

# **KENTUCKY**

## **CONTROLLED SUBSTANCES ACT**



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**OFFICE OF THE INSPECTOR GENERAL**  
**DRUG ENFORCEMENT AND PROFESSIONAL**  
**PRACTICES BRANCH**  
**REVISED June 2022**

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**KRS Chapter 218A**

**<https://apps.legislature.ky.gov/law/statutes/chapter.aspx?id=38267>**

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**CHAPTER 218A  
CONTROLLED SUBSTANCES**

**218A.005 Legislative findings and declarations.**

The General Assembly hereby finds, determines, and declares that:

- (1) The regulation of controlled substances in this Commonwealth is important and necessary for the preservation of public safety and public health; and
- (2) Successful, community-based treatment can be used as an effective tool in the effort to reduce criminal risk factors. Therapeutic intervention and ongoing individualized treatment plans prepared through the use of meaningful and validated, research-based assessment tools and professional evaluations offer a potential alternative to incarceration in appropriate circumstances and shall be used accordingly.

**Effective:** June 8, 2011

**History:** Created 2011 Ky. Acts ch. 2, sec. 4, effective June 8, 2011.

**218A.010 Definitions for chapter.**

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
  - (a) A practitioner or by his or her authorized agent under his or her immediate supervision and pursuant to his or her order; or
  - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances classified as Schedule III controlled substances pursuant to KRS 218A.020 but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Carfentanil" means any substance containing any quantity of carfentanil, or any of its salts, isomers, or salts of isomers;
- (5) "Certified community based palliative care program" means a palliative care program which has received certification from the Joint Commission;
- (6) "Child" means any person under the age of majority as specified in KRS 2.015;
- (7) "Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;
- (8) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;

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(9) (a) "Controlled substance analogue," except as provided in paragraph (b) of this subsection, means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

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

(10) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;

(11) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;

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

(13) "Distribute" means to deliver other than by administering or dispensing a controlled substance;

(14) "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;

(15) "Drug" means:

- (a) Substances recognized as drugs in the official United States Pharmacopoeia,

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official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

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

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

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

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

(16) "Fentanyl" means a substance containing any quantity of fentanyl, or any of its salts, isomers, or salts of isomers;

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

(a) By substitution:

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

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

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

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

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

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

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

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

(19) "Hazardous chemical substance" includes any chemical substance used or intended

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for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:

- (a) Poses an explosion hazard;
  - (b) Poses a fire hazard; or
  - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (20) "Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;
- (21) "Hydrocodone combination product" means a drug with:
- (a) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium; or
  - (b) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (22) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (23) "Industrial hemp" has the same meaning as in KRS 260.850;
- (24) "Industrial hemp products" has the same meaning as in KRS 260.850;
- (25) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- (26) "Isomer" means the optical isomer, except the Cabinet for Health and Family Services may include the optical, positional, or geometric isomer to classify any substance pursuant to KRS 218A.020;
- (27) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not

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include activities:

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

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

- (a) Industrial hemp that is in the possession, custody, or control of a person who holds a license issued by the Department of Agriculture permitting that person to cultivate, handle, or process industrial hemp;
- (b) Industrial hemp products that do not include any living plants, viable seeds, leaf materials, or floral materials;
- (c) The substance cannabidiol, when transferred, dispensed, or administered pursuant to the written order of a physician practicing at a hospital or associated clinic affiliated with a Kentucky public university having a college or school of medicine;
- (d) For persons participating in a clinical trial or in an expanded access program, a drug or substance approved for the use of those participants by the United States Food and Drug Administration;
- (e) A cannabidiol product derived from industrial hemp, as defined in KRS 260.850;
- (f) For the purpose of conducting scientific research, a cannabinoid product derived from industrial hemp, as defined in KRS 260.850; or
- (g) A cannabinoid product approved as a prescription medication by the United States Food and Drug Administration;

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

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



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- (31) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (32) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (33) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
  - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
  - (c) Opium poppy and poppy straw;
  - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
  - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (34) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.020, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (35) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (36) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (37) "Physical injury" has the same meaning it has in KRS 500.080;
- (38) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (39) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (40) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific

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investigator, optometrist as authorized in KRS 320.240, advanced practice registered nurse as authorized under KRS 314.011, physician assistant as authorized under KRS 311.858, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered nurse authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;

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

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

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

(44) "Presumptive probation" means a sentence of probation not to exceed the maximum term specified for the offense, subject to conditions otherwise authorized by law, that is presumed to be the appropriate sentence for certain offenses designated in this chapter, notwithstanding contrary provisions of KRS Chapter 533. That presumption shall only be overcome by a finding on the record by the sentencing court of substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety;

(45) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;

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

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

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

(49) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;

(50) "Serious physical injury" has the same meaning it has in KRS 500.080;

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

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

(b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-

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piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to JWH-167, JWH-250, JWH-251, and RCS-8;

(c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

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

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

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

(g) Naphthylmethylindenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class

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include but are not limited to JWH-176;

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

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

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

(52) "Synthetic cathinones" means any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law (not including bupropion or compounds listed under a different schedule) structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in one (1) or more of the following ways:

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

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

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

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or

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

(53) "Synthetic drugs" means any synthetic cannabinoids or piperazines or any synthetic cathinones;

(54) "Telehealth" has the same meaning it has in KRS 311.550;

(55) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

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

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

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

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

(57) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and

(58) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 123, sec. 1, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 39, sec. 9, effective July 15, 2020. -- Amended 2019 Ky. Acts ch.

84, sec. 4, effective June 27, 2019. -- Amended 2017 Ky. Acts ch. 45, sec. 12, effective March 20, 2017; ch. 61, sec. 1, effective June 29, 2017; and ch. 168, sec. 1, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 135, sec. 1, effective April 27, 2016. -- Amended 2014 Ky. Acts ch. 112, sec. 1, effective April 10, 2014. -- Amended 2013 Ky. Acts ch. 26, sec. 1, effective March 19, 2013; and ch. 134, sec. 15, effective June 25, 2013. -- Amended 2012 Ky. Acts ch. 108, sec. 3, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 2, sec. 5, effective June 8, 2011; and ch. 45, sec. 15, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 85, sec. 42, effective July 15, 2010; ch. 149, sec. 4, effective April 13, 2010; and ch. 160, sec. 4, effective April 26, 2010. -- Amended 2009 Ky. Acts ch. 12, sec. 48, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 124, sec. 1, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 5, sec. 4, effective July 12, 2006. -- Amended 2005 Ky.

Acts ch. 150, sec. 7, effective June 20, 2005; and ch. 99, sec. 527, effective June 20, 2005 -- Amended 2003 Ky. Acts ch. 51, sec. 3, effective June 24, 2003. -- Amended 1998 Ky. Acts ch. 301, sec. 12, effective July 15, 1998; and ch. 606, sec. 62, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 376, sec. 3, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 412, sec. 2, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 441, sec. 1, effective July 14, 1992. -- Amended 1974 Ky. Acts ch. 225, sec. 5, effective June 21, 1974 -- Created 1972 Ky. Acts ch. 226, sec. 2, effective July 1, 1972.

**Legislative Research Commission Note** (4/10/2014). 2014 Ky. Acts ch. 112, sec. 2

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provided that the amendments made to this statute in Section 1 of that Act shall be known and may be cited as the "Clara Madeline Gilliam Act."

**Legislative Research Commission Note** (4/11/2012). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format of the text in subsection (48) of this statute during codification. The words in the text were not changed

### **218A.015 Definitions of mental states.**

When used in this chapter, the terms "intentionally," "knowingly," "wantonly," and "recklessly," including but not limited to equivalent terms such as "with intent," shall have the same definition and the same principles shall apply to their use as those terms are defined and used in KRS Chapter 501.

**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 150, sec. 8, effective June 20, 2005.

### **218A.020 Cabinet for Health and Family Services to administer chapter -- Control of substances rescheduled under federal law -- Office of Drug Control Policy may request scheduling of substances meeting criteria.**

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

- (a) The actual or relative potential for abuse;
- (b) The scientific evidence of its pharmacological effect, if known;
- (c) The state of current scientific knowledge regarding the substance;
- (d) The history and current pattern of abuse;
- (e) The scope, duration, and significance of abuse;
- (f) The risk to the public health;
- (g) The potential of the substance to produce psychic or physiological
  - (a) dependence liability; and
  - (b) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(2) After considering the factors enumerated in subsection (1) of this section, the Cabinet for Health and Family Services may adopt a regulation controlling the substance if it finds the substance has a potential for abuse.

(3) (a) If any substance is designated or rescheduled as a controlled substance under the federal Controlled Substances Act, the drug shall be considered to be controlled at the state level in the same numerical schedule corresponding to the federal schedule.

(b) Notwithstanding paragraph (a) of this subsection, the Cabinet for Health and Family Services may file an amendment to the administrative regulations promulgated pursuant to this section to control the substance in a more restrictive numerical schedule than the federal schedule as permitted by subsection (1) of this section.

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

(5) The Office of Drug Control Policy may request that the Cabinet for Health and Family Services schedule any substance that would meet the criteria to be scheduled pursuant to this chapter. The cabinet shall consider the request utilizing the criteria established by this section and shall issue a written response within sixty (60) days of the scheduling request delineating the cabinet's decision to schedule or not schedule the substance and the basis for the cabinet's decision. The cabinet's response shall be provided to the Legislative Research Commission and shall be a public record.

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 61, sec. 2, effective June 29, 2017; and ch.168, sec. 2, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 135, sec. 2, effective April 27, 2016. -- Amended 2013 Ky. Acts ch. 26, sec. 6, effective March 19, 2013. -- Amended 2012 Ky. Acts ch. 108, sec. 4, effective April 11, 2012. -- Amended 2005 Ky. Acts ch. 99, sec. 528, effective June 20, 2005. --Amended 1998 Ky. Acts ch. 426, sec. 471, effective July 15, 1998. – Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec.3.

**Legislative Research Commission Note** (6/29/2017). This statute was amended by 2017 Ky. Acts chs. 61 and 168, which do not appear to be in conflict and have been codified together.

### **218A.030 Repealed 2017.**

### **218A.040 Criteria for classification under Schedule I.**

The Cabinet for Health and Family Services shall place a substance in Schedule I if it finds that the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 529, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 472, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 5.

### **218A.050 Repealed 2017.**

### **218A.060 Criteria for classification under Schedule II.**

The Cabinet for Health and Family Services shall place a substance in Schedule II if it finds that:

- (1) The substance has high potential for abuse;



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- (2) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychic or physical dependence.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 531, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 474, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 7.

### **218A.070 Repealed 2017**

### **218A.080 Criteria for classification under Schedule III.**

The Cabinet for Health and Family Services shall place a substance in Schedule III if it finds that:

- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 533, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 476, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 9.

### **218A.090 Repealed 2017**

### **218A.100 Criteria for classification under Schedule IV.**

The Cabinet for Health and Family Services shall place a substance in Schedule IV if it finds that:

- (1) The substance has a low potential for abuse relative to substances in Schedule III;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 535, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 478, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 11.

### **218A.110 Repealed 2017**

**218A.120 Criteria for classification under Schedule V.**

The Cabinet for Health and Family Services shall place a substance in Schedule V if it finds that:

- (1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 537, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 480, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 13.

**218A.130 Repealed 2017**

**218A.133 Exemption from prosecution for possession of controlled substance or drug paraphernalia if seeking assistance with drug overdose.**

(1) As used in this section:

(a) "Drug overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death which reasonably appears to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe requires medical assistance; and

(b) "Good faith" does not include seeking medical assistance during the course of the execution of an arrest warrant, or search warrant, or a lawful search.

(2) A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if:

(a) In good faith, medical assistance with a drug overdose is sought from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner because the person:

1. Requests emergency medical assistance for himself or herself or another person;
  2. Acts in concert with another person who requests emergency medical assistance;
- or
3. Appears to be in need of emergency medical assistance and is the individual for whom the request was made;

(b) The person remains with, or is, the individual who appears to be experiencing a drug overdose until the requested assistance is provided; and

(c) The evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance.

(3) The provisions of subsection (2) of this section shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section.

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(4) When contact information is available for the person who requested emergency medical assistance, it shall be reported to the local health department. Health department personnel shall make contact with the person who requested emergency medical assistance in order to offer referrals regarding substance abuse treatment, if appropriate.

(5) A law enforcement officer who makes an arrest in contravention of this section shall not be criminally or civilly liable for false arrest or false imprisonment if the arrest was based on probable cause.

**Effective:** March 25, 2015

**History:** Created 2015 Ky. Acts ch. 66, sec. 11, effective March 25, 2015.

### **218A.135 Pretrial release of defendant charged with offense for which conviction may result in presumptive probation.**

(1) Any statute to the contrary notwithstanding, a defendant charged with an offense under this chapter for which a conviction may result in presumptive probation shall be placed on pretrial release on his or her own recognizance or on unsecured bond by the court subject to any conditions, other than bail, specified in KRS 431.515 to 431.550.

(2) The provisions of this section shall not apply to a defendant who is found by the court to present a flight risk or to be a danger to others.

(3) If a court determines that a defendant shall not be released pursuant to subsection (2) of this section, the court shall document the reasons for denying the release in a written order.

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 156, sec. 6, effective July 12, 2012. -- Created 2011 Ky. Acts ch. 2, sec. 19, effective June 8, 2011.

### **218A.136 Utilization of faith-based residential treatment program -- Conditions.**

(1) An offender charged with a felony pursuant to this chapter who is not charged with a violent offense, who is eligible for diversion or deferred prosecution of his or her sentence, and whose diversion or deferred prosecution plan involves substance use disorder treatment may be afforded the opportunity to utilize a faith-based residential treatment program.

(2) If an offender and judge support this faith-based residential treatment program, and the cost of the program is less than that of the substance use disorder treatment that would otherwise be provided, then the court may approve the faith-based residential treatment program for a specified period of time. An offender shall sign a commitment to comply by the terms of the faith-based residential treatment program.

(3) If an offender violates the terms of the commitment he or she has signed with the faith-based residential treatment program, then the offender shall be returned to the court for additional proceedings.

**Effective:** March 25, 2015

**History:** Created 2015 Ky. Acts ch. 66, sec. 17, effective March 25, 2015.

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### **218A.140 Prohibited acts relating to controlled substances -- Penalties.**

(1) (a) No person shall obtain or attempt to obtain a prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner.

(b) No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.

(c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.

(d) No person shall knowingly make a false statement regarding any prescription, order, report, or record required by this chapter.

(e) No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself or herself to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.

(f) In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter.

(g) No person shall affix any false or forged label to a package or receptacle containing any controlled substance.

(2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.

(3) No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner or his or her designee from whom the person seeks to obtain the prescription.

(4) No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.

(5) Any person who violates any subsection of this section shall be guilty of a Class D felony.

**Effective:** June 8, 2011

**History:** Amended 2011 Ky. Acts ch. 2, sec. 6, effective June 8, 2011. -- Amended 2007 Ky. Acts ch. 124, sec. 2, effective June 26, 2007. -- Amended 1998 Ky. Acts ch. 301, sec. 22, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 441, sec. 5, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 160, sec. 2, effective July 13, 1990.

### **218A.1401 Selling controlled substances other than salvia to minor --Penalties.**

(1) A person is guilty of selling controlled substances to a minor when he or she, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance other than salvia to any person under eighteen (18) years of age.

(2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

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**Effective:** April 27, 2016

**History:** Amended 2016 Ky. Acts ch. 135, sec. 10, effective April 27, 2016. --Amended 2012 Ky. Acts ch. 108, sec. 6, effective April 11, 2012. – Amended 2011 Ky. Acts ch. 45, sec. 6, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 7, effective April 13, 2010; and ch. 160, sec. 7, effective April 26, 2010. -- Created 1992 Ky. Acts ch. 441, sec. 21, effective July 14, 1992.

### **218A.1402 Criminal conspiracy to commit offense in KRS Chapter 218A -- Penalties.**

Any person who commits a criminal conspiracy as defined in KRS 506.040 to commit any offense in this chapter shall be subject to the same penalties as provided for the underlying offense as specified in this chapter.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 124, sec. 3, effective June 26, 2007. -- Created 1992 Ky. Acts ch. 441, sec. 22, effective July 14, 1992.

### **218A.1403 Advertising controlled substance -- Penalties.**

(1) No person shall advertise through any media other than a professional or trade publication any controlled substance by either its "trade name" or by its generic or formulary name.

(2) Any person who violates subsection (1) of this section shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 441, sec. 26, effective July 14, 1992.

### **218A.1404 Prohibited activities relating to controlled substances -- Penalties.**

(1) No person shall traffic in any controlled substance except as authorized by law.

(2) No person shall possess any controlled substance except as authorized by law.

(3) No person shall dispense, prescribe, distribute, or administer any controlled substance except as authorized by law.

