capable, alone or through reaction with another substance,
22 of imparting color. "Color additive" does not include any material that has
23 been or may in the future be exempted under the federal act;
- 24 (6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not
25 securely protected from dust, dirt, and as far as may be necessary by all reasonable
26 means, from all foreign or injurious contaminants;
- 27 (7) "Cosmetic" means:

- 1 (a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into,
2 or otherwise applied to the human body or any part thereof for cleansing,
3 beautifying, promoting attractiveness, or altering the appearance; and
- 4 (b) Articles intended for use as a component of those articles, except that the term
5 shall not include soap;
- 6 (8) "Device," except when used in subsection (48) of this section, KRS 217.035(6),
7 KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments,
8 apparatus, and contrivances, including their components, parts, and accessories,
9 intended:
- 10 (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease
11 in man or other animals; or
- 12 (b) To affect the structure or any function of the body of man or other animals;
- 13 (9) "Dispense" means to deliver a drug or device to an ultimate user or research subject
14 by or pursuant to the lawful order of a practitioner, including the packaging,
15 labeling, or compounding necessary to prepare the substance for that delivery;
- 16 (10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the
17 use of an ultimate user;
- 18 (11) "Drug" means:
- 19 (a) Articles recognized in the official United States pharmacopoeia, official
20 homeopathic pharmacopoeia of the United States, or official national
21 formulary, or any supplement to any of them;
- 22 (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or
23 prevention of disease in man or other animals;
- 24 (c) Articles, other than food, intended to affect the structure or any function of the
25 body of man or other animals; and
- 26 (d) Articles intended for use as a component of any article specified in this
27 subsection but does not include devices or their components, parts, or

1 accessories;

2 (12) "Enriched," as applied to flour, means the addition to flour of vitamins and other
3 nutritional ingredients necessary to make it conform to the definition and standard
4 of enriched flour as defined under the federal act;

5 (13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental
6 Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;

7 (14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it
8 relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments
9 thereto;

10 (15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301
11 et seq., 52 Stat. 1040 et seq., or amendments thereto;

12 (16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed,
13 evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been
14 added, or which has been blended or compounded with, any fat or oil other than
15 milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of
16 substances used for flavoring purposes only, so that the resulting product is an
17 imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or
18 frozen desserts, whether or not condensed, evaporated, concentrated, frozen,
19 powdered, dried, or desiccated, whether in bulk or in containers, hermetically
20 sealed or unsealed. This definition does not mean or include any milk or cream
21 from which no part of the milk or butter fat has been extracted, whether or not
22 condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has
23 been added any substance rich in vitamins, nor any distinctive proprietary food
24 compound not readily mistaken for milk or cream or for condensed, evaporated,
25 concentrated, powdered, dried, or desiccated milk or cream, if the compound is
26 prepared and designed for the feeding of infants or young children, sick or infirm
27 persons, and customarily used on the order of a physician, and is packed in

1 individual containers bearing a label in bold type that the contents are to be used for
2 those purposes; nor shall this definition prevent the use, blending, or compounding
3 of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in
4 bulk or in containers, hermetically sealed or unsealed, to or with which has been
5 added, blended or compounded no other fat or oil other than milk or butter fat;

6 (17) "Flour" means only the foods commonly known as flour, white flour, wheat flour,
7 plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising
8 wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour,
9 defined under the federal act;

10 (18) "Food" means:

11 (a) Articles used for food or drink for man or other animals;

12 (b) Chewing gum; and

13 (c) Articles used for components of any such article;

14 (19) "Food additive" means any substance the intended use of which results or may be
15 reasonably expected to result, directly or indirectly, in its becoming a component or
16 otherwise affecting the characteristics of any food, including any substance
17 intended for use in producing, manufacturing, packing, processing, preparing,
18 treating, packaging, transporting, or holding food; and including any source of
19 radiation intended for any of these uses, if the substance is not generally
20 recognized, among experts qualified by scientific training and experience to
21 evaluate its safety, as having been adequately shown through scientific procedures
22 or, in the case of a substance used in a food prior to January 1, 1958, through either
23 scientific procedures or experience based on common use in food to be safe under
24 the conditions of its intended use; except that the term does not include:

25 (a) A pesticide chemical in or on a raw agricultural commodity;

26 (b) A pesticide chemical to the extent that it is intended for use or is used in the
27 production, storage, or transportation of any raw agricultural commodity;