(4) Unless another specific penalty is provided in this chapter, any person who violates the provisions of subsection (1) or (3) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for subsequent offenses and any person who violates the provisions of subsection (2) of this section shall be guilty of a Class A misdemeanor.

**Effective:** June 8, 2011

**History:** Amended 2011 Ky. Acts ch. 2, sec. 7, effective June 8, 2011. -- Created 1992 Ky. Acts ch. 441, sec. 27, effective July 14, 1992.

### **218A.1405 Use and investment of drug-related income -- Penalties.**

(1) It shall be unlawful for any person who has knowingly received any income derived directly or indirectly from trafficking in a controlled substance to use or invest any part of that income, or any proceeds thereof, to acquire any property, or to establish or operate any commercial enterprise.

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(a) As used in this section, "property" includes real and personal property, whether tangible or intangible.

(b) As used in this section, "commercial enterprise" means any proprietorship, partnership, corporation, association or other legal entity, including any individual or group not a legal entity, which is engaged in any business or commercial activity or whose activities affect business or commerce.

(2) Any person who violates this section shall be guilty of a Class D felony and, in addition to other penalties prescribed by law, shall forfeit any property constituting or derived from any income received directly or indirectly from trafficking in a controlled substance.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 441, sec. 29, effective July 14, 1992.

### **218A.141 Additional penalties for trafficking in controlled substance other than salvia or marijuana.**

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, other than trafficking in salvia or marijuana, shall, in addition to any other penalty authorized by law, be sentenced to:

(1) Pay the costs of disposal of the controlled substances;

(2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;

(3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and

(4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

**Effective:** April 11, 2012

**History:** Amended 2012 Ky. Acts ch. 108, sec. 7, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 45, sec. 7, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 8, effective April 13, 2010; and ch. 160, sec. 8, effective April 26, 2010. -- Created 1998 Ky. Acts ch. 606, sec. 61, effective July 15, 1998.

### **218A.1410 Importing heroin, carfentanil, fentanyl, or fentanyl derivatives.**

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

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

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

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 168, sec. 4, effective June 29, 2017. -- Created 2015 Ky. Acts ch. 66, sec. 13, effective March 25, 2015.

### **218A.1411 Trafficking in controlled substance in or near school -- Exception for misdemeanor salvia offenses -- Penalty.**

(1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) feet of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

(2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to salvia.

**Effective:** April 11, 2012

**History:** Amended 2012 Ky. Acts ch. 108, sec. 8, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 2, sec. 8, effective June 8, 2011; and ch. 45, sec. 8, effective March 16, 2011.-- Amended 2010 Ky. Acts ch. 149, sec. 9, effective April 13, 2010; and ch. 160, sec. 9, effective April 26, 2010. -- Created 1992 Ky. Acts ch. 441, sec. 11, effective July 14, 1992.

### **218A.1412 Trafficking in controlled substance in first degree -- Penalties.**

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

- (a) Four (4) grams or more of cocaine;
- (b) Two (2) grams or more of methamphetamine;
- (c) Ten (10) or more dosage units of a controlled substance that is classified in Schedules I or II and is a narcotic drug, or a controlled substance analogue;
- (d) Any quantity of heroin, fentanyl, carfentanil, or fentanyl derivatives; lysergic acid diethylamide; phencyclidine; gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers; or
- (e) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.

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

(3) (a) Any person who violates the provisions of subsection (1)(a), (b), (c), or (d) of this section shall be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense.

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(b) Any person who violates the provisions of subsection (1) (e) of this section:  
Shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense; and

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

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 130, sec. 2, effective June 27, 2019. -- Amended 2017 Ky. Acts ch. 168, sec. 5, effective June 29, 2017. -- Amended 2015 Ky. Acts ch. 66, sec. 14, effective March 25, 2015. -- Amended 2011 Ky. Acts ch. 2, sec. 9, effective June 8, 2011. -- Amended 2002 Ky. Acts ch. 259, sec. 1, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 169, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 606, sec. 63, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 12, effective July 14, 1992.

**218A.1413 Trafficking in controlled substance in second degree -- Penalties.**

(1) A person is guilty of trafficking in a controlled substance in the second degree when:

(a) He or she knowingly and unlawfully traffics in:

1. Ten (10) or more dosage units of a controlled substance classified in Schedules I and II that is not a narcotic drug; or specified in KRS 218A.1412, and which is not a synthetic drug, salvia, or marijuana; or
2. Twenty (20) or more dosage units of a controlled substance classified in Schedule III;

(b) He or she knowingly and unlawfully prescribes, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing human performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity; or

(c) He or she knowingly and unlawfully traffics in any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amounts specified in that paragraph.

(2) (a) Except as provided in paragraph (b) of this subsection, any person who violates the provisions of subsection (1) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

(b) Any person who violates the provisions of subsection (1)(c) of this section shall be guilty of:

1. A Class D felony for the first offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years; and
2. A Class D felony for a second offense or subsequent offense.

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 108, sec. 9, effective April 11, 2012; and ch. 156, sec. 7, effective July 12, 2012. -- Amended 2011 Ky. Acts ch. 2, sec. 10, effective June 8, 2011; and ch. 45,



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sec. 9, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 10, effective April 13, 2010; and ch. 160, sec. 10, effective April 26, 2010. -- Amended 1998 Ky. Acts ch. 606, sec. 64, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 13, effective July 14, 1992.

**Legislative Research Commission Note** (7/12/2012). This statute was amended by 2012 Ky. Acts chs. 108 and 156, which do not appear to be in conflict and have been codified together.

### **218A.1414 Trafficking in controlled substance in third degree -- Penalties.**

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

(a) Twenty (20) or more dosage units of a controlled substance classified in Schedules IV or V; or

(b) Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amount specified in that paragraph.

(2) (a) Any person who violates the provisions of subsection (1)(a) of this section shall be guilty of:

1. A Class A misdemeanor for a first offense involving one hundred twenty (120) or fewer dosage units;

2. A Class D felony for a first offense involving more than one hundred twenty (120) dosage units; and

3. A Class D felony for a second or subsequent offense.

(b) Any person who violates the provisions of subsection (1)(b) of this section shall be guilty of:

1. A Class A misdemeanor for the first offense, subject to the imposition of presumptive probation; and

2. A Class D felony for a second or subsequent offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years.

**Effective:** March 25, 2015

**History:** Amended 2015 Ky. Acts ch. 66, sec. 16, effective March 25, 2015. -- Amended 2011 Ky. Acts ch. 2, sec. 11, effective June 8, 2011. -- Created 1992 Ky. Acts ch. 441, sec. 14, effective July 14, 1992.

### **218A.14141 Trafficking in a misrepresented controlled substance.**

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

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

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

**Effective:** June 29, 2017

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**History:** Created 2017 Ky. Acts ch. 168, sec. 8, effective June 29, 2017.

### **218A.1415 Possession of controlled substance in first degree -- Penalties.**

(1) A person is guilty of possession of a controlled substance in the first degree when he or she knowingly and unlawfully possesses:

- (a) A controlled substance that is classified in Schedules I or II and is a narcotic drug;
- (b) A controlled substance analogue;
- (c) Methamphetamine;
- (d) Lysergic acid diethylamide;
- (e) Phencyclidine;
- (f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or
- (g) Flunitrazepam, including its salts, isomers, and salts of isomers.

(2) Possession of a controlled substance in the first degree is a Class D felony subject to the following provisions:

- (a) The maximum term of incarceration shall be no greater than three (3) years, notwithstanding KRS Chapter 532;
- (b) For a person's first or second offense under this section, he or she may be subject to a period of:
  - 1. Deferred prosecution pursuant to KRS 218A.14151; or
  - 2. Presumptive probation;
- (c) Deferred prosecution under paragraph (b) of this subsection shall be the preferred alternative for a first offense; and
- (d) If a person does not enter a deferred prosecution program for his or her first or second offense, he or she shall be subject to a period of presumptive probation, unless a court determines the defendant is not eligible for presumptive probation as defined in KRS 218A.010.

**Effective:** June 8, 2011

**History:** Amended 2011 Ky. Acts ch. 2, sec. 12, effective June 8, 2011. -- Amended 2002 Ky. Acts ch. 259, sec. 2, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 606, sec. 65, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 15, effective July 14, 1992.

### **218A.14151 Deferred prosecution program for first and second offenders of KRS 218A.1415.**

(1) A defendant charged with his or her first or second offense under KRS 218A.1415 may enter a deferred prosecution program subject to the following provisions:

- (a) The defendant requests deferred prosecution in writing on an application created under KRS 27A.099, and the prosecutor agrees;
- (b) The defendant shall not be required to plead guilty or enter an Alford plea as a condition of applying for participation in the deferred prosecution program;

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(c) The defendant agrees to the terms and conditions set forth by the Commonwealth's attorney and approved by the court, which may include any provision authorized for pretrial diversion pursuant to KRS 533.250(1)(h) and (2); and

(d) The maximum length of participation in the program shall be two (2) years.

(2) If a prosecutor denies a defendant's request to enter a deferred prosecution program, the prosecutor shall state on the record the substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety.

(3) If the defendant successfully completes the deferred prosecution program, the charges against the defendant shall be dismissed, and all records relating to the case, including but not limited to arrest records and records relating to the charges, shall be sealed, except as provided in KRS 27A.099. The offense shall be deemed never to have occurred, except for the purposes of determining the defendant's eligibility for deferred prosecution under this section or voiding of the conviction under KRS 218A.275, and the defendant shall not be required to disclose the arrest or other information relating to the charges or participation in the program unless required to do so by state or federal law.

(4) If the defendant is charged with violating the conditions of the program, the court, upon motion of the Commonwealth's attorney, shall hold a hearing to determine whether the defendant violated the conditions of the program.

(5) If the court finds that the defendant violated the conditions of the program, the court may, with the approval of the prosecutor:

(a) Continue the defendant's participation in the program;

(b) Change the terms and conditions of the defendant's participation in the program;  
or

(c) Order the defendant removed from the program and proceed with ordinary prosecution for the offense charged.

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 156, sec. 9, effective July 12, 2012. -- Created 2011 Ky. Acts ch. 2, sec. 20, effective June 8, 2011.

### **218A.1416 Possession of controlled substance in second degree -- Penalties.**

(1) A person is guilty of possession of a controlled substance in the second degree when he or she knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or a controlled substance classified in Schedule III; but not synthetic drugs, salvia, or marijuana.

(2) Possession of a controlled substance in the second degree is a Class A misdemeanor.

**Effective:** April 11, 2012

**History:** Amended 2012 Ky. Acts ch. 108, sec. 10, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 2, sec. 13, effective June 8, 2011; and ch. 45, sec. 10, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 11, effective April 13, 2010; and ch. 160, sec. 11, effective April 26, 2010. -- Amended 1998 Ky. Acts ch. 606, sec. 66, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 16, effective July 14, 1992.

**218A.1417 Possession of controlled substance in third degree -- Penalties.**

(1) A person is guilty of possession of a controlled substance in the third degree when he or she knowingly and unlawfully possesses a controlled substance classified in Schedules IV or V.

(2) Possession of a controlled substance in the third degree is a Class A misdemeanor.

**Effective:** June 8, 2011

**History:** Amended 2011 Ky. Acts ch. 2, sec. 14, effective June 8, 2011. -- Created 1992 Ky. Acts ch. 441, sec. 17, effective July 14, 1992.

**218A.1418 Repealed, 2013. (Effective June 25, 2013)**

**218A.142 Aggravated trafficking in controlled substance in first degree.**

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

- (a) One hundred (100) grams or more of heroin;
- (b) Twenty-eight (28) grams or more of fentanyl; or
- (c) Ten (10) grams or more of carfentanil or fentanyl derivatives.

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

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 168, sec. 6, effective June 29, 2017. -- Created 2015 Ky. Acts ch. 66, sec. 15, effective March 25, 2015.

**218A.1421 Trafficking in marijuana -- Penalties.**

(1) A person is guilty of trafficking in marijuana when he knowingly and unlawfully traffics in marijuana.

(2) Trafficking in less than eight (8) ounces of marijuana is:

- (a) For a first offense a Class A misdemeanor.
- (b) For a second or subsequent offense a Class D felony.

(3) Trafficking in eight (8) or more ounces but less than five (5) pounds of marijuana is:

- (a) For a first offense a Class D felony.
- (b) For a second or subsequent offense a Class C felony.

(4) Trafficking in five (5) or more pounds of marijuana is:

- (a) For a first offense a Class C felony.
- (b) For a second or subsequent offense a Class B felony.

(5) The unlawful possession by any person of eight (8) or more ounces of marijuana shall be prima facie evidence that the person possessed the marijuana with the intent to sell or transfer it.

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**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 441, sec. 18, effective July 14, 1992.

### **218A.1422 Possession of marijuana -- Penalty -- Maximum term of incarceration.**

(1) A person is guilty of possession of marijuana when he or she knowingly and unlawfully possesses marijuana.

(2) Possession of marijuana is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than forty-five (45) days.

**Effective:** June 8, 2011

**History:** Amended 2011 Ky. Acts ch. 2, sec. 16, effective June 8, 2011. -- Created 1992 Ky. Acts ch. 441, sec. 19, effective July 14, 1992.

### **218A.1423 Marijuana cultivation -- Penalties.**

(1) A person is guilty of marijuana cultivation when he knowingly and unlawfully plants, cultivates, or harvests marijuana with the intent to sell or transfer it.

(2) Marijuana cultivation of five (5) or more plants of marijuana is:

- (a) For a first offense a Class D felony.
- (b) For a second or subsequent offense a Class C felony.

(3) Marijuana cultivation of fewer than five (5) plants is:

- (a) For a first offense a Class A misdemeanor.
- (b) For a second or subsequent offense a Class D felony.

(4) The planting, cultivating, or harvesting of five (5) or more marijuana plants shall be prima facie evidence that the marijuana plants were planted, cultivated, or harvested for the purpose of sale or transfer.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 441, sec. 20, effective July 14, 1992.

**218A.1426 Repealed, 2012.**

**218A.1427 Repealed, 2012.**

**218A.1428 Repealed, 2012.**

### **218A.1430 Trafficking in synthetic drugs -- Penalties -- Affirmative defense -- Possession of synthetic drugs -- Penalty.**

- (1) (a) A person is guilty of trafficking in synthetic drugs when he or she knowingly and unlawfully traffics in synthetic drugs.
- (b) Trafficking in synthetic drugs is a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (c) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any offense under this subsection the court may impose a maximum fine of double the defendant's gain from the commission of the offense, in which case any fine

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- money collected shall be divided between the same parties, in the same ratio, and for the same purposes as established for forfeited property under KRS 218A.420.
- (d) It shall be an affirmative defense to an offense under this subsection that the defendant committed the offense during the course of the defendant's employment as an employee of a retail store and that the defendant did not know and should not have known that the trafficked substance was a synthetic drug.
- (2) (a) A person is guilty of possession of synthetic drugs when he or she knowingly and unlawfully possesses synthetic drugs.
- (b) Possession of synthetic drugs is:
1. A Class A misdemeanor for the first offense; and
  2. A Class D felony for each subsequent offense.
- Effective:** April 27, 2016
- History:** Amended 2016 Ky. Acts ch. 135, sec. 9, effective April 27, 2016. -- Created 2012 Ky. Acts ch. 108, sec. 1, effective April 11, 2012.

### **218A.1431 Definitions for KRS 218A.1431 to 218A.1438 and KRS 218A.141.**

As used in KRS 218A.1431 to 218A.1438 and KRS 218A.141, the following definitions apply:

- (1) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of methamphetamine, or possession with intent to manufacture, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, except that this term does not include activities:
- (a) By a practitioner incident to administering or dispensing of a controlled substance in the course of his professional practice; or
  - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or incident to, research, teaching, or chemical analysis; or
  - (c) By a pharmacist incident to dispensing of a controlled substance in the course of his professional practice.
- (2) "Methamphetamine" means any substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
- (3) "Traffic" means to distribute, dispense, sell, transfer, or possess with intent to distribute, dispense, or sell methamphetamine.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 150, sec. 13, effective June 20, 2005. -- Created 1998 Ky. Acts ch. 606, sec. 58, effective July 15, 1998.

### **218A.1432 Manufacturing methamphetamine -- Penalties.**

- (1) A person is guilty of manufacturing methamphetamine when he knowingly and unlawfully:
- (a) Manufactures methamphetamine; or

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(b) With intent to manufacture methamphetamine possesses two (2) or more chemicals or two (2) or more items of equipment for the manufacture of methamphetamine.

(2) Manufacture of methamphetamine is a Class B felony for the first offense and a Class A felony for a second or subsequent offense.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 150, sec. 9, effective June 20, 2005. -- Created 1998 Ky. Acts ch. 606, sec. 59, effective July 15, 1998.

**218A.1435 Repealed, July 14, 2000.**

**218A.1437 Unlawful possession of a methamphetamine precursor -- Prima facie evidence of intent -- Penalties.**

(1) A person is guilty of unlawful possession of a methamphetamine precursor when he or she knowingly and unlawfully possesses a drug product or combination of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the drug product or combination of drug products as a precursor to manufacturing methamphetamine or other controlled substance.

(2) (a) Except as provided in paragraph (b) of this subsection, possession of a drug product , pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, within any thirty (30) day period shall constitute prima facie evidence of the intent to use the drug product or combination of drug products as a precursor to methamphetamine or other controlled substance.

(b) The prima facie evidence referred to in paragraph (a) of this subsection shall not apply to the following persons who lawfully possess a drug product or combination of drug products listed in subsection (1) of this section in the course of legitimate business:

1. A retail distributor of drug products or wholesaler of drug products or its agent;
2. A wholesale drug distributor, or its agent, issued a permit by the Board of Pharmacy;
3. A pharmacist licensed by the Board of Pharmacy;
4. A pharmacy permitted by the Board of Pharmacy;
5. A licensed health care professional possessing the drug products in the course of carrying out his or her profession;
6. A trained chemist working in a properly equipped research laboratory in an education, government, or corporate setting; or
7. A common carrier under contract with any of the persons or entities set out in subparagraphs 1. to 6. of this paragraph.

(3) Unlawful possession of a methamphetamine precursor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 150, sec. 10, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 170, sec. 1, effective July 15, 2002.

**218A.1438 Unlawful distribution of a methamphetamine precursor -- Penalties.**

(1) Notwithstanding KRS 218A.1446, a person is guilty of unlawful distribution of a methamphetamine precursor when he or she knowingly and unlawfully sells, transfers, distributes, dispenses, or possesses with the intent to sell, transfer, distribute, or dispense any drug product or combination of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts, isomers, or salts of isomers, if the person knows that the purchaser intends that the drug product or combination of drug products will be used as a precursor to methamphetamine or other controlled substance, or if the person sells, transfers, distributes, or dispenses the drug product or combination of drug products with reckless disregard as to how the drug product or combination of drug products will be used.

(2) Unlawful distribution of a methamphetamine precursor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

(3) In addition to the criminal penalty specified in subsection (2) of this section, or in lieu of the criminal penalty specified in subsection (2) of this section, any person who traffics in or transfers any drug product or combination of drug products specified in subsection (1) of this section intentionally or recklessly with knowledge of or reason to know that the drug product or combination of drug products will be used to illegally manufacture methamphetamine or other controlled substance shall be liable for damages in a civil action for all damages, whether directly or indirectly caused by the sale or trafficking or transfer of the drug product or drug products.

(a) Damages may include but are not limited to:

1. Any and all costs of detecting, investigating, and cleaning up or remediating unlawfully operated laboratories or other facilities for the illegal manufacture of methamphetamine or other controlled substance;
2. Costs of prosecution of criminal cases arising from the illegal sale, transfer, distribution, manufacture, or dispensing of a controlled substance or their precursors;
3. Court costs and reasonable attorney's fees for bringing this civil action;
4. Consequential damages; and
5. Punitive damages.

(b) A civil action to recover damages against a person or persons violating this section may be brought by the Attorney General, an attorney of the Justice and Public Safety Cabinet, or by any Commonwealth's attorney in whose jurisdiction the defendant may be shown to have committed an act specified in this section.

(c) All moneys collected pursuant to such civil action shall be distributed in the following order:

1. Court costs and reasonable attorney's fees for bringing this civil action;
2. The reimbursement of all reasonable costs of detecting, investigating, cleaning up or remediating the laboratory or other facility utilized for manufacture of methamphetamine underlying the present judgment;



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3. The reasonable costs of prosecution of criminal cases arising from trafficking in or transfer of a precursor for the illegal manufacture of methamphetamine giving rise to the present judgment; and

4. All remaining moneys shall be distributed to the General Fund.

**Effective:** July 15, 2014

**History:** Amended 2014 Ky. Acts ch. 71, sec. 10, effective July 15, 2014. -- Amended 2005 Ky. Acts ch. 150, sec. 11, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 170, sec. 2, effective July 15, 2002.

**Legislative Research Commission Note (6/20/2005).** 2005 Ky. Acts ch. 150, sec. 11, amended KRS 218A.1438. This amendment inserted the following phrase at the beginning of the section: "Notwithstanding Section 3 of this Act," it appears that this reference is not correct. Section 3 of this Act was a newly created section, which was codified as KRS 218A.1442, and deals with controlled substance endangerment to children. A representative of the executive agency that prepared the original draft of this bill has told LRC staff that the reference should have been to Section 6 of the bill, a newly created section, which was codified as KRS 218A.1446, and deals with requirements for dispensing certain nonprescription drugs.

### **218A.1439 Trafficking in or transferring a dietary supplement -- Exceptions -- Penalties.**

- (1) A person is guilty of trafficking in or transferring a dietary supplement when he or she traffics in or transfers any dietary supplement product containing ephedrine group alkaloids, except as provided in this section.
- (2) The prohibition in subsection (1) of this section shall not apply to:
  - (a) A practitioner or pharmacist licensed in this Commonwealth who is practicing within his or her scope of practice and who prescribes or dispenses, or both, dietary supplement products containing ephedrine alkaloids in the course of the treatment of a patient under the direct care of the prescribing practitioner, except that a licensed practitioner or registered pharmacist shall not prescribe or dispense dietary supplement products containing ephedrine group alkaloids for purposes of weight loss, body building, or athletic performance enhancement;
  - (b) Dietary supplement products containing ephedrine group alkaloids that are sold or distributed directly to a licensed practitioner or registered pharmacist, when the dietary supplement products containing ephedrine group alkaloids are used solely for the purpose of the treatment of patients under the direct care of the practitioner;
  - (c) Dietary supplement products containing ephedrine group alkaloids that are sold or distributed directly to a licensed practitioner or registered pharmacist for resale to a patient for whom the products have been prescribed under paragraph (a) of this subsection; or
  - (d) Dietary supplement products containing ephedrine group alkaloids that are not for resale in this Commonwealth and that are sold or distributed directly to businesses not located in this Commonwealth.
- (3) Trafficking in or transferring a dietary supplement is:
  - (a) For the first offense, a Class A misdemeanor; and

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(b) For a second or subsequent offense, a Class D felony.

**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 150, sec. 1, effective June 20, 2005.

**218A.1440 Unlawful possession of ephedrine-based products -- AOC to provide Office of Drug Control Policy with updated information on certain drug offenders -- Convicting court to inform defendant of restrictions.**

- (1)
  - (a) Notwithstanding KRS 218A.1446, it shall be unlawful for a person convicted after July 12, 2013, of any offense in this chapter relating to methamphetamine or any offense in KRS Chapter 250 or 514 relating to anhydrous ammonia to possess or attempt to possess any compound, mixture, or preparation containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers until ten (10) years have elapsed from the date the person was convicted, unless the offense was a violation of KRS 218A.1432, in which case the prohibition shall be permanent.
  - (b) Notwithstanding KRS 218A.1446, it shall be unlawful for a person convicted prior to July 12, 2013, of any offense in this chapter relating to methamphetamine or any offense in KRS Chapter 250 or 514 relating to anhydrous ammonia to possess or attempt to possess any compound, mixture, or preparation containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers without a prescription until ten (10) years have elapsed from the date the person was convicted, unless the offense was a violation of KRS 218A.1432, in which case the prohibition shall be permanent.
- (2) The Administrative Office of the Courts shall report monthly to the Office of Drug Control Policy for utilization in the electronic logging or recordkeeping mechanism required under KRS 218A.1446 the conviction of any person for any offense in this chapter relating to methamphetamine or any offense in KRS Chapter 250 or 514 relating to anhydrous ammonia, as well as the vacating, reversing, or overruling of any previously reported conviction. The information reported shall include:
  - (a) The defendant's name;
  - (b) The defendant's date of birth;
  - (c) The defendant's address;
  - (d) The defendant's identification number on a government-issued photographic identification document if available in the defendant's records readily available to the circuit clerk;
  - (e) Any offense or offenses specified in subsection (1) of this section for which the defendant was convicted;
  - (f) The defendant's date of conviction; and
  - (g) The defendant's sentence or, if applicable, that the conviction was reversed, overruled, or vacated.
- (3) A court convicting a defendant of an offense triggering the prohibition established in subsection (1) of this section shall inform the defendant of the restrictions contained

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in this section. Failure of a court to provide the information in accordance with this subsection shall not affect the validity of the prohibition.

**Effective:** March 19, 2013

**History:** Amended 2013 Ky. Acts ch. 26, sec. 4, effective March 19, 2013. -- Created 2012 Ky. Acts ch. 122, sec. 2, effective July 12, 2012.

### **218A.1441 Controlled substance endangerment to a child in the first degree -- Penalty.**

- (1) A person is guilty of controlled substance endangerment to a child in the first degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child dies as a result of the commission of the offense.
- (2) Controlled substance endangerment to a child in the first degree is a Class A felony.

**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 150, sec. 2, effective June 20, 2005.

### **218A.1442 Controlled substance endangerment to a child in the second degree -- Penalty.**

- (1) A person is guilty of controlled substance endangerment to a child in the second degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child receives serious physical injury as a result of the commission of the offense.
- (2) Controlled substance endangerment to a child in the second degree is a Class B felony.

**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 150, sec. 3, effective June 20, 2005.

### **218A.1443 Controlled substance endangerment to a child in the third degree -- Penalty.**

- (1) A person is guilty of controlled substance endangerment to a child in the third degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child receives physical injury as a result of the commission of the offense.
- (2) Controlled substance endangerment to a child in the third degree is a Class C felony.

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**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 150, sec. 4, effective June 20, 2005.

**218A.1444 Controlled substance endangerment to a child in the fourth degree -- Penalty.**

- (1) A person is guilty of controlled substance endangerment to a child in the fourth degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child is not injured as a result of the commission of the offense.
- (2) Controlled substance endangerment to a child in the fourth degree is a Class D felony.

**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 150, sec. 5, effective June 20, 2005.

**218A.1446 Requirements for dispensing of ephedrine-based products -- Log or recordkeeping mechanism – Thirty-day and one-year quantity limitations on ephedrine-based products -- Exceptions -- Preemption of local laws – Blocking mechanism – Annual report.**

- (1) Any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers shall be dispensed, sold, or distributed only by a registered pharmacist, a pharmacy intern, or a pharmacy technician.
- (2) Any person purchasing, receiving, or otherwise acquiring any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers shall:
  - (a) Produce a government-issued photo identification showing the date of birth of the person; and
  - (b) Sign a log or record showing the:
    1. Date of the transaction;
    2. Name, date of birth, and address of the person making the purchase; and
    3. The amount and name of the compound, mixture, or preparation.

Only an electronic logging or recordkeeping mechanism approved by the Office of Drug Control Policy may be utilized to meet the requirements of this subsection. No pharmacy may dispense or sell any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers unless the electronic logging or recordkeeping mechanism required by this section is provided at no cost to the pharmacy.

- (3) An electronic log or record, as described in subsection (2) of this section, shall be kept of each day's transactions. The registered pharmacist, a pharmacy intern, or a

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pharmacy technician shall initial the entry of each sale in the log, evidencing completion of each transaction. The log shall be:

- (a) Kept for a period of two (2) years; and
  - (b) Subject to random and warrantless inspection by city, county, or state law enforcement officers.
- (4) (a) Intentional failure of a registered pharmacist, a pharmacy intern, or a pharmacy technician to make an accurate entry of a sale of a product or failure to maintain the log records as required by this section may subject him or her to a fine of not more than one thousand dollars (\$1,000) for each violation and may be evidence of a violation of KRS 218A.1438.
- (b) If evidence exists that the pharmacist's, the pharmacy intern's, or the pharmacist technician's employer fails, neglects, or encourages incorrect entry of information by improper training, lack of supervision or oversight of the maintenance of logs, or other action or inaction, the employer shall also face liability under this section and any other applicable section of this chapter.
- (c) It shall be a defense to a violation of this section that the person proves that circumstances beyond the control of the registered pharmacist, pharmacy intern, or pharmacy technician delayed or prevented the making of the record or retention of the record as required by this section. Examples of circumstances beyond the control of the registered pharmacist, pharmacy intern, or pharmacy technician include but are not limited to:
1. Fire, natural or manmade disaster, loss of power, and similar events;
  2. Robbery, burglary, shoplifting, or other criminal act by a person on the premises;
  3. A medical emergency suffered by the registered pharmacist, pharmacy intern, or pharmacy technician, another employee of the establishment, a customer, or any other person on the premises; or
  4. Some other circumstance that establishes that an omission was inadvertent.
- (5) No person shall purchase, receive, or otherwise acquire any product, mixture, or preparation or combinations of products, mixtures, or preparations containing more than seven and one-fifth (7.2) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers within any thirty (30) day period or twenty-four (24) grams within any one (1) year period, provided that either of these limits shall not apply to any quantity of product, mixture or preparation dispensed pursuant to a valid prescription. In addition to the thirty (30) day and the one (1) year restrictions, no person shall purchase, receive, or otherwise acquire more than three (3) packages of any product, mixture, or preparation containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers during each transaction.
- (6) A person under eighteen (18) years of age shall not purchase or attempt to purchase any quantity of a nonprescription ephedrine, pseudoephedrine, or phenylpropanolamine product as described in subsection (1) of this section. No person shall aid or assist a person under eighteen (18) years of age in purchasing any

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- quantity of a nonprescription ephedrine, pseudoephedrine, or phenylpropanolamine product as described in subsection (1) of this section.
- (7) The requirements of this section shall not apply to any compounds, mixtures, or preparation containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers which are in liquid, liquid capsule, or gel capsule form or to any compounds, mixtures, or preparations containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts or optical isomers which are deemed to be not subject to abuse upon joint review and agreement of the Office of Drug Control Policy, the Board of Pharmacy, and the Cabinet for Health and Family Services.
- (8) The provisions of this section shall not apply to a:
- (a) Licensed manufacturer manufacturing and lawfully distributing a product in the channels of commerce;
  - (b) Wholesaler lawfully distributing a product in the channels of commerce;
  - (c) Pharmacy with a valid permit from the Kentucky Board of Pharmacy;
  - (d) Health care facility licensed pursuant to KRS Chapter 216B;
  - (e) Licensed long-term care facility;
  - (f) Government-operated health department;
  - (g) Physician's office;
  - (h) Publicly operated prison, jail, or juvenile correctional facility, or a private adult or juvenile correctional facility under contract with the Commonwealth;
  - (i) Public or private educational institution maintaining a health care program; or
  - (j) Government-operated or industrial medical facility serving its own employees.
- (9) The provisions of this section shall supersede and preempt all local laws, ordinances, and regulations pertaining to the sale of any compounds, mixtures, or preparation containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.
- (10) To be approved for use under this section, a logging or recordkeeping system shall:
- (a) Be designed to block the dispensing of any compound, mixture, or preparation containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers, where the dispensing would exceed the quantity limitations established in this section or would be prohibited under KRS 218A.1440; and
  - (b) Allow unimpeded access by the Office of Drug Control Policy to any data stored in the system for statistical analysis purposes.
- (11) The Office of Drug Control Policy shall prepare and submit to the Legislative Research Commission an annual statistical report on the sale of compounds, mixtures, or preparations containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers, including state and county sale amounts and numbers of individual purchasers.

**Effective:** March 19, 2013

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**History:** Amended 2013 Ky. Acts ch. 26, sec. 5, effective March 19, 2013. -- Amended 2012 Ky. Acts ch. 122, sec. 1, effective July 12, 2012. -- Amended 2007 Ky. Acts ch. 124, sec. 12, effective June 26, 2007. -- Created 2005 Ky. Acts ch. 150, sec. 6, effective June 20, 2005.

**Legislative Research Commission Note (6/20/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

### **218A.1447 Restrictions on possession of dextromethorphan and sale of products containing dextromethorphan.**

- (1) A person, other than a medical facility, medical practitioner, pharmacist, pharmacy intern, pharmacy technician, pharmacy licensed or registered under KRS Chapter 315, or registrant under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. secs. 301 et seq., shall not possess one (1) gram or more of:
  - (a) Pure dextromethorphan; or
  - (b) Dextromethorphan extracted from solid or liquid dose forms, as defined by United States Pharmacopeia reference standards.
- (2) A person shall not sell any products containing dextromethorphan to individuals under eighteen (18) years of age, except that in any prosecution for selling a product containing dextromethorphan to an individual under eighteen (18) years of age it shall be an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his or her age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he or she was of legal age to purchase products containing dextromethorphan. This evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.
- (3) Any person who sells any product containing dextromethorphan shall limit access to these products by requiring proof of age from a prospective buyer by showing a government-issued photo identification card that displays his or her date of birth if the person has reason to believe that the prospective buyer is under the age of eighteen (18) years.