- 1 (c) A color additive; or
- 2 (d) Any substance used in accordance with a sanction or approval granted prior to
- 3 the enactment of the Food Additives Amendment of 1958, pursuant to the
- 4 federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.;
- 5 or the Meat Inspection Act of 1907; and amendments thereto;
- 6 (20) "Food processing establishment" means any commercial establishment in which
- 7 food is manufactured, processed, or packaged for human consumption, but does not
- 8 include retail food establishments, home-based processors, or home-based
- 9 microprocessors;
- 10 (21) "Food service establishment" means any fixed or mobile commercial establishment
- 11 that engages in the preparation and serving of ready-to-eat foods in portions to the
- 12 consumer, including but not limited to: restaurants; coffee shops; cafeterias; short
- 13 order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains;
- 14 taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding
- 15 establishments; private, public or nonprofit organizations or institutions routinely
- 16 serving food; catering kitchens; commissaries; charitable food kitchens; or similar
- 17 places in which food is prepared for sale or service on the premises or elsewhere
- 18 with or without charge. It does not include food vending machines, establishments
- 19 serving beverages only in single service or original containers, or retail food stores
- 20 which only cut, slice, and prepare cold-cut sandwiches for individual consumption;
- 21 (22) "Food storage warehouse" means any establishment in which food is stored for
- 22 subsequent distribution;
- 23 (23) "Immediate container" does not include package liners;
- 24 (24) "Imminent health hazard" means a significant threat or danger to health that is
- 25 considered to exist when there is evidence sufficient to show that a product,
- 26 practice, circumstance, or event creates a situation that requires immediate
- 27 correction or cessation of operation to prevent illness or injury based on:

- 1 (a) The number of potential illnesses or injuries; or
- 2 (b) The nature, severity, and duration of the anticipated illness or injury;
- 3 (25) "Interference" means threatening or otherwise preventing the performance of lawful
- 4 inspections or duties by agents of the cabinet during all reasonable times of
- 5 operation;
- 6 (26) "Label" means a display of written, printed, or graphic matter upon the immediate
- 7 container of any article; and a requirement made by or under authority of KRS
- 8 217.005 to 217.215 that any word, statement, or other information appearing on the
- 9 label shall not be considered to be complied with unless the word, statement, or
- 10 other information also appears on the outside container or wrapper, if any there be,
- 11 of the retail package of the article, or is easily legible through the outside container
- 12 or wrapper;
- 13 (27) "Labeling" means all labels and other written, printed, or graphic matter:
- 14 (a) Upon an article or any of its containers or wrappers; or
- 15 (b) Accompanying the article;
- 16 (28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act,
- 17 as amended, and under which definition its label is required to bear the statement
- 18 "Caution: Federal law prohibits dispensing without prescription.";
- 19 (29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71
- 20 et seq., 34 Stat. 1260 et seq., including any amendments thereto;
- 21 (30) "New drug" means:
- 22 (a) Any drug the composition of which is such that the drug is not generally
- 23 recognized among experts qualified by scientific training and experience to
- 24 evaluate the safety of drugs as safe for use under the conditions prescribed,
- 25 recommended, or suggested in the labeling thereof; or
- 26 (b) Any drug the composition of which is such that the drug, as a result of
- 27 investigations to determine its safety for use under prescribed conditions, has

1 become so recognized, but which has not, otherwise than in the investigations,
2 been used to a material extent or for a material time under the conditions;

3 (31) "Official compendium" means the official United States pharmacopoeia, official
4 homeopathic pharmacopoeia of the United States, official national formulary, or
5 any supplement to any of them;

6 (32) "Person" means an individual, firm, partnership, company, corporation, trustee,
7 association, or any public or private entity;

8 (33) "Pesticide chemical" means any substance that alone in chemical combination, or in
9 formulation with one or more other substances, is an "economic poison" within the
10 meaning of the Federal Insecticide, Fungicide and Rodenticide Act and
11 amendments thereto, and that is used in the production, storage, or transportation of
12 raw agricultural commodities;

13 (34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products
14 Inspection Act, 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any
15 amendments thereto;

16 (35) "Practitioner" means medical or osteopathic physicians, dentists, chiropractors, and
17 veterinarians who are licensed under the professional licensing laws of Kentucky to
18 prescribe and administer drugs and devices. "Practitioner" includes optometrists
19 when administering or prescribing pharmaceutical agents authorized in KRS
20 320.240(12) to (14), advanced practice registered nurses as authorized in KRS
21 314.011 and 314.042, physician assistants when administering or prescribing
22 pharmaceutical agents as authorized in KRS 311.858, *advanced practice*
23 *respiratory therapists as authorized in Sections 2 and 3 of this Act*, and health care
24 professionals who are residents of and actively practicing in a state other than
25 Kentucky and who are licensed and have prescriptive authority under the
26 professional licensing laws of another state, unless the person's Kentucky license
27 has been revoked, suspended, restricted, or probated, in which case the terms of the

- 1 Kentucky license shall prevail;
- 2 (36) "Prescription" means a written or oral order for a drug or medicine, or combination
3 or mixture of drugs or medicines, or proprietary preparation, that is signed, given,
4 or authorized by a medical, advanced practice registered nurse, advanced practice
5 respiratory therapist, dental, chiropody, veterinarian, or optometric practitioner,
6 and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
7 disease in man or other animals;
- 8 (37) "Prescription blank" means a document that conforms with KRS 217.216 and is
9 intended for prescribing a drug to an ultimate user;
- 10 (38) "Raw agricultural commodity" means any food in its raw or natural state, including
11 all fruits that are washed, colored, or otherwise treated in their unpeeled natural
12 form prior to marketing;
- 13 (39) "Retail food establishment" means any food service establishment, retail food store,
14 or a combination of both within the same establishment;
- 15 (40) "Retail food store" means any fixed or mobile establishment where food or food
16 products, including prepackaged, labeled sandwiches or other foods to be heated in
17 a microwave or infrared oven at the time of purchase, are offered for sale to the
18 consumer, and intended for off-premises consumption, but does not include
19 establishments which handle only prepackaged, snack-type, nonpotentially
20 hazardous foods, markets that offer only fresh fruits and vegetables for sale, food
21 service establishments, food and beverage vending machines, vending machine
22 commissaries, food processing establishments, or home-based processors;
- 23 (41) "Salvage distributor" means a person who engages in the business of distributing,
24 peddling, or otherwise trafficking in any salvaged merchandise;
- 25 (42) "Salvage processing plant" means an establishment operated by a person engaged in
26 the business of reconditioning, labeling, relabeling, repackaging, reconditioning,
27 sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or

1 distributes for human or animal consumption or use any salvaged food, beverage,
2 including beer, wine and distilled spirits, vitamins, food supplements, dentifrices,
3 cosmetics, single-service food containers or utensils, containers and packaging
4 materials used for foods and cosmetics, soda straws, paper napkins, or any other
5 product of a similar nature that has been damaged or contaminated by fire, water,
6 smoke, chemicals, transit, or by any other means;

7 (43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;

8 (44) "Secretary" means the secretary of the Cabinet for Health and Family Services;

9 (45) "Temporary food service establishment" means any food service establishment
10 which operates at a fixed location for a period of time, not to exceed fourteen (14)
11 consecutive days;

12 (46) "Traffic" has the same meaning as it does in KRS 218A.010;

13 (47) "Ultimate user" has the same meaning as it does in KRS 218A.010;

14 (48) If an article is alleged to be misbranded because the labeling is misleading, or if an
15 advertisement is alleged to be false because it is misleading, in determining whether
16 the labeling or advertisement is misleading, there shall be taken into account,
17 among other things, not only representations made or suggested by statement, word,
18 design, device, sound, or in any combination thereof, but also the extent to which
19 the labeling or advertisement fails to reveal facts that are material in the light of the
20 representations or material with respect to consequences which may result from the
21 use of the article to which the labeling or advertisement relates under the conditions
22 of use prescribed in the labeling or advertisement thereof or under the conditions of
23 use as are customary or usual;

24 (49) The representation of a drug in its labeling or advertisement as an antiseptic shall be
25 considered to be a representation that it is a germicide, except in the case of a drug
26 purporting to be, or represented as, an antiseptic for inhibitory use as a wet
27 dressing, ointment, dusting powder, or other use involving prolonged contact with

- 1 the body;
- 2 (50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs,
3 devices, or cosmetics shall be considered to include the manufacture, production,
4 processing, packing, exposure, offer, possession, and holding of those articles for
5 sale, the sale, dispensing, and giving of those articles, and the supplying or applying
6 of those articles in the conduct of any food, drug, or cosmetic establishment;
- 7 (51) "Home" means a primary residence occupied by the processor, that contains only
8 two (2) ranges, ovens, or double-ovens, and no more than three (3) refrigerators
9 used for cold storage. This equipment shall have been designed for home use and
10 not for commercial use, and shall be operated in the kitchen within the residence;
- 11 (52) "Formulated acid food product" means an acid food in which the addition of a small
12 amount of low-acid food results in a finished equilibrium pH of 4.6 or below that
13 does not significantly differ from that of the predominant acid or acid food;
- 14 (53) "Acidified food product" means a low-acid food to which acid or acidic food is
15 added and which has a water activity value greater than 0.85, and a finished
16 equilibrium pH of 4.6 or below;
- 17 (54) "Low-acid food" means foods, other than alcoholic beverages, with a finished
18 equilibrium pH greater than 4.6, and a water activity value greater than 0.85;
- 19 (55) "Acid food" means foods that have a natural pH of 4.6 or below;
- 20 (56) "Home-based processor" means a person who in his or her home, produces or
21 processes non-potentially hazardous foods, including but not limited to dried herbs,
22 spices, nuts, candy, dried grains, whole fruit and vegetables, mixed-greens, jams,
23 jellies, sweet sorghum syrup, preserves, fruit butter, bread, fruit pies, cakes, or
24 cookies, and who has a gross income of no more than sixty thousand dollars
25 (\$60,000) annually from the sale of the products;
- 26 (57) "Home-based microprocessor" means a farmer who, in the farmer's home or
27 certified or permitted kitchen, produces or processes foods, including but not

1 limited to acid foods, formulated acid food products, acidified food products, or
2 low-acid canned foods, and who has a gross income of no more than sixty thousand
3 dollars (\$60,000) annually from the sale of the product;

4 (58) "Certified" means any person or home-based microprocessor who:

5 (a) Has attended the Kentucky Cooperative Extension Service's microprocessing
6 program or pilot microprocessing program and has been identified by the
7 Kentucky Cooperative Extension Service as having satisfactorily completed
8 the prescribed course of instruction; or

9 (b) Has attended some other school pursuant to 21 C.F.R. sec. 114.10;