**Effective:** June 24, 2015

**History:** Created 2015 Ky. Acts ch. 23, sec. 1, effective June 24, 2015.

### **218A.1448 Offenses relating to purchases of products containing dextromethorphan by minors.**

- (1) No person shall aid or assist any person under eighteen (18) years of age in purchasing any product containing dextromethorphan.
- (2) A person under eighteen (18) years of age shall not misrepresent his or her age for the purpose of inducing a retail establishment or the retail establishment's agent, servant, or employee to sell or serve a product containing dextromethorphan to the underage person.
- (3) A person under eighteen (18) years of age shall not use or attempt to use any false,

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fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain a product containing dextromethorphan.

- (4) Any person under the age of eighteen (18) years of age shall not purchase or attempt to purchase or have another person purchase for him or her a product containing dextromethorphan.

**Effective:** June 24, 2015

**History:** Created 2015 Ky. Acts ch. 23, sec. 2, effective June 24, 2015.

### **218A.1449 Penalties for violation of KRS 218A.1447 or 218A.1448.**

- (1) Any person who violates KRS 218A.1447 (1) shall be subject to a fine of one thousand dollars (\$1,000) for the first violation and two thousand five hundred dollars (\$2,500) for each subsequent violation.
- (2) Any person who knowingly violates KRS 218A.1447(2) shall be subject to a fine of twenty-five dollars (\$25) for the first violation and two hundred dollars (\$200) for each subsequent violation.
- (3) Any person who knowingly violates KRS 218A.1447(3) shall be subject to a fine of twenty-five dollars (\$25) for the first violation and two hundred fifty dollars (\$250) for each subsequent violation.
- (4) Any person who knowingly violates KRS 218A.1448 (1) shall be subject to a fine of one hundred dollars (\$100) for the first violation and two hundred dollars (\$200) for each subsequent violation.
- (5) Any person who violates KRS 218A.1448(2), (3), or (4) shall be subject to a fine of twenty-five dollars (\$25) for the first violation, a fine of one hundred dollars (\$100) for the second violation, and a fine of two hundred dollars (\$200) for each subsequent violation.

**Effective:** June 24, 2015

**History:** Created 2015 Ky. Acts ch. 23, sec. 3, effective June 24, 2015.

### **218A.1450 Trafficking in salvia -- Penalty.**

- (1) A person is guilty of trafficking in salvia when he or she knowingly and unlawfully traffics in salvia for human consumption.
- (2) Trafficking in salvia is a Class A misdemeanor.

**Effective:** April 26, 2010

**History:** Created 2010 Ky. Acts ch. 160, sec. 1, effective April 26, 2010.

### **218A.1451 Possession of salvia -- Penalty -- Maximum term of incarceration.**

- (1) A person is guilty of possession of salvia when he or she knowingly and unlawfully possesses salvia for human consumption.
- (2) Possession of salvia is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.

**Effective:** June 8, 2011



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**History:** Amended 2011 Ky. Acts ch. 2, sec. 18, effective June 8, 2011. -- Created 2010 Ky. Acts ch. 160, sec. 2, effective April 26, 2010.

### **218A.1452 Salvia cultivation -- Penalty.**

- (1) A person is guilty of salvia cultivation when he or she knowingly and unlawfully plants, cultivates, or harvests salvia with the intent to sell or transfer it for human consumption.
- (2) Salvia cultivation is a Class A misdemeanor.

**Effective:** April 26, 2010

**History:** Created 2010 Ky. Acts ch. 160, sec. 3, effective April 26, 2010.

**218A.1453 Repealed, 2012.**

**218A.1454 Repealed, 2012.**

**218A.1455 Repealed, 2012.**

**218A.150 Repealed, 2018.**

**218A.160 Repealed, 2018.**

### **218A.170 Sale, distribution, administration, or prescription of controlled substances by licensed manufacturers, distributors, wholesalers, pharmacists, or practitioners -- Nontoxic compositions for safe disposal of controlled substances -- Duties of pharmacists and practitioners -- Penalties.**

(1) A duly licensed manufacturer, distributor, or wholesaler may sell or distribute controlled substances, other than samples, to any of the following persons:

- (a) To a manufacturer, wholesaler, or pharmacy;
- (b) To a practitioner;
- (c) To the administrator in charge of a hospital, but only for use by or in that hospital;
- (d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes;
- (e) To a person registered pursuant to the federal controlled substances laws.

(2) A pharmacist may sell or distribute a controlled substance:

- (a) Pursuant to a prescription that conforms to the requirements of this chapter; or
- (b) To a person registered pursuant to the federal controlled substances laws.

(3) A pharmacist who is licensed under KRS Chapter 315 or a pharmacist's designee shall inform persons who receive a prescription for a controlled substance that contains any salt, compound, derivative, or preparation of an opioid, benzodiazepine, a barbiturate, codeine, or an amphetamine, about the importance of proper and safe disposal of unused, unwanted, or expired prescription drugs by one of the following methods:

- (a) Verbally;
- (b) In writing; or
- (c) Posted signage.

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- (4) Upon dispensing of any prescription that contains any salt, compound, derivative, or preparation of an opioid, benzodiazepine, a barbiturate, codeine, or an amphetamine, a pharmacist who is licensed under KRS Chapter 315 or a pharmacist's designee may:
- (a) Make available for purchase, or at no charge distribute, a nontoxic composition for the sequestration, deactivation, destruction, and disposal of any unused, unwanted, or expired prescription; or
  - (b) Provide an on-site, safe, and secure medicine disposal receptacle or kiosk for the safe disposal of any unused, unwanted, or expired prescription.
- (5) A manufacturer or distributor of nontoxic compositions for the sequestration, deactivation, or destruction and disposal of controlled substances is strongly encouraged to enter into a consignment-reimbursement contract with a pharmacy in order for a pharmacy to expand its inventory of the nontoxic compositions.
- (6) A practitioner may:
- (a) Administer, dispense, or prescribe a controlled substance only for a legitimate medical purpose and in the course of professional practice; or
  - (b) Distribute a controlled substance to a person registered pursuant to the federal controlled substance laws.
- (7) A practitioner who dispenses a controlled substance that contains any salt, compound, derivative, or preparation of an opioid, benzodiazepine, a barbiturate, codeine, or an amphetamine shall:
- (a) Inform all persons who receive a prescription for a controlled substance about the importance of proper and safe disposal of unused, unwanted, or expired prescription drugs; and
  - (b) Make available for purchase, or at no cost distribute, a nontoxic composition for the sequestration, deactivation, or destruction and disposal of unused, unwanted, or expired controlled substances.
- (8) All sales and distributions shall be in accordance with KRS 218A.200 and the federal controlled substances laws, including the requirements governing the use of order forms.
- (9) Possession of or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.
- (10) Subsections (3), (4), (7), and (12) of this section shall not apply to veterinarians.
- (11) The Kentucky Medicaid program shall not be required to provide payment for the provisions established in subsections (4) and (7) of this section.
- (12) Any person who violates subsection (3) or (7) of this section shall be subject to a fine of twenty-five dollars (\$25) for the first violation, a fine of one hundred dollars (\$100) for the second violation, and a fine of two hundred dollars (\$200) for each subsequent violation.

**Effective:** July 14, 2018

**History:** Amended 2018 Ky. Acts ch. 108, sec. 1, effective July 14, 2018. -- Amended 1998 Ky. Acts ch. 301, sec. 23, effective July 15, 1998. -- Created 1972 Ky. Acts ch.

### **218A.171 Electronic prescribing.**

- (1) Electronic prescribing of a controlled substance under this chapter shall not interfere with a patient's freedom to select a pharmacy.
- (2) Electronic prescribing software used by a practitioner to prescribe a controlled

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substance under this chapter may include clinical messaging and messages in pop-up windows directed to the practitioner regarding a particular controlled substance that supports the practitioner's clinical decision making.

- (3) Drug information contained in electronic prescribing software to prescribe a controlled substance under this chapter shall be consistent with Food and Drug Administration-approved information regarding a particular controlled substance.
- (4) (a) Electronic prescribing software used by a practitioner to prescribe a controlled substance under this chapter may show information regarding a payor's formulary, copayments, or benefit plan, provided that nothing in the software is designed to preclude a practitioner from selecting any particular pharmacy or controlled substance.  
(b) If electronic prescribing software does show information regarding a payor's formulary, payments, or benefit plan under paragraph (a) of this subsection, the information shall be updated at least quarterly to ensure its accuracy.
- (5) Each governmental unit of the Commonwealth promulgating administrative regulations relating to electronic prescribing shall include in the regulations electronic prior authorization standards meeting the requirements of KRS 304.17A-167 in its implementation of health information technology improvements as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.

**Effective:** January 1, 2020

**History:** Amended 2019 Ky. Acts ch. 190, sec. 4, effective January 1, 2020. -- Created 2012 Ky. Acts ch. 136, sec. 2, effective July 12, 2012.

### **218A.172 Administrative regulations on prescribing or dispensing of Schedule II controlled substance or Schedule III controlled substance containing hydrocodone -- Continuing course of treatment -- Recordkeeping -- Exemptions.**

- (1) Administrative regulations promulgated under KRS 218A.205(3) shall require that, prior to the initial prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, a practitioner shall:
  - (a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;
  - (b) Query the electronic monitoring system established in KRS 218A.202 for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;
  - (c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;
  - (d) Discuss the risks and benefits of the use of controlled substances with the

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patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(2) (a) Administrative regulations promulgated under KRS 218A.205(3) shall require that a practitioner prescribing or dispensing additional amounts of Schedule II controlled substances or Schedule III controlled substances containing hydrocodone for the same medical complaint and related symptoms shall:

1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;
2. Provide to the patient any new information about the treatment; and
3. Modify or terminate the treatment as appropriate.

(b) If the course of treatment extends beyond three (3) months, the administrative regulations shall also require that the practitioner:

1. Query the electronic monitoring system established in KRS 218A.202 no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and
2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.

(3) Administrative regulations promulgated under KRS 218A.205(3) shall require that, for each patient for whom a practitioner prescribes any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the practitioner shall keep accurate, readily accessible, and complete medical records which include, as appropriate:

- (a) Medical history and physical or mental health examination;
- (b) Diagnostic, therapeutic, and laboratory results;
- (c) Evaluations and consultations;
- (d) Treatment objectives;
- (e) Discussion of risk, benefits, and limitations of treatments;
- (f) Treatments;
- (g) Medications, including date, type, dosage, and quantity prescribed or dispensed;
- (h) Instructions and agreements; and
- (i) Periodic reviews of the patient's file.

(4) Administrative regulations promulgated under KRS 218A.205(3) may exempt, in whole or in part, compliance with the mandatory diagnostic, treatment, review, and

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other protocols and standards established in this section for:

- (a) A licensee prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;
- (b) A licensee prescribing or administering a controlled substance necessary to treat a patient in an emergency situation;
- (c) A licensed pharmacist or other person licensed by the Kentucky Board of Pharmacy to dispense drugs or a licensed pharmacy;
- (d) A licensee prescribing or dispensing a controlled substance:
  1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a practitioner in those hospitals or facilities where no institutional account exists, queries the electronic monitoring system established in KRS 218A.202 for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;
  2. As part of the patient's hospice or end-of-life treatment;
  3. For the treatment of pain associated with cancer or with the treatment of cancer;
  4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;
  5. Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:
    - a. Is done as a substitute for the initial prescribing or dispensing;
    - b. Cancels any refills for the initial prescription; and
    - c. Requires the patient to dispose of any remaining unconsumed medication;
  6. Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another practitioner in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or
  7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance

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number from the United States Department of Health and Human Services, Office for Human Research Protections, where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

(e) The prescribing of a Schedule III, IV, or V controlled substance by a licensed optometrist to a patient in accordance with the provisions of KRS 320.240; or

(f) The prescribing of a three (3) day supply of a Schedule III controlled substance following the performance of oral surgery by a dentist licensed pursuant to KRS Chapter 313.

(5) (a) A state licensing board promulgating administrative regulations under KRS 218A.205(3) may promulgate an administrative regulation authorizing exemptions supplemental or in addition to those specified in subsection (4) of this section. Prior to exercising this authority, the board shall:

1. Notify the Kentucky Office of Drug Control Policy that it is considering a proposal to promulgate an administrative regulation authorizing exemptions supplemental or in addition to those specified in subsection (4) of this section and invite the office to participate in the board meeting at which the proposal will be considered;

2. Make a factual finding based on expert testimony as well as evidence or research submitted to the board that the exemption demonstrates a low risk of diversion or abuse and is supported by the dictates of good medical practice; and

3. Submit a report to the Governor and the Legislative Research Commission of its actions, including a detailed explanation of the factual and policy basis underlying the board's action. A copy of this report shall be provided to the regulations compiler.

(b) Within one (1) working day of promulgating an administrative regulation authorizing an exemption under this section, the promulgating board shall e mail to the Kentucky Office of Drug Control Policy:

1. A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1); and

2. A request from the board that the office review the administrative regulation in the same manner as would the Commission on Small Business Innovation and Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in KRS 13A.270(1)(c). A copy of the report or comments shall be filed with the regulations compiler.

**Effective: June 29, 2021**

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**History:** Amended 2021 Ky. Acts ch. 185, sec. 139, effective June 29, 2021. --  
Amended 2013 Ky. Acts ch. 2, sec. 1, effective March 4, 2013. -- Created 2012 (1st  
Extra. Sess.) Ky. Acts ch. 1, sec. 3, effective July 20, 2012

### **218A.175 Pain management facilities -- Physician ownership required -- Additional activities permitted to qualifying facilities -- Certification requirements -- Payment for services rendered or goods provided -- Compliance with section as additional licensure condition -- Penalty for violation.**

- (1) (a) As used in this section, "pain management facility" means a facility where the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances and:
  1. The facility's primary practice component is the treatment of pain; or
  2. The facility advertises in any medium for any type of pain management services.
- (b) "Pain management facility" does not include the following:
  1. A hospital, including a critical access hospital, as defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;
  2. A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;
  3. A hospice program or residential hospice facility licensed under KRS Chapter 216B;
  4. An ambulatory surgical center licensed under KRS Chapter 216B; or
  5. A long-term-care facility as defined in KRS 216.510.
- (2) (a) Only a physician having a full and active license to practice medicine issued under KRS Chapter 311 shall have an ownership or investment interest in a pain management facility. Credit extended by a financial institution as defined in KRS 136.500 to the facility shall not be deemed an investment interest under this subsection. This ownership or investment requirement shall not be enforced against any pain management facility existing and operating on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility, any person employed by the facility, or any person working at the facility as an independent contractor for an act or omission done within the scope of the facility's licensure or the person's employment.
- (b) A facility qualifying for the exemption permitted by paragraph (a) of this subsection whose ownership has been continuously held jointly and exclusively by practitioners having full and active licenses to practice in Kentucky since April 24, 2012, may, after June 24, 2015:
  1. Open and operate no more than two (2) additional facilities in locations other than those locations existing and operating on April 24, 2012;

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2. Transfer whole or partial ownership between existing practitioner owners;
  3. Transfer whole or partial ownership interests to new owners if the new owners are physicians having full and active licenses to practice in Kentucky and the facility notifies the cabinet of the transfer thirty (30) days before it occurs; and
  4. Pass the ownership interest of a deceased former owner through that person's estate to a physician having a full and active license to practice in Kentucky without disqualifying the facility's grandfathered status under this subsection if the facility notifies the cabinet of the transfer thirty (30) days before it occurs in cases where the interest is being transferred to a physician who is not an existing owner in the facility.
- (3) Regardless of the form of facility ownership, beginning on July 20, 2012, at least one (1) of the owners or an owner's designee who is a physician employed by and under the supervision of the owner shall be physically present practicing medicine in the facility for at least fifty percent (50%) of the time that patients are present in the facility, and that physician owner or designee shall:
- (a) Hold a current subspecialty certification in pain management by a member board of the American Board of Medical Specialties, or hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;
  - (b) Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties, or hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;
  - (c) Hold a current board certification by the American Board of Pain Medicine;
  - (d) Hold a current board certification by the American Board of Interventional Pain Physicians;
  - (e) Have completed a fellowship in pain management or an accredited residency program that included a rotation of at least five (5) months in pain management; or
  - (f) If the facility is operating under a registration filed with the Kentucky Board of Medical Licensure, have completed or hold, or be making reasonable progress toward completing or holding, a certification or training substantially equivalent to the certifications or training specified in this subsection, as authorized by the Kentucky Board of Medical Licensure by administrative regulation.
- (4) A pain management facility shall accept private health insurance as one (1) of the facility's allowable forms of payment for goods or services provided and shall accept payment for services rendered or goods provided to a patient only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.
- (5) If the pain management facility is operating under a license issued by the cabinet, the cabinet shall include and enforce the provisions of this section as additional conditions of that licensure. If the pain management facility is operating as the private office or clinic of a physician under KRS 216B.020 (2), the Kentucky Board of



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Medical Licensure shall enforce the provisions of this section. The provisions of this subsection shall not apply to the investigation or enforcement of criminal liability.