10 (59) "Farmer" means a person who is a resident of Kentucky and owns or rents
11 agricultural land pursuant to subsection (9) of KRS 132.010 or horticultural land
12 pursuant to subsection (10) of KRS 132.010. For the purposes of KRS 217.136 to
13 217.139, "farmer" also means any person who is a resident of Kentucky and has
14 grown the primary horticultural and agronomic ingredients used in the home-based
15 microprocessed products which they have produced; and

16 (60) "Farmers market temporary food service establishment" means any temporary food
17 service establishment operated by a farmer who is a member of the market which
18 operates within the confines of a farmers market registered with the Kentucky
19 Department of Agriculture for the direct-to-consumer marketing of Kentucky-
20 grown farm products from approved sources for a period of time not to exceed two
21 (2) days per week for any consecutive six (6) months period in a calendar year.

22 ➔Section 19. KRS 311.646 is amended to read as follows:

23 (1) A health-care practitioner may prescribe injectable epinephrine devices and
24 bronchodilator rescue inhalers in the name of an authorized entity or to a certified
25 individual for use in accordance with this section.

26 (2) A pharmacist may dispense injectable epinephrine devices and bronchodilator
27 rescue inhalers pursuant to a prescription issued in the name of an authorized entity

1 or to a certified individual.

2 (3) The Department for Public Health, the Kentucky Board of Medical Licensure, the
3 Kentucky Board of Nursing, *the Kentucky Board of Respiratory Care*, the
4 American Red Cross, or other training programs approved by the Department for
5 Public Health may conduct in-person or online~~on-line~~ training for administering
6 lifesaving treatment to persons believed in good faith to be experiencing severe
7 allergic reactions and asthma symptoms or respiratory distress and issue a
8 certificate of training to persons completing the training. The training shall include
9 instructions for recognizing the symptoms of anaphylaxis and asthma and
10 administering an injectable epinephrine device or a bronchodilator rescue inhaler.

11 (4) An individual who has a certificate issued under this section may:

12 (a) Receive a prescription for injectable epinephrine devices and bronchodilator
13 rescue inhalers from a health-care practitioner;

14 (b) Possess prescribed injectable epinephrine devices and bronchodilator rescue
15 inhalers; and

16 (c) In an emergency situation when a physician is not immediately available and
17 the certified individual in good faith believes a person is experiencing a severe
18 allergic reaction, asthma symptoms, or respiratory distress regardless of
19 whether the person has a prescription for an injectable epinephrine device or a
20 bronchodilator rescue inhaler or has previously been diagnosed with an
21 allergy or asthma:

22 1. Administer an injectable epinephrine device or a bronchodilator rescue
23 inhaler to the person; and

24 2. Provide an injectable epinephrine device or a bronchodilator rescue
25 inhaler to the person for immediate self-administration.

26 (5) An authorized entity that acquires and stocks a supply of injectable epinephrine
27 devices or bronchodilator rescue inhalers with a valid prescription shall:

- 1 (a) Store the injectable epinephrine devices and bronchodilator rescue inhalers in
2 accordance with manufacturer's instructions and with any additional
3 requirements established by the department; and
- 4 (b) Designate an employee or agent who holds a certificate issued under this
5 section to be responsible for the storage, maintenance, and general oversight
6 of injectable epinephrine devices and bronchodilator rescue inhalers acquired
7 by the authorized entity.
- 8 (6) Any individual or entity who administers or provides an injectable epinephrine
9 device to a person who is experiencing a severe allergic reaction shall contact the
10 local emergency medical services system as soon as possible.
- 11 (7) Any individual or entity who acquires and stocks a supply of injectable epinephrine
12 devices in accordance with this section shall notify an agent of the local emergency
13 medical services system and the local emergency communications or vehicle
14 dispatch center of the existence, location, and type of the injectable epinephrine
15 devices acquired if a severe allergic reaction has occurred.

16 ➔Section 20. KRS 353.510 is amended to read as follows:

17 As used in KRS 353.500 to 353.720, unless the context otherwise requires:

- 18 (1) "Department" means the Department for Natural Resources;
- 19 (2) "Commissioner" means the commissioner of the Department for Natural Resources;
- 20 (3) "Director" means the director of the Division of Oil and Gas as provided in KRS
21 353.530;
- 22 (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as
23 provided in KRS 353.565;
- 24 (5) "Person" means any natural person, corporation, association, partnership, receiver,
25 governmental agency subject to KRS 353.500 to 353.720, trustee, so-called
26 common-law or statutory trust, guardian, executor, administrator, or fiduciary of
27 any kind, federal agency, state agency, city, commission, political subdivision of

- 1 the Commonwealth, or any interstate body;
- 2 (6) "Correlative rights" means the reasonable opportunity of each person entitled
3 thereto to recover and receive or receive, without waste, the oil and gas in and
4 under or produced from a tract or tracts in which the person owns or controls an
5 interest, or proceeds thereof;
- 6 (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of
7 gravity, which are produced at the well in liquid form by ordinary production
8 methods and which are not the result of condensation of gas after it leaves the
9 underground reservoir;
- 10 (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons
11 not defined in subsection (7) of this section as oil;
- 12 (9) "Pool" means:
- 13 (a) An underground reservoir containing a common accumulation of oil or gas or
14 both; or
- 15 (b) An area established by the department or the commission as a pool.
16 Each productive zone of a general structure which is completely separated from any
17 other zone in the structure, or which for the purpose of KRS 353.500 to 353.720
18 may be so declared by the department, is covered by the word "pool";
- 19 (10) "Field" means the general area which is underlaid or appears to be underlaid by at
20 least one (1) pool; and "field" includes the underground reservoir containing oil or
21 gas or both. The words "field" and "pool" mean the same thing when only one (1)
22 underground reservoir is involved; however, "field," unlike "pool," may relate to
23 two (2) or more pools;
- 24 (11) "Just and equitable share of production" means, as to each person, an amount of oil
25 or gas or both substantially equal to the amount of recoverable oil and gas in that
26 part of a pool underlying his tract or tracts;
- 27 (12) "Abandoned," when used in connection with a well or hole, means a well or hole

1 which has never been used, or which, in the opinion of the department, will no
2 longer be used for the production of oil or gas or for the injection or disposal of
3 fluid therein;

4 (13) "Workable bed" means:

5 (a) A coal bed actually being operated commercially;

6 (b) A coal bed that the department decides can be operated commercially and the
7 operation of which can reasonably be expected to commence within not more
8 than ten (10) years; or

9 (c) A coal bed which, from outcrop indications or other definite evidence, proves
10 to the satisfaction of the commissioner to be workable, and which, when
11 operated, will require protection if wells are drilled through it;

12 (14) "Well" means a borehole:

13 (a) Drilled or proposed to be drilled for the purpose of producing gas or oil;

14 (b) Through which gas or oil is being produced; or

15 (c) Drilled or proposed to be drilled for the purpose of injecting any water, gas, or
16 other fluid therein or into which any water, gas, or other fluid is being
17 injected;

18 (15) "Shallow well" means any well drilled and completed at a depth of six thousand
19 (6,000) feet or less except, in the case of any well drilled and completed east of
20 longitude line 84 degrees 30', shallow well means any well drilled and completed at
21 a depth of six thousand (6,000) feet or above the base of the lowest member of the
22 Devonian Brown Shale, whichever is the deeper in depth;

23 (16) "Deep well" means any well drilled and completed below the depth of six thousand
24 (6,000) feet or, in case of a well located east of longitude line 84 degree 30', a well
25 drilled and completed at a depth below six thousand (6,000) feet or below the base
26 of the lowest member of the Devonian Brown Shale, whichever is deeper;

27 (17) "Operator" means:

1 (a) For a deep well, any owner of the right to develop, operate, and produce oil
2 and gas from a pool and to appropriate the oil and gas produced therefrom,
3 either for himself or for himself and others. In the event that there is no oil
4 and gas lease in existence with respect to the tract in question, the owner of
5 the oil and gas rights therein shall be considered as the royalty owner to the
6 extent of the prevailing royalty in the oil and gas in that portion of the pool
7 underlying the tract owned by the owner, and as operator as to the remaining
8 interest in such oil and gas. In the event the oil is owned separately from the
9 gas, the owner of the right to develop, operate, and produce the substance
10 being produced or sought to be produced from the pool shall be considered as
11 "operator" as to such pool; and

12 (b) For a shallow well, any owner of the right to develop, operate, and produce oil
13 and gas from a pool and to appropriate the oil and gas therefrom, either for
14 himself or herself, or for himself or herself and others. If there is no oil and
15 gas lease in existence with respect to the tract in question, the owner of the oil
16 and gas rights therein shall be considered as operator to the extent of seven-
17 eighths (7/8) of the oil and gas in that portion of the pool underlying the tract
18 owned by the owner, and as a royalty owner as to the one-eighth (1/8) interest
19 in the oil and gas. If the oil is owned separately from the gas, the owner of the
20 right to develop, operate, and produce the substance being produced or sought
21 to be produced from the pool shall be considered as operator as to the pool;

22 (18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to
23 the extent that the owner is not an operator as defined in subsection (17) of this
24 section;

25 (19) "Drilling unit" generally means the maximum area in a pool which may be drained
26 efficiently by one (1) well so as to produce the reasonable maximum oil or gas
27 reasonably recoverable in the area. Where the regulatory authority has provided

1 rules for the establishment of a drilling unit and an operator, proceeding within the
2 framework of the rules so prescribed, has taken the action necessary to have a
3 specified area established for production from a well, the area shall be a drilling
4 unit;

5 (20) "Underground source of drinking water" means those subsurface waters identified
6 as in regulations promulgated by the department which shall be consistent with the
7 definition of underground source of drinking water in regulations promulgated by
8 the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42
9 U.S.C. secs. 300(f) et seq.;

10 (21) "Underground injection" means the subsurface emplacement of fluids by well
11 injection but does not include the underground injection of natural gas for purposes
12 of storage;