- (6) Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor.

**Effective:** June 24, 2015

**History:** Amended 2015 Ky. Acts ch. 33, sec. 1, effective June 24, 2015. -- Amended 2013 Ky. Acts ch. 2, sec. 2, effective March 4, 2013. -- Created 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 1, effective July 20, 2012.

### **218A.180 Distribution by practitioner or pharmacist -- Prescription requirements - - Penalties.**

- (1) Except when dispensed directly by a practitioner to an ultimate user, no controlled substance listed in Schedule II may be dispensed without the written, facsimile, electronic, or oral prescription of a practitioner. A prescription for a controlled substance listed in Schedule II may be dispensed by a facsimile prescription only as specified in administrative regulations promulgated by the cabinet. A prescription for a controlled substance listed in Schedule II may be dispensed by oral prescription only for immediate administration to a patient enrolled in a hospice program or a resident in a long-term care facility, as defined in KRS 216.535, excluding a family care home or personal care home, and the practitioner determines that immediate administration is necessary, no appropriate alternative treatment is available, and it is not reasonably possible for the prescriber to provide a written prescription. No prescription for a controlled substance in Schedule II shall be valid after sixty (60) days from the date issued. No prescription for a controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.
- (2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written, facsimile, electronic, or oral prescription by a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date issued or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written, electronic, or oral shall be required.
- (3) (a) To be valid, a prescription for a controlled substance shall be issued only for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. Responsibility for the proper dispensing of a controlled substance pursuant to a prescription for a legitimate medical purpose is upon the pharmacist who fills the prescription.  
(b) A prescription shall not be issued for a practitioner to obtain a controlled substance for the purpose of general dispensing or administering to patients.
- (4) All written, facsimile, and electronic prescriptions for controlled substances shall be dated and signed by the practitioner on the date issued. A computer-generated prescription that is printed out or faxed by the practitioner shall be manually signed. A prescription may be transmitted by facsimile only as specified in administrative regulations promulgated by the cabinet. Electronic prescriptions shall be created, signed, and transmitted in accordance with the requirements of 21 C.F.R. pt. 1311.

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- (5) All prescriptions for controlled substances shall include the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.
- (6) All oral prescriptions for controlled substances shall be immediately reduced to writing, dated, and signed by the pharmacist.
- (7) A pharmacist refilling any prescription shall record on the prescription or other equivalent record the date, the quantity, and the pharmacist's initials. The maintenance of prescription records under the federal controlled substances laws and regulations containing substantially the same information as specified in this subsection shall constitute compliance with this subsection.
- (8) The pharmacist filling a written, facsimile, electronic, or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.
- (9) Any person who violates any provision of this section shall:
  - (a) For the first offense, be guilty of a Class A misdemeanor.
  - (b) For a second or subsequent offense, be guilty of a Class D felony.

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 168, sec. 9, effective June 29, 2017. --Amended 2011 Ky. Acts ch. 63, sec. 1, effective June 8, 2011. -- Amended 1998 Ky. Acts ch. 301, sec. 24, effective July 15, 1998; and ch. 606, sec. 68, effective July 15, 1998 -- Amended 1982 Ky. Acts ch. 259, sec. 1, effective July 15, 1982. -- Created 1972 Ky. Acts ch. 226, sec. 19.

### **218A.182 Electronic prescribing of controlled substances required --Exceptions -- Duties of pharmacist -- Administrative regulations. (Effective January 1, 2021)**

- (1) Notwithstanding KRS 218A.180 or any other state law to the contrary, beginning January 1, 2021, no practitioner shall issue any prescription for a controlled substance unless the prescription is made by electronic prescription from the practitioner issuing the prescription to a pharmacy, except for prescriptions issued:
  - (a) By veterinarians;
  - (b) In circumstances where electronic prescribing is not available due to temporary technological or electrical failure;
  - (c) By a practitioner to be dispensed by a pharmacy located outside the state;
  - (d) When the prescriber and dispenser are the same entity;
  - (e) That include elements that are not supported by the most recently implemented version of the National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard;
  - (f) By a practitioner for a drug that contains certain elements that cannot be incorporated as required by the United States Food and Drug Administration with electronic prescribing, including extemporaneous compounding;
  - (g) By a practitioner allowing for the dispensing of a nonpatient specific prescription under a standing order, approved protocol for drug therapy, or collaborative drug

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management or comprehensive medication management, in response to a public health emergency;

(h) By a practitioner prescribing a drug under a research protocol;

(i) By practitioners who have received a waiver or a renewal thereof, from the requirement to use electronic prescribing due to economic hardship, technological limitations that are not reasonably within the control of the practitioner, or other exceptional circumstance demonstrated by the practitioner. The initial waiver and each subsequent waiver renewal shall not exceed one (1) year per waiver or waiver renewal;

(j) By a practitioner under circumstances where, notwithstanding the practitioner's present ability to make an electronic prescription as required by this subsection, the practitioner reasonably determines that it would be impractical for the patient to obtain substances prescribed by electronic prescription in a timely manner, and delay would adversely impact the patient's medical condition;

(k) By a practitioner for an individual who receives hospice care; or

(l) By a practitioner for an individual who is a resident of a nursing facility.

(2) A pharmacist who receives a written, oral, or faxed prescription for a controlled substance shall not be required to verify that the prescription properly falls under one (1) of the exceptions from the requirement to electronically prescribe. Pharmacists may continue to dispense medications from otherwise valid written, oral, or fax prescriptions that are consistent with current laws and administrative regulations.

(3) The cabinet shall promulgate administrative regulations to implement this section including enforcement mechanisms, waivers of requirements, and appropriate penalties for violations.

**Effective:** January 1, 2021

**History:** Created 2019 Ky. Acts ch. 106, sec. 1, effective January 1,

### **218A.185 Automated pharmacy system in residential hospice facilities.**

(1) As used in this section:

(a) "Automated pharmacy system" means a mechanical system that delivers prescribed over-the-counter and legend drugs, and controlled substances received from a pharmacy licensed in Kentucky that maintains transaction information; and

(b) "Residential hospice facility" means a facility licensed under KRS Chapter 216B that provides residential skilled nursing care, pain management, and treatment for acute and chronic conditions for terminally ill patients.

(2) Nothing in this chapter shall preclude a residential hospice facility from obtaining pharmacy services from a pharmacy through the use of an automated pharmacy system in accordance with KRS 315.295 and related administrative regulations promulgated by the Kentucky Board of Pharmacy. A residential hospice facility and the pharmacy providing pharmacy services shall comply with the reporting requirements of this chapter.

**Effective:** July 12, 2006

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**History:** Created 2006 Ky. Acts ch. 153, sec. 4, effective July 12, 2006.

### **218A.190 Exempt codeine preparations.**

- (1) Nonprescription medicinal preparations that contain in one hundred (100) milliliters, or as a solid or semisolid preparation, in one hundred (100) grams, not more than two hundred (200) milligrams of codeine or its salts may be sold over the counter subject to the following conditions:
  - (a) That the medicinal preparation shall contain in addition to the codeine in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the codeine alone;
  - (b) That such preparation shall be dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter;
  - (c) That such preparation shall only be sold at retail without a prescription to a person at least eighteen (18) years of age and only by a pharmacist. An employee may complete the actual cash or credit transaction or delivery;
  - (d) That such preparations shall not be displayed in areas of the pharmacy open to the public; and
  - (e) That no person shall purchase and no pharmacist or practitioner shall sell to the same person within a forty-eight (48) hour period more than one hundred twenty (120) milliliters of an exempt codeine preparation. Any person purchasing in excess of this limitation shall be deemed to be in illegal possession.
- (2) All wholesalers, manufacturers, and repackers shall keep a separate exempt codeine registry showing the following:
  - (a) Date;
  - (b) Registration number of recipient;
  - (c) Name of recipient;
  - (d) Address;
  - (e) Name of preparation; and
  - (f) Quantity.
- (3) All pharmacists and practitioners shall keep a separate exempt codeine registry showing the following:
  - (a) Date;
  - (b) Name of recipient;
  - (c) Address;
  - (d) Name of preparation;
  - (e) Quantity; and
  - (f) Pharmacist's or practitioner's name.
- (4) Notwithstanding any other provision of this section, the Cabinet for Health and Family Services may by regulation specifically prohibit any such codeine preparation from being sold over the counter due to actual or potential abuse.

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**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 541, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 484, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 20.

### **218A.200 Record-keeping and inventory requirements -- Penalties.**

- (1) Every practitioner who is authorized to administer or professionally use controlled substances, shall keep a record of substances received by him, and a record of all substances administered, dispensed, or professionally used by him otherwise than by prescription. Every such record shall be kept for a period of five (5) years.
- (2) Manufacturers and wholesalers shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all controlled substances received and disposed of by them. Every such record shall be kept for a period of two (2) years.
- (3) Pharmacists shall keep records of all controlled substances received and disposed of by them. Every such record shall be kept for a period of five (5) years.
- (4) The record of controlled substances received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity.
- (5) The keeping of a record under the federal controlled substances laws, containing substantially the same information as is specified in subsection (4) of this section, shall constitute compliance with this section.
- (6) A copy of the detailed list of controlled substances lost, destroyed, or stolen shall be forwarded to the Cabinet for Health and Family Services as soon as practical.
- (7)
  - (a) Every manufacturer, distributor, wholesaler, repacker, practitioner, pharmacist, or other person authorized to possess controlled substances shall take an inventory of all controlled substances in his possession at least every two (2) years.
  - (b) A substance which is added to any schedule of controlled substances and which was not previously listed in any schedule shall be initially inventoried within thirty (30) days of the effective date of the statute or administrative regulation which adds the substance to the provisions of this chapter. Thereafter, the substance shall be included in the inventory required by paragraph (a) of this subsection.
- (8) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for subsequent offenses.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 542, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 301, sec. 25, effective July 15, 1998; and ch. 426, sec. 485, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 21.

**218A.202 Electronic system for monitoring controlled substances – Required registration and reporting -- Penalty for illegal use of system --Continuing education programs -- Reports of failure to comply with section -- Quarterly reviews to identify patterns of improper prescribing or dispensing -- Administrative regulations -- Collection and retention of drug conviction data.**

- (1) The Cabinet for Health and Family Services shall establish and maintain an electronic system for monitoring Schedules II, III, IV, and V controlled substances. The cabinet may contract for the design, upgrade, or operation of this system if the contract preserves all of the rights, privileges, and protections guaranteed to Kentucky citizens under this chapter and the contract requires that all other aspects of the system be operated in conformity with the requirements of this or any other applicable state or federal law.
- (2) A practitioner or a pharmacist authorized to prescribe or dispense controlled substances to humans shall register with the cabinet to use the system provided for in this section and shall maintain such registration continuously during the practitioner's or pharmacist's term of licensure and shall not have to pay a fee or tax specifically dedicated to the operation of the system.
- (3) Every practitioner or pharmacy which dispenses a controlled substance to a person in Kentucky, or to a person at an address in Kentucky, shall report to the Cabinet for Health and Family Services the data required by this section, which includes the reporting of any Schedule II controlled substance dispensed at a facility licensed by the cabinet and a Schedule II through Schedule V controlled substance regardless of dosage when dispensed by the emergency department of a hospital to an emergency department patient. Reporting shall not be required for:
- (a) A drug administered directly to a patient in a hospital, a resident of a health care facility licensed under KRS Chapter 216B, a resident of a child-caring facility as defined by KRS 199.011, or an individual in a jail, correctional facility, or juvenile detention facility;
  - (b) A Schedule III through Schedule V controlled substance dispensed by a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours and is not dispensed by the emergency department of a hospital; or
  - (c) A drug administered or dispensed to a research subject enrolled in a research protocol approved by an institutional review board that has an active federal wide assurance number from the United States Department of Health and Human Services, Office for human Research Protections, where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.
- (4) In addition to the data required by subsection (5) of this section, a Kentucky-licensed acute care hospital or critical access hospital shall report to the cabinet all positive toxicology screens that were performed by the hospital's emergency department to evaluate the patient's suspected drug overdose.
- (5) Data for each controlled substance that is reported shall include but not be limited to the following:

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- (a) Patient identifier;
  - (b) National drug code of the drug dispensed;
  - (c) Date of dispensing;
  - (d) Quantity dispensed;
  - (e) Prescriber; and
  - (f) Dispenser.
- (6) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.
- (7) The Cabinet for Health and Family Services shall only disclose data to persons and entities authorized to receive that data under this section. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The Cabinet for Health and Family Services shall be authorized to provide data to:
- (a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;
  - (b) Employees of the Office of the Inspector General of the Cabinet for Health and Family Services who have successfully completed training for the electronic system and who have been approved to use the system, federal prosecutors, Kentucky Commonwealth's attorneys and assistant Commonwealth's attorneys, county attorneys and assistant county attorneys, a peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal agent whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;
  - (c) A state-operated Medicaid program in conformity with subsection (8) of this section;
  - (d) A properly convened grand jury pursuant to a subpoena properly issued for the records;
  - (e) A practitioner or pharmacist, or employee of the practitioner's or pharmacist's practice acting under the specific direction of the practitioner or pharmacist, who certifies that the requested information is for the purpose of:
    - 1. Providing medical or pharmaceutical treatment to a bona fide current or prospective patient;
    - 2. Reviewing data on controlled substances that have been reported for the birth mother of an infant who is currently being treated by the practitioner for neonatal abstinence syndrome, or has symptoms that suggest prenatal drug exposure; or

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3. Reviewing and assessing the individual prescribing or dispensing patterns of the practitioner or pharmacist or to determine the accuracy and completeness of information contained in the monitoring system;
  - (f) The chief medical officer of a hospital or long-term-care facility, an employee of the hospital or long-term-care facility as designated by the chief medical officer and who is working under his or her specific direction, or a physician designee if the hospital or facility has no chief medical officer, if the officer, employee, or designee certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current or prospective patient or resident in the hospital or facility;
  - (g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:
    1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing or dispensing practices;
    2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring; or
    3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring in that area;
  - (h) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced practice registered nurse who is:
    1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing or dispensing practices;
    2. Associated in a partnership or other business entity with an advanced practice registered nurse who is already under investigation by the Board of Nursing for improper prescribing practices;
    3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring; or
    4. In a designated geographic area for which a report on a physician or another advanced practice registered nurse in that area indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring in that area;
  - (i) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program; or
  - (j) A medical examiner engaged in a death investigation pursuant to KRS 72.026.
- (8) The Department for Medicaid Services shall use any data or reports from the system for the purpose of identifying Medicaid providers or recipients whose prescribing, dispensing, or usage of controlled substances may be:
- (a) Appropriately managed by a single outpatient pharmacy or primary care physician; or



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- (b) Indicative of improper, inappropriate, or illegal prescribing or dispensing practices by a practitioner or drug seeking by a Medicaid recipient.
- (9) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except as provided in this section, in another statute, or by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:
  - (a) A person specified in subsection (7)(b) of this section who is authorized to receive data or a report may share that information with any other persons specified in subsection (7)(b) of this section authorized to receive data or a report if the persons specified in subsection (7)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each agency engaged in the investigation;
  - (b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (7)(a) of this section, or with a law enforcement officer designated in subsection (7)(b) of this section;
  - (c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B;
  - (d) If a state licensing board as defined in KRS 218A.205 initiates formal disciplinary proceedings against a licensee, and data obtained by the board is relevant to the charges, the board may provide the data to the licensee and his or her counsel, as part of the notice process required by KRS 13B.050, and admit the data as evidence in an administrative hearing conducted pursuant to KRS Chapter 13B, with the board and licensee taking all necessary steps to prevent further disclosure of the data; and
  - (e) A practitioner, pharmacist, or employee who obtains data under subsection (7)(e) of this section may share the report with the patient or person authorized to act on the patient's behalf. Any practitioner, pharmacist, or employee who obtains data under subsection (7)(e) of this section may place the report in the patient's medical record, in which case the individual report shall then be deemed a medical record subject to disclosure on the same terms and conditions as an ordinary medical record in lieu of the disclosure restrictions otherwise imposed by this section.
- (10) The Cabinet for Health and Family Services, all peace officers specified in subsection (7)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.
- (11) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

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- (12) Intentional failure to comply with the reporting requirements of this section shall be a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.
- (13) Intentional disclosure of transmitted data to a person not authorized by subsections (7) to (9) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide current or prospective patient or a bona fide specific investigation, shall be a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.
- (14) The Cabinet for Health and Family Services may, by promulgating an administrative regulation, limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.
- (15)
  - (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.
  - (b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.
  - (c) The cabinet shall work with the Justice and Public Safety Cabinet for the development of a continuing education program for law enforcement officers about the purposes and uses of the electronic system for monitoring established in this section.
- (16) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with this section, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser. The licensing board shall treat the notification as a complaint against the licensee.
- (17) The Cabinet for Health and Family Services, Office of Inspector General, shall conduct quarterly reviews to identify patterns of potential improper, inappropriate, or illegal prescribing or dispensing of a controlled substance. The Office of Inspector General may independently investigate and submit findings and recommendations to the appropriate boards of licensure or other reporting agencies.
- (18) The cabinet shall promulgate administrative regulations to implement the provisions of this section. Included in these administrative regulations shall be:
  - (a) An error resolution process allowing a patient to whom a report had been disclosed under subsection (9) of this section to request the correction of inaccurate information contained in the system relating to that patient; and
  - (b) A requirement that data be reported to the system under subsection (3) of this section within one (1) day of dispensing.
- (19) Before July 1, 2018, the Administrative Office of the Courts shall forward data regarding any felony or Class A misdemeanor conviction that involves the trafficking or possession of a controlled substance or other prohibited acts under KRS Chapter

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218A for the previous five (5) calendar years to the cabinet for inclusion in the electronic monitoring system established under this section. On or after July 1, 2018 such data shall be forwarded by the Administrative Office of the Courts to the cabinet on a continuing basis. The cabinet shall incorporate the data received into the system so that a query by patient name indicates any prior drug conviction.