13 (22) "Endangerment of underground sources of drinking water" means underground
14 injection which may result in the presence in underground water, which supplies or
15 can reasonably be expected to supply any public water system, of any contaminant
16 and if the presence of the contaminant may result in the system's not complying
17 with any national primary drinking water regulation or may otherwise adversely
18 affect the health of persons;

19 (23) "Class II well" means wells which inject fluids:

20 (a) Which are brought to the surface in connection with conventional oil or
21 natural gas production and may be commingled with waste waters from gas
22 plants which are an integral part of production operations, unless those waters
23 are classified as a hazardous waste at the time of injection;

24 (b) For enhanced recovery of oil or natural gas; and

25 (c) For storage of hydrocarbons which are liquid at standard temperature and
26 pressure;

27 (24) "Fluid" means any material or substance which flows or moves whether in a

- 1 semisolid, liquid, sludge, gas, or any other form or state;
- 2 (25) "Horizontal well" means a well, the wellbore of which is initially drilled on a
3 vertical or directional plane and which is curved to become horizontal or nearly
4 horizontal, in order to parallel a particular geological formation and which may
5 include multiple horizontal or stacked laterals;
- 6 (26) "Vertical well" means a well, the wellbore of which is drilled on a vertical or
7 directional plane into a formation and is not turned or curved horizontally to allow
8 the wellbore additional access to the oil and gas reserves in the formation;
- 9 (27) "Prevailing royalty" means the royalty rate or percentage that the department or the
10 commission determines is the royalty most commonly applicable with regard to the
11 tract or unit in the issue. The royalty rate set by the department or the commission
12 shall not be less than one-eighth (1/8) or twelve and one-half percent (12.5%);
- 13 (28) "Best management practices" means demonstrated practices intended to control site
14 runoff and pollution of surface water and groundwater to prevent or reduce the
15 pollution of waters of the Commonwealth;
- 16 (29) "Abandoned storage tank facility" means any aboveground storage tank or
17 interconnected grouping of tanks that is no longer being actively used and
18 maintained in conjunction with the production and storage of crude oil or produced
19 water;
- 20 (30) "Spill prevention, control, and countermeasure structures" means containment
21 structures constructed around a storage facility to contain facility discharges;
- 22 (31) "Landowner" means any person who owns real property where an abandoned
23 storage tank facility is currently located;
- 24 (32) "Chemical Abstracts Service" means the division of the American Chemical
25 Society that is the globally recognized authority for information on chemical
26 substances;
- 27 (33) "Chemical abstracts service number" means the unique identification number

- 1 assigned to a chemical by the Chemical Abstracts Service;
- 2 (34) "Chemical" means any element, chemical compound, or mixture of elements or
3 compounds that has its own specific name or identity, such as a chemical abstracts
4 service number;
- 5 (35) "Chemical disclosure registry" means the chemical registry known as FracFocus
6 developed by the Groundwater Protection Council and the Interstate Oil and Gas
7 Compact Commission. If that registry becomes permanently inoperable, the
8 chemical disclosure registry shall mean another publicly accessible Web site that is
9 designated by the commissioner;
- 10 (36) "Division" means the Kentucky Division of Oil and Gas;
- 11 (37) "Emergency spill or discharge" means an uncontrolled release, spill, or discharge
12 associated with an oil or gas well or production facility that has an immediate
13 adverse impact to public health, safety, or the environment as declared by the
14 secretary of the cabinet;
- 15 (38) "Health professional" means a physician, physician assistant, nurse practitioner,
16 registered nurse, advanced practice respiratory therapist, or emergency medical
17 technician licensed by the Commonwealth of Kentucky;
- 18 (39) "High-volume horizontal fracturing treatment" means the stimulated treatment of a
19 horizontal well by the pressurized application of more than eighty thousand
20 (80,000) gallons of water, chemical, and proppant, combined for any stage of the
21 treatment or three hundred twenty thousand (320,000) gallons in the aggregate for
22 the treatment used to initiate or propagate fractures in a geological formation for the
23 purpose of enhancing the extraction or production of oil or natural gas;
- 24 (40) "Proppant" means sand or any natural or man-made material that is used in a
25 hydraulic fracturing treatment to prop open the artificially created or enhanced
26 fractures once the treatment is completed;
- 27 (41) "Total water volume" means the total quantity of water from all sources used in a