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 120, sec. 1, effective June 29, 2017; ch. 138, sec. 1, effective June 29, 2017; and ch. 168, sec. 10, effective June 29, 2017. --Amended 2013 Ky. Acts ch. 2, sec. 3, effective March 4, 2013. – Amended 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 4, effective July 20, 2012. --Amended 2010 Ky. Acts ch. 85, sec. 43, effective July 15, 2010. – Amended 2007 Ky. Acts ch. 85, sec. 252, effective June 26, 2007; and ch. 124, sec. 4, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 5, sec. 5, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 627, effective June 20, 2005; and ch. 99, sec. 543, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 68, sec. 1, effective July 13, 2004; and ch. 107, sec. 1, effective July 13, 2004. --Amended 2002 Ky. Acts ch. 295, sec. 1, effective April 9, 2002. -- Created 1998 Ky. Acts ch. 301, sec. 13, effective July 15, 1998.

**Legislative Research Commission Note** (6/29/2017). This statute was amended by 2017 Ky. Acts chs. 120, 138, and 168, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note** (7/13/2004). This section was amended by 2004 Ky. Acts chs. 68 and 107. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 107, which was last enacted by the General Assembly, prevails under KRS 446.250

### **218A.204 Administrative regulations to establish security requirements for prescriptions -- Waiver.**

The Cabinet for Health and Family Services shall promulgate administrative regulations in accordance with KRS Chapter 13A that establish security requirements for all prescriptions written by practitioners. The administrative regulations shall include a procedure to obtain a waiver for prescription blanks that provide substantially equivalent protection against forgery.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 544, effective June 20, 2005. -- Created 1998 Ky. Acts ch. 301, sec. 14, effective July 15, 1998.

### **218A.205 Reports of improper, inappropriate, or illegal prescribing or dispensing of controlled substances -- Administrative regulations for prescribing and dispensing protocols and licensure actions and requirements -- Complaint procedure -- Criminal record check.**

(1) As used in this section:

(a) "Reporting agency" includes:

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

(b) "State licensing board" means:

1. The Kentucky Board of Medical Licensure;
2. The Kentucky Board of Nursing;

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3. The Kentucky Board of Dentistry;
  4. The Kentucky Board of Optometric Examiners;
  5. The State Board of Podiatry; and
  6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans.
- (2) (a) When a reporting agency or a law enforcement agency receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance it may, to the extent otherwise allowed by law, send a copy of the report within three (3) business days to every other reporting agency.
- (b) A county attorney or Commonwealth's attorney shall notify the Office of the Attorney General and the appropriate state licensing board within three (3) business days of an indictment or a waiver of indictment becoming public in his or her jurisdiction charging a licensed person with a felony offense relating to the manufacture of, trafficking in, prescribing, dispensing, or possession of a controlled substance.
- (3) Each state licensing board shall, in consultation with the Kentucky Office of Drug Control Policy, establish the following by administrative regulation for those licensees authorized to prescribe or dispense controlled substances:
- (a) Mandatory prescribing and dispensing standards related to controlled substances, the requirements of which shall include the diagnostic, treatment, review, and other protocols and standards established for Schedule II controlled substances and Schedule III controlled substances containing hydrocodone under KRS 218A.172 and which may include the exemptions authorized by KRS 218A.172(4);
- (b) In accord with the CDC Guideline for Prescribing Opioids for Chronic Pain published in 2016, a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply of a Schedule II controlled substance if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:
1. The practitioner, in his or her professional judgment, believes that more than a three (3) day supply of a Schedule II controlled substance is medically necessary to treat the patient's pain as an acute medical condition and the practitioner adequately documents the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit established in this subsection in the patient's medical records;
  2. The prescription for a Schedule II controlled substance is prescribed to treat chronic pain;
  3. The prescription for a Schedule II controlled substance is prescribed to treat pain associated with a valid cancer diagnosis;
  4. The prescription for a Schedule II controlled substance is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment or is receiving care from a certified community based palliative care program;

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5. The prescription for a Schedule II controlled substance is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;
  6. The prescription for a Schedule II controlled substance is prescribed to treat pain following a major surgery or the treatment of significant trauma, as defined by the state licensing board in consultation with the Kentucky Office of Drug Control Policy;
  7. The Schedule II controlled substance is dispensed or administered directly to an ultimate user in an inpatient setting; or
  8. Any additional treatment scenario deemed medically necessary by the state licensing board in consultation with the Kentucky Office of Drug Control Policy. Nothing in this paragraph shall authorize a state licensing board to promulgate regulations which expand any practitioner's prescriptive authority beyond that which existed prior to June 29, 2017;
- (c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour supply of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone unless the dispensing is done as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;
- (d) A procedure for temporarily suspending, limiting, or restricting a license held by a named licensee where a substantial likelihood exists to believe that the continued unrestricted practice by the named licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public;
- (e) A procedure for the expedited review of complaints filed against their licensees pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances that is designed to commence an investigation within seven (7) days of a complaint being filed and produce a charging decision by the board on the complaint within one hundred twenty (120) days of the receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation;
- (f) The establishment and enforcement of licensure standards that conform to the following:
1. A permanent ban on licensees and applicants convicted after July 20, 2012, in this state or any other state of any felony offense relating to controlled substances from prescribing or dispensing a controlled substance;
  2. Restrictions short of a permanent ban on licensees and applicants convicted in this state or any other state of any misdemeanor offense relating to prescribing or dispensing a controlled substance;
  3. Restrictions mirroring in time and scope any disciplinary limitation placed on a licensee or applicant by a licensing board of another state if the disciplinary action results from improper, inappropriate, or illegal prescribing or dispensing of controlled substances; and
  4. A requirement that licensees and applicants report to the board any conviction or disciplinary action covered by this subsection with appropriate sanctions for any failure to make this required report;

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- (g) A procedure for the continuous submission of all disciplinary and other reportable information to the National Practitioner Data Bank of the United States Department of Health and Human Services;
  - (h) If not otherwise required by other law, a process for submitting a query on each applicant for licensure to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and
  - (i) Continuing education requirements beginning with the first full educational year occurring after July 1, 2012, that specify that at least seven and one-half percent (7.5%) of the continuing education required of the licensed practitioner relate to the use of the electronic monitoring system established in KRS 218A.202, pain management, or addiction disorders.
- (4) For the purposes of pharmacy dispensing, the medical necessity for a Schedule II controlled substance as documented by the practitioner in the patient's medical record and the prescription for more than a three (3) day supply of that controlled substance are presumed to be valid.
  - (5) A state licensing board shall employ or obtain the services of a specialist in the treatment of pain and a specialist in drug addiction to evaluate information received regarding a licensee's prescribing or dispensing practices related to controlled substances if the board or its staff does not possess such expertise, to ascertain if the licensee under investigation is engaging in improper, inappropriate, or illegal practices.
  - (6) Any statute to the contrary notwithstanding, no state licensing board shall require that a grievance or complaint against a licensee relating to controlled substances be sworn to or notarized, but the grievance or complaint shall identify the name and address of the grievant or complainant, unless the board by administrative regulation authorizes the filing of anonymous complaints. Any such authorizing administrative regulation shall require that an anonymous complaint or grievance be accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint or grievance is meritorious.
  - (7) Every state licensing board shall cooperate to the maximum extent permitted by law with all state, local, and federal law enforcement agencies, and all professional licensing boards and agencies, state and federal, in the United States or its territories in the coordination of actions to deter the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.
  - (8) Each state licensing board shall require a fingerprint-supported criminal record check by the Department of Kentucky State Police and the Federal Bureau of Investigation of any applicant for initial licensure to practice any profession authorized to prescribe or dispense controlled substances.

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 84, sec. 5, effective June 27, 2019. -- Amended 2017 Ky. Acts ch. 168, sec. 7, effective June 29, 2017. -- Amended 2013 Ky. Acts ch. 2, sec. 4, effective March 4, 2013. -- Created 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 2, effective July 20, 2012.

**218A.210 Controlled substances may be possessed only in original container -- Penalties.**

- (1) A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed, by a practitioner or other person authorized under this chapter, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.
- (2) Violation of subsection (1) of this section is a Class B misdemeanor for the first offense and a Class A misdemeanor for subsequent offenses.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 441, sec. 6, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 226, sec. 22.

**218A.220 Persons exempt from chapter.**

The provisions of this chapter shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such substances, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of controlled substances; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

**History:** Created 1972 Ky. Acts ch. 226, sec. 23.

**218A.230 Controlled substances -- Possession, forfeiture, disposition -- Records, inspection.**

All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

- (1) Except as otherwise provided in this section, the court having jurisdiction shall order such controlled substances forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept.
- (2) The court by whom the forfeiture of controlled substances has been decreed may order the delivery of same to the Cabinet for Health and Family Services for destruction. Practitioners, pharmacists, hospitals, and nursing homes may voluntarily surrender controlled substances to the Cabinet for Health and Family Services for destruction.
- (3) The Cabinet for Health and Family Services shall keep a record of all substances received and of all substances disposed of, showing the exact kinds, quantities, and forms of such substances, the persons from whom received and the time, place, and manner of destruction.
- (4) Prescriptions, orders, and records, required by this chapter, and stocks of controlled substances, shall be open for inspection only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States

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relating to controlled substances.

- (5) No pharmacist, practitioner, manufacturer, or wholesaler or other custodian of records, prescriptions, or orders required by this chapter shall refuse to permit the inspection thereof by any federal, state, county or municipal officer whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 545, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 486, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, secs. 24 and 25.

### **218A.240 Controlled substances -- Duties and authority of state and local officers, Cabinet for Health and Family Services, and Kentucky Board of Pharmacy -- Civil proceedings -- Identification of trends -- Identification of prescribers, dispensers, and patients for licensing board -- Review of hospital's or health care facility's prescribing and dispensing practices.**

- (1) All police officers and deputy sheriffs directly employed full-time by state, county, city, urban-county, or consolidated local governments, the Department of Kentucky State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.
- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health and Family Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths; to enter upon premises at all times for the purpose of making inspections; to seize evidence; to interrogate all persons; to require the production of prescriptions, of books, papers, documents, or other evidence; to employ special investigators; and to expend funds for the purpose of obtaining evidence and to use data obtained under KRS 218A.202 in any administrative proceeding before the cabinet.
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health and Family Services.
- (4) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.



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- (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
  - (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
  - (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his or her costs, including a reasonable attorney's fee.
  - (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.420, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his or her percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) The Cabinet for Health and Family Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.
- (7) (a) The Cabinet for Health and Family Services shall proactively use the data compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a state licensing board listed in KRS 218A.205 if a report or analysis conducted under this subsection indicates that further investigation about improper, inappropriate or illegal prescribing or dispensing may be necessary by the board. The board shall consider each report and may, after giving due consideration to areas of practice, specialties, board certifications, and appropriate standards of care, request and receive a follow-up report or analysis containing relevant information as to the prescriber or dispenser and his or her patients.
- (b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure, the Board of Nursing, the Office of Drug Control Policy, and the Board of Pharmacy, to be used to generate public trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850. The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system. Except as provided in subsection (8) of this section, these trend reports shall not identify an individual prescriber, dispenser, or patient. Peace officers authorized to receive data under KRS 218A.202 may request trend reports not specifically published pursuant to this paragraph except that the report shall not identify an individual prescriber, dispenser, or patient.
- (8) If the cabinet deems it to be necessary and appropriate, upon the request of a state licensing board listed in KRS 218A.205, the cabinet shall provide the requesting

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board with the identity of prescribers, dispensers, and patients used to compile a specific trend report.

- (9) Any hospital or other health care facility may petition the cabinet to review data from the electronic system specified in KRS 218A.202 as it relates to employees of that facility to determine if inappropriate prescribing or dispensing practices are occurring. The cabinet may initiate any investigation in such cases as he or she determines is appropriate, and may request the assistance from the hospitals or health care facilities in the investigation.
- (10) If the office or clinic of a practitioner abruptly closes or is subject to emergency closure or other enforcement action resulting in a suspension or termination of the practitioner's controlled substance prescribing privileges, the Cabinet for Health and Family Services or applicable professional licensing board may use data from the electronic system established under KRS 218A.202 to issue notification as soon as practicable to the practitioner's patients to help prevent the disruption of medical treatment and promote continuity of care.

**Effective:** July 15, 2020

**History:** Amended 2020 Ky. Acts ch. 20, sec. 1, effective July 15, 2020. -- Amended 2017 Ky. Acts ch. 138, sec. 2, effective June 29, 2017. -- Amended 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 5, effective July 20, 2012. -- Amended 2007 Ky. Acts ch. 85, sec. 253, effective June 26, 2007; and ch. 124, sec. 14, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 99, sec. 546, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 68, sec. 2, effective July 13, 2004; and ch. 107, sec. 2, effective July 13, 2004. -- Amended 1998 Ky. Acts ch. 301, sec. 26, effective July 15, 1998; and ch. 426, sec. 487, effective July 15, 1988. -- Amended 1992 Ky. Acts ch. 441, sec. 28, effective July 14, 1992. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). - Created 1972 Ky. Acts ch. 226, sec. 26.

### **218A.245 Reciprocal agreements or contracts with other states, jurisdictions, counties, or political subdivisions or with an administering organization to share prescription drug monitoring information.**

- (1) The secretary of the Cabinet for Health and Family Services may enter into reciprocal agreements or a contract, either directly with any other state or states of the United States or any jurisdiction, county, or political subdivision thereof, or with an organization administering the exchange of interstate data on behalf of the prescription monitoring program of one (1) or more states or jurisdictions, to share prescription drug monitoring information if the other prescription drug monitoring program or data exchange program is compatible with the program in Kentucky. If the secretary elects to evaluate the prescription drug monitoring program of another state, jurisdiction, or organization as authorized by this section, priority shall be given to a state or jurisdiction that is contiguous with the borders of the Commonwealth or an organization that offers connectivity with a contiguous state or jurisdiction.
- (2) In determining compatibility, the secretary shall consider:
  - (a) The essential purposes of the program and the success of the program in fulfilling those purposes;
  - (b) The safeguards for privacy of patient records and its success in protecting patient privacy;

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- (c) The persons authorized to view the data collected by the program;
  - (d) The schedules of controlled substances monitored;
  - (e) The data required to be submitted on each prescription or dispensing;
  - (f) Any implementation criteria deemed essential for a thorough comparison; and
  - (g) The costs and benefits to the Commonwealth in mutually sharing particular information available in the Commonwealth's database with the program under consideration.
- (3) The secretary shall review any agreement on an annual basis to determine its continued compatibility with the Kentucky prescription drug monitoring program.
- (4) Any agreement between the cabinet and another state, jurisdiction, or organization shall prohibit the sharing of information about a Kentucky resident, practitioner, pharmacist, or other prescriber or dispenser for any purpose not otherwise authorized by this section or KRS 218A.202.

**Effective:** July 15, 2020

**History:** Amended 2020 Ky. Acts ch. 20, sec. 2, effective July 15, 2020. -- Amended 2018 Ky. Acts ch. 30, sec. 1, effective July 14, 2018. -- Amended 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 6, effective July 20, 2012. -- Amended 2005 Ky. Acts ch. 99, sec. 547, effective June 20, 2005. -- Created 2004 Ky. Acts ch. 107, sec. 3,

### **218A.250 Regulations -- Hearings.**

The Cabinet for Health and Family Services shall promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of this chapter. Administrative hearings on appeals filed pursuant to this chapter shall be conducted in accordance with KRS Chapter 13B.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 548, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 488, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 128, effective July 15, 1996. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 27.