- 1 high-volume hydraulic fracturing treatment;
- 2 (42) "Trade secret" means information concerning the volume of a chemical or relative
3 concentration of chemicals used in a hydraulic fracturing treatment that:
- 4 (a) Is known only to the hydraulic fracturing treatment's owners, employees,
5 former employees, or persons under contractual obligation to hold the
6 information in confidence;
- 7 (b) Has been perfected and appropriated by the exercise of individual ingenuity
8 which gives the hydraulic fracturing treatment's owner an opportunity to
9 retain or obtain an advantage over competitors who do not know the
10 information; and
- 11 (c) Is not required to be disclosed or otherwise made available to the public under
12 any federal or state law or administrative regulation;
- 13 (43) "Cabinet" means the Energy and Environment Cabinet;
- 14 (44) "Stratigraphic test well" means an exploratory borehole drilled for the sole purpose
15 of acquiring subsurface geological and structure test data;
- 16 (45) "Notice" means the sending of certified mail to the last known address. The date of
17 delivery shall be the earlier of the date shown on the certified mail return receipt or
18 the date thirty (30) days after the date shown on the postal service proof of mailing.
19 For the purposes of KRS 353.620, 353.630, 353.640, and 353.700, any unknown or
20 nonlocatable owner shall be deemed to have received notice, provided that the
21 person giving the notice has caused to be published, no more than thirty (30) days
22 prior to the submission of an application or order issued pursuant to an application,
23 one (1) notice in the newspaper of the largest circulation in each county in which
24 any tract, or portion thereof, affected or proposed to be affected, is located. The
25 applicant shall provide a copy of the published notification to the director within
26 twenty (20) days of the date of publication. The notice shall:
- 27 (a) State, as applicable, that an application is being filed with the division or that

1 an order has been issued pursuant to an application filed with the division;

2 (b) Describe any tract, or portion thereof, affected or proposed to be affected;

3 (c) In the case of an unknown owner, identify the name of the last known owner;

4 (d) In the case of a nonlocatable owner, identify the owner and the owner's last
5 known address; and

6 (e) State that any party claiming an interest in any tract, or portion thereof,
7 affected or proposed to be affected, shall contact the operator at the published
8 address;

9 (46) (a) "Control person" means a person who:

10 1. Has the ability to commit the financial or real property assets or working
11 resources of an entity to comply with this chapter and the administrative
12 regulations promulgated hereunder with respect to the operations of a
13 well or the manner in which a well is operated;

14 2. Has any other relationship that gives that person authority to determine
15 the manner in which a well is operated, plugged, and abandoned. This
16 includes a rebuttable presumption that an ineligible person is directing
17 the actions of his or her spouse or child who files an application;

18 3. Is an officer, director, or general partner of an entity; or

19 4. Has an ownership interest in an entity equaling or exceeding fifty
20 percent (50%), except that the cabinet may determine that a person has
21 controlling interest in an entity with less than fifty percent (50%)
22 ownership.

23 (b) Unless the person is determined to qualify under paragraph (a) of this
24 subsection, "control person" does not include:

25 1. An independent third-party service company;

26 2. A contract operator;

27 3. A well tender or pumper;

- 1 4. The owner of a non-operated undivided working interest;
- 2 5. A limited partner;
- 3 6. A unitholder in a limited liability company; or
- 4 7. Any other person who by virtue of a joint operating agreement, entity
- 5 governance agreement, or other contractual relationship does not have
- 6 the right to control the manner in which a well is operated and plugged
- 7 and abandoned;

8 (47) "Eligible well" means:

- 9 (a) An orphan well; or
- 10 (b) Any abandoned well that poses an imminent threat to human health, safety, or
- 11 the environment; and

12 (48) "Orphan well" means any oil or gas well, as defined in subsection (14) of this

13 section, which has been determined by the cabinet to be improperly abandoned or

14 improperly closed, and that has no known owner or operator with continuing legal

15 responsibility or all owners or operators with continuing legal responsibility for the

16 well are determined to be financially insolvent following a reasonable investigation

17 conducted by the cabinet.

18 ➔Section 21. KRS 405.024 is amended to read as follows:

19 (1) As used in this section:

- 20 (a) "Cabinet" means the Cabinet for Health and Family Services;
- 21 (b) "Caregiver" means an adult person with whom a minor resides, including a
- 22 grandparent, stepgrandparent, stepparent, aunt, uncle, or any other adult
- 23 relative of the minor;
- 24 (c) "De facto custodian" has the same meaning as defined in KRS 403.270;
- 25 (d) "Department" means the Department of Education;
- 26 (e) "Health care provider" means any licensed medical, surgical, dental,
- 27 psychological, or osteopathic practitioner; nurse practitioner; **advanced**

- 1 *practice respiratory therapist*; occupational, physical, or speech therapist;
2 hospital; public or private health clinic; or their agents or employees; and
- 3 (f) "Health care treatment":
- 4 1. Means any necessary medical and dental examination, diagnostic
5 procedure, and treatment, including but not limited to hospitalization,
6 developmental screening, mental health screening and treatment,
7 preventive care, immunizations recommended by the federal Centers for
8 Disease Control and Prevention's Advisory Committee on Immunization
9 Practices, well-child care, blood testing, and occupational, physical, and
10 speech and language therapies; and
- 11 2. Does not mean any procedure to terminate a pregnancy, pregnancy
12 determination testing, HIV or AIDS testing, controlled substance
13 testing, or any other testing for which a separate court order or informed
14 consent is required under other applicable law.
- 15 (2) The caregiver shall create an affidavit establishing the caregiver's ability to
16 authorize health care treatment for a minor and to make school-related decisions for
17 a minor. The affidavit shall include but not be limited to the following information:
- 18 (a) The name and address of the caregiver;
- 19 (b) The caregiver's relationship to the minor to whom the affidavit applies;
- 20 (c) A statement that the caregiver is over the age of eighteen (18);
- 21 (d) The name and date of birth of the minor to whom the affidavit applies;
- 22 (e) A statement that the minor resides in the caregiver's home;
- 23 (f) A statement that the caregiver shall be allowed to authorize the provision of
24 health care treatment to the minor, or to withhold such authorization;
- 25 (g) A statement that the caregiver shall be the person responsible for enrolling the
26 minor in school and acting as the minor's legal contact with the school for the
27 purposes of making decisions on enrollment, attendance, extracurricular

- 1 activities, discipline, and all other school-related activities;
- 2 (h) A statement identifying the minor's parents, de facto custodian, guardian, or
3 legal custodian and describing the caregiver's relationship to the parents, de
4 facto custodian, guardian, or legal custodian;
- 5 (i) A statement that no other party has legal standing in custody issues for the
6 minor other than those parties identified in paragraph (h) of this subsection;
- 7 (j) The dated signatures of the minor's parents, de facto custodian, guardian, or
8 legal custodian indicating their approval of the caregiver's ability to authorize
9 the provision of health care treatment to the minor and to make school-related
10 decisions for the minor. If a parent or parents, de facto custodian, guardian, or
11 legal custodian are unavailable to sign the affidavit, the affidavit shall include
12 a statement describing the circumstances of their unavailability and a
13 statement of the caregiver's reasonable efforts to locate them;
- 14 (k) The dated signature of the caregiver;
- 15 (l) A statement that acknowledges that a person making false statements in the
16 affidavit shall be subject to criminal penalties;
- 17 (m) A statement that acknowledges that execution of the affidavit does not confer
18 upon the caregiver the status of a de facto custodian, guardian, or legal
19 custodian of the minor; and
- 20 (n) A statement that acknowledges the requirement for the caregiver to notify any
21 health care provider or school to which the affidavit was presented if the
22 minor ceases to reside with the caregiver or the affidavit is revoked by the
23 minor's parent or parents, de facto custodian, guardian, legal custodian, or
24 caregiver.
- 25 (3) The health care authorization portion of the affidavit described in subsection (2) of
26 this section shall be valid for one (1) year and may be renewed annually thereafter
27 unless it is revoked by the minor's parent or parents, de facto custodian, guardian,

1 legal custodian, or caregiver, or if the minor no longer resides with the caregiver.
2 Execution or revocation of the health care authorization portion of the affidavit
3 shall not operate as a complete execution or revocation of the entire affidavit.

4 (4) The education authorization portion of the affidavit described in subsection (2) of
5 this section shall be valid for one (1) year and may be renewed annually thereafter
6 unless it is revoked by the minor's parent or parents, de facto custodian, guardian,
7 legal custodian, or caregiver, or if the minor no longer resides with the caregiver.
8 Execution or revocation of the education authorization portion of the affidavit shall
9 not operate as a complete execution or revocation of the entire affidavit.

10 (5) A caregiver may authorize the provision of health care treatment or may refuse the
11 provision of health care treatment to a minor residing with the caregiver if the
12 caregiver presents to a health care provider a duly executed affidavit as described in
13 subsection (2) of this section.

14 (6) The decision of a caregiver to authorize or refuse health care treatment for a minor
15 shall be superseded by a decision of a parent, de facto custodian, guardian, or legal
16 custodian of the minor.

17 (7) A health care provider shall honor a caregiver's authorization to provide health care
18 treatment to a minor, or the caregiver's decision to withhold such authorization, if
19 the caregiver presents to the provider a duly executed affidavit described in
20 subsection (2) of this section. A health care provider shall refuse to honor the
21 caregiver's decision to seek or refuse health care treatment if the provider has actual
22 knowledge that a parent, de facto custodian, legal custodian, or guardian has made a
23 superseding decision to authorize or refuse health care treatment for the minor. ~~The~~
24 ~~provisions of~~ This subsection shall not be construed to prohibit a health care
25 provider from providing health care treatment for a condition that, left untreated,
26 could reasonably be expected to substantially threaten the health or life of the
27 minor.

- 1 (8) A person who relies in good faith on a duly executed affidavit as described in
2 subsection (2) of this section in providing or refusing health care treatment shall:
- 3 (a) Be under no obligation to undertake further investigation into the
4 circumstances forming the basis of the caregiver's authorization to the
5 provision or refusal of health care treatment; and
- 6 (b) Not be subject to criminal or civil liability or professional disciplinary action
7 because of that reliance.
- 8 (9) ~~The provisions of~~ This section shall not be construed to relieve any health care
9 provider from liability for negligence in the provision of health care treatment.
- 10 (10) An affidavit described in subsection (2) of this section may be revoked by the
11 minor's parent, de facto custodian, guardian, legal custodian, or caregiver, and shall
12 be revoked if the minor to whom it applies ceases to reside with the caregiver. If an
13 affidavit is revoked, the caregiver shall give written notice of revocation to any
14 health care provider to which the affidavit was presented for the purpose of
15 obtaining health care for the minor.
- 16 (11) A person who knowingly makes a false statement in an affidavit described in
17 subsection (2) of this section shall be guilty of a Class A misdemeanor.