### **218A.260 Repealed, effective July 1, 1992.**

### **218A.270 Repealed, 1984.**

### **218A.274 Pregnant women to receive priority by state-funded substance abuse treatment or recovery service providers.**

Substance abuse treatment or recovery service providers that receive state funding shall give pregnant women priority in accessing services and shall not refuse access to services solely due to pregnancy as long as the provider's services are appropriate for pregnant women.

**Effective:** March 25, 2015

**History:** Created 2015 Ky. Acts ch. 66, sec. 12, effective March 25, 2015; and ch. 82, sec. 1, effective June 24, 2015.

**Legislative Research Commission Note (3/25/2015).** This statute was created with identical text in 2015 Ky. Acts chs. 66 and 82. These Acts have been codified together.

**218A.275 Assessment and treatment program for first offenders of possession of controlled substance -- Rescission of treatment order -- Voiding of conviction -- Sealing of records.**

- (1) A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of a controlled substance pursuant to KRS 218A.1415, 218A.1416, or 218A.1417. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her to the appropriate treatment or recovery program that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery not to exceed one (1) year in duration may be prescribed. The person ordered to the designated treatment or recovery program shall present himself or herself for registration and initiation of the treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program within the specified time, or if at any time during the program of treatment or recovery prescribed, the authorized director of the treatment or recovery program finds that the person is unwilling to participate in his or her treatment, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment, or may rescind the treatment order and impose a sentence for the possession offense. Upon discharge of the person from the treatment or recovery program by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the one (1) year period or upon satisfactory completion of one (1) year of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the treatment or recovery program.
- (2) The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the treatment or recovery program to which the person is sentenced.
- (3) Transportation to an inpatient facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated treatment or recovery program of the sentence and its effective date.
- (5) The secretary for health and family services, or his or her designee, may authorize transfer of the person from the initially designated treatment or recovery program to another treatment or recovery program for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating treatment or recovery program and shall be notified by the secretary of the new treatment or recovery program to which the person was transferred.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this

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section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the treatment or recovery program shall arrange otherwise.

- (7) None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) Except as provided in subsection (12) of this section, in the case of any person who has been convicted for the first time of possession of controlled substances, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under this subsection and dismissal may occur only once with respect to any person.
- (9) If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in KRS 27A.099. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.
- (10) After the sealing of the record, the proceedings in the matter shall not be used against the defendant except for the purposes of determining the person's eligibility to have his or her conviction voided under subsection (8) of this section. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record has been sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.
- (11) Inspection of the sealed records may thereafter be permitted by the court pursuant to KRS 27A.099 or upon a motion by the person who is the subject of the records and only to those persons named in the motion or upon a motion of the prosecutor to verify a defendant's eligibility to have his or her conviction voided under subsection (8) of this section.
- (12) A person who has previously had a charge of possession of controlled substances dismissed after completion of a deferred prosecution under KRS 218A.14151 shall not be eligible for voiding of conviction under this section.

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 156, sec. 8, effective July 12, 2012. -- Amended 2011 Ky. Acts ch. 2, sec. 21, effective June 8, 2011. -- Amended 2005 Ky. Acts ch. 99, sec. 549, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 489, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 9, effective July 28, 1992.

**218A.276 Assessment and treatment program for possessors of marijuana, synthetic drugs, or salvia -- Rescission of treatment order -- Voiding of conviction -- Sealing of records.**

- (1) A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of marijuana pursuant to KRS 218A.1422, synthetic drugs pursuant to KRS 218A.1430, or salvia pursuant to KRS 218A.1451. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her to the appropriate treatment or recovery program as indicated by the assessment that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated treatment or recovery program shall present himself or herself for registration and initiation of the treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program within the specified time, or if any time during the program of treatment or recovery prescribed, the authorized director of the treatment or recovery program finds that the person is unwilling to participate in his or her treatment, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment, or may rescind the treatment order and impose a sentence for the possession offense. Upon discharge of the person from the treatment or recovery program by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the treatment or recovery program.
- (2) The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the treatment or recovery program to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to an inpatient facility for treatment pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated treatment or recovery program of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his or her designee, may authorize transfer of the person from the initially designated treatment or recovery program to another treatment or recovery program for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating treatment or recovery program and shall be notified by the secretary or his or her

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designee of the new treatment or recovery program to which the person was transferred.

- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the treatment or recovery program shall arrange otherwise.
- (7) None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation, presumptive probation, or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana, synthetic drugs, or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.
- (9) If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in KRS 27A.099. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.
- (10) After the sealing of the record, the proceedings in the matter shall not be used against the defendant. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.
- (11) Inspection of the sealed records may thereafter be permitted by the court or upon a motion by the person who is the subject of the records and only to those persons named in the motion.

**Effective:** April 11, 2012

**History:** Amended 2012 Ky. Acts ch. 108, sec. 11, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 2, sec. 22, effective June 8, 2011; and ch. 45, sec. 11, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 12, effective April 13, 2010; and ch. 160, sec. 12, effective April 26, 2010. -- Amended 2005 Ky. Acts ch. 99, sec. 550, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 490, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 10, effective July 14, 1992.

**Legislative Research Commission Note** (12/14/2010). During codification, a reference to KRS 218A.1451 relating to the possession of salvia in subsection (1) of this statute was inadvertently omitted from the final text reflecting the merger of the amendments to this statute in 2010 Ky. Acts chs. 149 and 160. The Reviser of Statutes has corrected this manifest clerical or typographical error.

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**218A.278 Pilot program to analyze outcomes and effectiveness of substance abuse treatment programs.**

- (1) For the purposes of this section:
  - (a) "Analyze" means to apply scientific and mathematical measures to determine meaningful patterns and associations in data. "Analyze" includes descriptive analysis to examine historical data, predictive analysis to examine future probabilities and trends, and prescriptive analysis to examine how future decisions may impact the population and trends; and
  - (b) "Pilot program" means a program in a county or set of counties, or a subset or subsets of the population, as designated by the Cabinet for Health and Family Services and the Office of Drug Control Policy for analyzing the effectiveness of substance abuse treatment services in Kentucky.
- (2) The general purpose of this section is to assist in the development of a pilot program to analyze the outcomes and effectiveness of substance abuse treatment programs in order to ensure that the Commonwealth is:
  - (a) Addressing appropriate risk and protective factors for substance abuse in a defined population;
  - (b) Using approaches that have been shown to be effective;
  - (c) Intervening early at important stages and transitions;
  - (d) Intervening in appropriate settings and domains; and
  - (e) Managing programs effectively.
- (3) Sources of data for the pilot program shall include, at a minimum, claims under the Kentucky Department for Medicaid Services, the electronic monitoring system for controlled substances established under KRS 218A.202, and the Department of Workers' Claims within the Labor Cabinet.
- (4) As funds are available, the Cabinet for Health and Family Services and the Office of Drug Control Policy shall initiate a pilot program to determine, collect, and analyze performance measurement data for substance abuse treatment services to determine practices that reduce frequency of relapse, provide better outcomes for patients, hold patients accountable, and control health costs related to substance abuse.
- (5) By December 31, 2016, the Cabinet for Health and Family Services and the Office of Drug Control Policy shall issue a joint report to the Legislative Research Commission and the Office of the Governor that:
  - (a) Details the findings of the pilot program;
  - (b) Includes recommendations based on the pilot program's results for optimizing substance abuse treatment services; and
  - (c) Includes recommendations for the continued application of analytics to further augment Kentucky's approach to fighting substance abuse in the future.

**Effective:** March 25, 2015

**History:** Created 2015 Ky. Acts ch. 66, sec. 9, effective March 25, 2015.



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**218A.280 Controlled substances -- Communications with practitioner not privileged.**

Information communicated to a practitioner in an effort unlawfully to procure a controlled substance, or unlawfully to procure the administration of any controlled substance, shall not be deemed a privileged communication.

**History:** Created 1972 Ky. Acts ch. 226, sec. 30.

**218A.281 Applicability of definitions in KRS 516.010 to KRS 218A.282 and 218A.284.**

For purposes of KRS 218A.282 and 218A.284, the definitions found in KRS 516.010 apply.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 301, sec. 18, effective July 15, 1998.

**218A.282 Forgery of a prescription.**

- (1) A person is guilty of forgery of a prescription when, with intent to defraud, deceive, or injure another, he falsely makes, completes, or alters a written instrument which is or purports to be or which is calculated to become or to represent a prescription for a controlled substance when completed.
- (2) Forgery of a prescription is:
  - (a) For a first offense, a Class D felony.
  - (b) For a second or subsequent offense, a Class C felony.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 301, sec. 16, effective July 15, 1998.

**218A.284 Criminal possession of a forged prescription.**

- (1) A person is guilty of criminal possession of a forged prescription when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he utters or possesses a forged prescription for a controlled substance.
- (2) Criminal possession of a forged prescription is:
  - (a) For a first offense, a Class D felony.
  - (b) For a second or subsequent offense, a Class C felony.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 301, sec. 17, effective July 15, 1998.

**218A.286 Theft, criminal possession, trafficking, or unlawful possession of a prescription or blank.**

- (1) A person is guilty of theft of a prescription blank when he unlawfully takes or exercises control over a prescription blank belonging to another.
- (2) A person is guilty of criminal possession of a prescription blank when, with knowledge that he has no lawful authority to possess a prescription blank, he

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possesses a prescription blank with the intent to utter a forged prescription or sell or transfer the prescription blank to another person for that purpose.

- (3) A person is guilty of trafficking in prescription blanks when he knowingly and unlawfully traffics in a prescription blank or a forged prescription for a controlled substance.
- (4) The knowing, with intent to violate this chapter, possession of a prescription blank by a person other than a pharmacist, practitioner, or other person authorized by law to prescribe or dispense a controlled substance, a manufacturer, wholesaler, or distributor, or by a person lawfully printing or reproducing prescription blanks, shall be prima facie evidence that the prescription blank was possessed for the purpose of uttering a forged prescription or for sale or transfer to another person for that purpose.
- (5) Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 301, sec. 19, effective July 15, 1998.

### **218A.288 Seizure of unlawful prescription.**

- (1) A pharmacist, practitioner, or other person authorized by law to dispense controlled substances, or an employee of that person, may seize and retain any prescription which he has reasonable suspicion for believing is forged, altered, or deceitful in violation of KRS 218A.140, 218A.282, or 218A.284.
- (2) Seizure and retention shall be for a reasonable period of time to make reasonable inquiry as to whether the prescription is forged, altered, or deceitful.
- (3) If after reasonable inquiry the pharmacist, practitioner, or other person determines that the prescription is forged, altered, or deceitful, he shall report the seizure to a law enforcement officer and shall surrender the prescription to the officer upon the request of the officer.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 301, sec. 20, effective July 15, 1998.

### **218A.290 Administrative fines.**

Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any state licensing board may impose a fine not to exceed \$500 on any practitioner, pharmacist, manufacturer, or wholesaler whom it licenses for any violation of this chapter. All such fines shall be deposited to the credit of the respective licensing board concerned to be used by such board in carrying out the provisions of this chapter.

**History:** Created 1972 Ky. Acts ch. 226, sec. 32.

### **218A.300 Election whether or not to be tried under this chapter or prior law.**

The provisions of this chapter shall not apply to any offense committed prior to June 16, 1972, unless the defendant elects to be tried under the provisions of this chapter. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this chapter had not been enacted

if he does not so elect.

**History:** Created 1972 Ky. Acts ch. 226, sec. 34.

**218A.310 Title for chapter.**

This chapter may be cited as the Kentucky Controlled Substances Act of 1972.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 441, sec. 23, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 226, sec. 1.

**218A.320 Criminal possession of a medical record -- Penalties.**

- (1) A person is guilty of criminal possession of a medical record when he or she possesses a medical record with the intent to unlawfully obtain a controlled substance by:
  - (a) Falsifying, altering, or creating a medical record; or
  - (b) Selling or unlawfully transferring the medical record to another person.
- (2) Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

**Effective:** June 26, 2007

**History:** Created 2007 Ky. Acts ch. 124, sec. 5, effective June 26, 2007.

**218A.322 Theft of a medical record -- Penalties.**

- (1) A person is guilty of theft of a medical record when he or she unlawfully takes or exercises control over a medical record belonging to another person with intent to violate this chapter.
- (2) Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

**Effective:** June 26, 2007

**History:** Created 2007 Ky. Acts ch. 124, sec. 6, effective June 26, 2007.

**218A.324 Criminal falsification of a medical record -- Penalties.**

- (1) A person is guilty of criminal falsification of a medical record when he or she knowingly and unlawfully falsifies, alters, or creates a medical record for the purpose of obtaining or attempting to obtain a controlled substance with intent to violate this chapter.
- (2) Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

**Effective:** June 26, 2007

**History:** Created 2007 Ky. Acts ch. 124, sec. 7, effective June 26, 2007.

**218A.350 Prohibited practices concerning substances that simulate controlled substances -- Penalties.**

- (1) No person shall sell or transfer any substance, other than a controlled substance, with the representation or upon creation of an impression that the substance which is sold or transferred is a controlled substance.
- (2) No person shall possess for sale or transfer any substance designed in any manner, including but not limited to design of the item or its container, markings, or color, to simulate a controlled substance.
- (3) No person shall possess for sale or transfer any substance, not covered by subsection (2) of this section which is not a controlled substance with the representation or upon the creation of an impression that the substance held for sale or transfer is a controlled substance.
- (4) No person shall manufacture, package, repackage, advertise, or mark any substance, which is not a controlled substance, in such a manner as to resemble a controlled substance, for the purpose of creating the impression that the substance is a controlled substance.
- (5) For the purpose of determining whether this section has been violated, the court or other authority shall include in its consideration the following:
  - (a) Whether the noncontrolled substance was packaged in a manner normally used for the illegal sale of controlled substances;
  - (b) Whether the sale or attempted sale included an exchange of or demand for money or other property as consideration, and whether the amount of the consideration was substantially greater than the reasonable value of the noncontrolled substance.
  - (c) Whether the physical appearance of the noncontrolled substance is substantially identical to that of a controlled substance.
- (6) In any prosecution brought under this section, it is not a defense to a violation of this section that the defendant believed the noncontrolled substance to actually be a controlled substance.
- (7)
  - (a) Any person who violates any of the provisions of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for subsequent offenses.
  - (b) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any offense under this subsection the court may impose a maximum fine of double the defendant's gain from the commission of the offense, in which case any fine money collected shall be divided between the same parties, in the same ratio, and for the same purposes as established for forfeited property under KRS 218A.420.
  - (c) It shall be an affirmative defense to an offense under this subsection that the defendant committed the offense during the course of the defendant's employment as an employee of a retail store and that the defendant did not know and should not have known that the trafficked substance was a synthetic drug.

**Effective:** April 11, 2012

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**History:** Amended 2012 Ky. Acts ch. 108, sec. 12, effective April 11, 2012. -- Amended 1992 Ky. Acts ch. 441, sec. 7, effective July 14, 1992. -- Created 1982 Ky. Acts ch. 419, sec. 1, effective July 15, 1982.

### **218A.390 Prescription Monitoring Program Compact.**

The Prescription Monitoring Program compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

#### ARTICLE I

##### PURPOSE

The purpose of this interstate compact is to provide a mechanism for state prescription monitoring programs to securely share prescription data to improve public health and safety. This interstate compact is intended to:

- A. Enhance the ability of state prescription monitoring programs, in accordance with state laws, to provide an efficient and comprehensive tool for:
  1. Practitioners to monitor patients and support treatment decisions;
  2. Law enforcement to conduct diversion investigations where authorized by state law;
  3. Regulatory agencies to conduct investigations or other appropriate reviews where authorized by state law; and
  4. Other uses of prescription drug data authorized by state law for purposes of curtailing drug abuse and diversion; and
- B. Provide a technology infrastructure to facilitate secure data transmission.

#### ARTICLE II

##### DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

- A. "Authentication" means the process of verifying the identity and credentials of a person before authorizing access to prescription data;
- B. "Authorize" means the process by which a person is granted access privileges to prescription data;
- C. "Bylaws" means those bylaws established by the interstate commission pursuant to Article VIII for its governance, or for directing or controlling its actions and conduct;
- D. "Commissioner" means the voting representative appointed by each member state pursuant to Article VI of this compact;
- E. "Interstate commission" or "commission" means the interstate commission created pursuant to Article VI of this compact;
- F. "Member state" means any state that has adopted a prescription monitoring program and has enacted the enabling compact legislation;
- G. "Practitioner" means a person licensed, registered or otherwise permitted to prescribe or dispense a prescription drug;
- H. "Prescription data" means data transmitted by a prescription monitoring program that contains patient, prescriber, dispenser, and prescription drug information;
- I. "Prescription drug" means any drug required to be reported to a state prescription

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monitoring program and which includes but is not limited to substances listed in the federal Controlled Substances Act;

- J. "Prescription Monitoring Program" means a program that collects, manages, analyzes, and provides prescription data under the auspices of a state;
- K. "Requestor" means a person authorized by a member state who has initiated a request for prescription data;
- L. "Rule" means a written statement by the interstate commission promulgated pursuant to Article VII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule;
- M. "State" means any state, commonwealth, district, or territory of the United States;
- N. "Technology infrastructure" means the design, deployment, and use of both individual technology based components and the systems of such components to facilitate the transmission of information and prescription data among member states; and
- O. "Transmission" means the release, transfer, provision, or disclosure of information or prescription data among member states.

### ARTICLE III

#### AUTHORIZED USES AND RESTRICTIONS ON THE PRESCRIPTION DATA

- A. Under the Prescription Monitoring Program compact a member state:
  - 1. Retains its authority and autonomy over its prescription monitoring program and prescription data in accordance with its laws, regulations and policies;
  - 2. May provide, restrict or deny prescription data to a requestor of another state in accordance with its laws, regulations and policies;
  - 3. May provide, restrict or deny prescription data received from another state to a requestor within that state; and
  - 4. Has the authority to determine which requestors shall be authorized.
- B. Prescription data obtained by a member state pursuant to this compact shall have the following restrictions:
  - 1. Be used solely for purposes of providing the prescription data to a requestor; and
  - 2. Not be stored in the state's prescription monitoring program database, except for stored images, nor in any other database.
- C. A state may limit the categories of requestors of another member state that will receive prescription data.
- D. The commission shall promulgate rules establishing standards for requestor authentication.
  - 1. Every member state shall authenticate requestors according to the rules established by the commission.
  - 2. A member state may authorize its requestors to request prescription data from

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another member state only after such requestor has been authenticated.

3. A member state that becomes aware of a requestor who violated the laws or regulations governing the appropriate use of prescription data shall notify the state that transmitted the prescription data.

### ARTICLE IV

#### TECHNOLOGY AND SECURITY

- A. The commission shall establish security requirements through rules for the transmission of prescription data.
- B. The commission shall foster the adoption of open (vendor- and technology-neutral) standards for the technology infrastructure.
- C. The commission shall be responsible for acquisition and operation of the technology infrastructure.

### ARTICLE V

#### FUNDING

- A. The commission, through its member states, shall be responsible to provide for the payment of the reasonable expenses for establishing, organizing and administering the operations and activities of the interstate compact.
- B. The interstate commission may levy on and collect annual dues from each member state to cover the cost of operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual dues amount shall be allocated in an equitable manner and may consist of a fixed fee component as well as a variable fee component based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states. Such a formula shall take into account factors including, but not limited to the total number of practitioners or licensees within a member state. Fees established by the commission may be recalculated and assessed on an annual basis.
- C. Notwithstanding the above or any other provision of law, the interstate commission may accept non-state funding, including grants, awards and contributions to offset, in whole or in part, the costs of the annual dues required under Article V, Section B.
- D. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member states.
- E. The interstate commission shall keep accurate accounts of all receipts and disbursements subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited annually by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

### ARTICLE VI

#### INTERSTATE COMMISSION

The member states hereby create the Interstate Prescription Monitoring Program

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Commission. The Prescription Monitoring Program compact shall be governed by an interstate commission comprised of the member states and not by a third-party group or federal agency. The activities of the commission are the formation of public policy and are a discretionary state function.

- A. The commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.
- B. The commission shall consist of one (1) voting representative from each member state who shall be that state's appointed compact commissioner and who is empowered to determine statewide policy related to matters governed by this compact. The compact commissioner shall be a policymaker within the agency that houses the state's Prescription Monitoring Program.
- C. In addition to the state commissioner, the state shall appoint a non-voting advisor who shall be a representative of the state Prescription Monitoring Program.
- D. In addition to the voting representatives and non-voting advisor of each member state, the commission may include persons who are not voting representatives, but who are members of interested organizations as determined by the commission.
- E. Each member state represented at a meeting of the commission is entitled to one vote. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the commission, the appropriate appointing authority may delegate voting authority to another person from their state for a specified meeting. The bylaws may provide for meetings of the commission to be conducted by electronic communication.
- F. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings.
- G. The commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the commission, with the exception of rulemaking. During periods when the commission is not in session the executive committee shall oversee the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary.
- H. The commission shall maintain a robust committee structure for governance (i.e., policy, compliance, education, technology, etc.) and shall include specific opportunities for stakeholder input.
- I. The commission's bylaws and rules shall establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may exempt from disclosure information or official records that would adversely affect personal privacy rights or proprietary interests.



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- J. The commission shall provide public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The commission may close a meeting, or portion thereof, where it determines by a two-thirds (2/3) vote of the members present that an open meeting would be likely to:
1. Relate solely to the commission’s internal personnel practices and procedures;
  2. Discuss matters specifically exempted from disclosure by federal and state statute;
  3. Discuss trade secrets or commercial or financial information which is privileged or confidential;
  4. Involve accusing a person of a crime, or formally censuring a person;
  5. Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
  6. Discuss investigative records compiled for law enforcement purposes; or
  7. Specifically relate to the commission’s participation in a civil action or other legal proceeding.
- K. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

### ARTICLE VII

#### POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

- A. To oversee and maintain the administration of the technology infrastructure;
- B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact, provided that no member state shall be required to create an advisory committee. The rules shall have the force and effect of statutory law and shall be binding in the member states to the extent and in the manner provided in this compact;
- C. To establish a process for member states to notify the commission of changes to a state’s prescription monitoring program statutes, regulations, or policies. This applies only to changes that would affect the administration of the compact;
- D. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions;
- E. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
- F. To establish and maintain one (1) or more offices;

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- G. To purchase and maintain insurance and bonds;
- H. To borrow, accept, hire or contract for personnel or services;
- I. To establish and appoint committees including, but not limited to, an executive committee as required by Article VI, Section G, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
- J. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- K. To seek and accept donations and grants of money, equipment, supplies, materials, and services, and to utilize or dispose of them;
- L. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;
- M. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;
- N. To establish a budget and make expenditures;
- O. To adopt a seal and bylaws governing the management and operation of the interstate commission;
- P. To report annually to the legislatures, Governors and Attorneys General of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission and shall be made publically available;
- Q. To coordinate education, training and public awareness regarding the compact, its implementation and operation;
- R. To maintain books and records in accordance with the bylaws;
- S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and
- T. To provide for dispute resolution among member states.

### ARTICLE VIII

#### ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

- A. The interstate commission shall, by a majority of the members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:
  - 1. Establishing the fiscal year of the interstate commission;
  - 2. Establishing an executive committee, and such other committees as may be necessary for governing any general or specific delegation of authority or function of the interstate commission;
  - 3. Providing procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
  - 4. Establishing the titles and responsibilities of the officers and staff of the interstate commission; and

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5. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.
- B. The interstate commission shall, by a majority of the members present, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.
- C. Executive Committee, Officers and Staff
1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:
    - a. Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;
    - b. Overseeing an organizational structure within, and appropriate procedures for the interstate commission to provide for the administration of the compact; and
    - c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the purpose of the interstate commission.
  2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.
- D. The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.
1. The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the

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purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The interstate commission shall defend the executive director, its employees, and subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.
3. To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

### ARTICLE IX

#### RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

- A. Rulemaking Authority - The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect. Any rules promulgated by the commission shall not override the state's authority to govern prescription drugs or each state's Prescription Monitoring Program.
- B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the interstate commission.
- C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

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## ARTICLE X

### OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

#### A. Oversight

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law but, shall not override the state's authority to govern prescription drugs or the state's Prescription Monitoring Program.
2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission.
3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact or promulgated rules.

#### B. Default, Technical Assistance, Suspension and Termination - If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.
2. Provide remedial training and specific technical assistance regarding the default.
3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
5. The state which has been suspended or terminated is responsible for all dues, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.
6. The interstate commission shall not bear any costs relating to any state that has

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been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

7. The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

### C. Dispute Resolution

1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states.
2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution as appropriate.

### D. Enforcement

1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
2. The interstate commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.
3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

## ARTICLE XI

### MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

- A. Any state that has enacted Prescription Monitoring Program legislation through statute or regulation is eligible to become a member state of this compact.
- B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than six (6) of the states. Thereafter it shall become effective and binding on a state upon enactment of the compact into law by that state. The Governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.
- C. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

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### ARTICLE XII WITHDRAWAL AND DISSOLUTION

#### A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.
2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state.
3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.
4. The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.
5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

#### B. Dissolution of the Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.
2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

### ARTICLE XIII SEVERABILITY AND CONSTRUCTION

- A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.
- B. The provisions of this compact shall be liberally construed to effectuate its purposes.
- C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

### ARTICLE XIV BINDING EFFECT OF COMPACT AND OTHER LAWS

#### A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state

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that is not inconsistent with this compact.

### B. Binding Effect of the Compact

1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.
2. All agreements between the interstate commission and the member states are binding in accordance with their terms.
3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**Effective:** July 20, 2012

**History:** Created 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 12, effective July 20, 2012.

**Legislative Research Commission Note** (7/20/2012). 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 12, Article XI, B. states that the compact contained in this statute "shall become effective and binding upon legislative enactment of the compact into law by no less than six states." At the time of the codification of this statute, that threshold had not been met.

### **218A.391 Gubernatorial appointments to Prescription Monitoring Program Compact.**

The Governor shall be the appointing authority for those appointments Kentucky is entitled to make under KRS 218A.390, provided that all such appointments shall be subject to confirmation by the Senate.

**Effective:** July 20, 2012

**History:** Created 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 13, effective July 20, 2012.

## **Forfeited Property**

### **218A.405 Definitions for KRS 218A.405 to 218A.460.**

The following definitions apply in KRS 218A.405 to 218A.460 unless the context otherwise requires:

- (1) "Interest in property" includes:
  - (a) The interest of a person as a beneficiary under a trust, in which the trustee of the trust holds legal or record title of the personal or real property;
  - (b) The interest of a person or a beneficiary under any other trust arrangement under which any other person holds legal or record title to personal or real property for the benefit of the person; or
  - (c) The interest of a person under any other form of express fiduciary arrangement under which any other person holds legal or record title to personal or real property for the benefit of the person.
  - (d) Real property or an interest in real property shall be deemed to be located where the real property is located. Personal property or an interest in personal property



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shall be deemed to be located where the trustee is located, the personal property is located, or the instrument evidencing the right is located.

- (2) "Forfeiture lien notice" means the notice provided for in KRS 218A.450.
- (3) "Property" means everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, easements, franchises, incorporeal hereditaments, or any interest therein.
- (4) "Real property" means any real property located in the Commonwealth or any interest in real property, including any lease of, or mortgage upon, real property.
- (5) "Trustee" includes:
  - (a) Any person acting as trustee under a trust in which the trustee holds legal or record title to personal or real property;
  - (b) Any person who holds legal or record title to personal or real property in which any other person has an interest; or
  - (c) Any successor trustee.

The term "trustee" shall not include an assignee or trustee for an insolvent debtor, a guardian under the Uniform Veterans' Guardianship Act, or an executor, administrator, administrator with will annexed, testamentary trustee, curators, guardians, or committees, appointed by, or under control of, or accountable to a District Court.

**Effective:** July 13, 1990

**History:** Created 1990 Ky. Acts ch. 445, sec. 7, effective July 13, 1990.

### **218A.410 Property subject to forfeiture.**

- (1) The following are subject to forfeiture:
  - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state;
  - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state;
  - (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants;
  - (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and

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forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband;

- (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter;
- (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;
- (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection;
- (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
  - 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
  - 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;
  - 3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission; and
  - 4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana or salvia;
- (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him or her to have been committed or omitted without his or her knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is

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forfeitable under this paragraph; and

- (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana, synthetic drugs, or salvia, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.
- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he or she is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.
- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

**Effective:** April 11, 2012

**History:** Amended 2012 Ky. Acts ch. 108, sec. 13, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 45, sec. 12, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 13, effective April 13, 2010; and ch. 160, sec. 13, effective April 26, 2010. -- Amended 1990 Ky. Acts ch. 445, sec. 1, effective July 13, 1990. - Created 1984 Ky. Acts ch. 101, sec. 1, effective July 13, 1984.

### **218A.415 Procedure for seizure of property.**

- (1) Personal property subject to forfeiture under this chapter may be seized by any law enforcement agency upon process issued by any judge that is empowered to issue a warrant of arrest or search warrant and in whose jurisdiction the property is located. Seizure of personal property without process may be made if:
  - (a) The seizure is incident to an arrest or a search under a search warrant;
  - (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
  - (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
  - (d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture pursuant to this chapter.
- (2) Property taken or detained under this section shall not be subject to replevin, but shall be deemed to be in the custody of the law enforcement agency subject only to the

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orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the law enforcement agency may:

- (a) Remove the property to a place designated by it; or
  - (b) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.
- (3) Real property subject to forfeiture may be seized only pursuant to final judgment and order of forfeiture or upon order of the court having jurisdiction over the property. The order may be obtained pursuant to this subsection upon application of the Commonwealth.
- (a) Upon receipt of the application, the court shall immediately enter an order setting a date for hearing on the matter no fewer than five (5) days nor more than ten (10) days after the filing of the application. At the hearing:
    1. The court shall take evidence on the issues of whether the property named in the application is forfeit and seizure is necessary to preserve the property pending final judgment.
    2. The Commonwealth shall have the initial burden of showing the existence of probable cause for forfeiture of the property and the necessity of seizure. On the showing by the Commonwealth, the respondent shall have the burden of showing by a preponderance of the evidence that the property is not subject to forfeiture.
    3. Evidence at the seizure hearing may not be suppressed on the ground that its acquisition by search or seizure violated constitutional protections applicable in criminal cases relating to unreasonable searches or seizures.
    4. If the court makes a determination in favor of the Commonwealth, it shall enter an order authorizing the seizure of the property.
    5. The court may, in its discretion, permit the owner of the property to post security equal to the value of the property in lieu of seizure.
  - (b) A temporary seizure order pursuant to this section may be entered on application without notice or an opportunity for a hearing if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture and the need to preserve the availability of property through immediate seizure outweighs the hardship that an immediate seizure may cause the owner. The temporary order shall expire ten (10) days after the date on which it is entered or at the time of the hearing provided for in paragraph (a) of this subsection.

**Effective:** July 13, 1990

**History:** Amended 1990 Ky. Acts ch. 445, sec. 2, effective July 13, 1990. -- Created 1984 Ky. Acts ch. 101, sec. 2, effective July 13, 1984.

**218A.420 Procedure for disposal of seized and forfeited property -- Distribution of proceeds -- Administrative regulations on use of funds -- Adoption of policies for seizure of forfeitable assets -- Asset-forfeiture training -- Vehicles -- Joint operations.**

- (1) All property which is subject to forfeiture under this chapter shall be disposed of in accordance with this section.
- (2) All controlled substances which are seized and forfeited under this chapter shall be ordered destroyed by the order of the trial court unless there is a legal use for them, in which case they may be sold to a proper buyer as determined by the Cabinet for Health and Family Services by promulgated regulations. Property other than controlled substances may be destroyed on order of the trial court.
- (3) When property other than controlled substances is forfeited under this chapter and not retained for official use, it may be sold for its cash value. Any sale shall be a public sale advertised pursuant to KRS Chapter 424.
- (4) Coin, currency, or the proceeds from the sale of property forfeited shall be distributed as follows:
  - (a) Eighty-five percent (85%) shall be paid to the law enforcement agency or agencies which seized the property, to be used for direct law enforcement purposes; and
  - (b) Fifteen percent (15%) shall be paid to the Office of the Attorney General or, in the alternative, the fifteen percent (15%) shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to subsection (9) of this section. Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.

The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

- (5) The Attorney General, after consultation with the Prosecutors Advisory Council, shall promulgate administrative regulations to establish the specific purposes for which these funds shall be expended.
- (6) Each state and local law enforcement agency that seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving any forfeited property, adopt policies relating to the seizure, maintenance, storage, and care of property pending forfeiture which are in compliance with or substantially comply with the model policy for seizure of forfeitable assets by law enforcement agencies published by the Department of Criminal Justice Training. However, a state or local law enforcement agency may adopt policies that are more restrictive on the agency than those contained in the model policy and that fairly and uniformly implement the provisions of this chapter.
- (7) Each state or local law enforcement agency that seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving forfeited property, have one

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- (1) or more officers currently employed attend asset-forfeiture training approved by the Kentucky Law Enforcement Council, which shall approve a curriculum of study for asset-forfeiture training.
- (8) (a) Other provisions of this section notwithstanding and subject to the limitations of paragraph (b) of this subsection, any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter may be retained by the seizing agency for official use or sold within its discretion. Proceeds from the sale shall remain with the agency. The moneys shall be utilized for purposes consistent with KRS 218A.405 to 218A.460. The seizing agency shall be required to pay any bona fide perfected security interest on any vehicle so forfeited.
- (b) Any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter and which has been determined by a state or local law enforcement agency to be contaminated with methamphetamine as defined by KRS 218A.1431 shall not be used, resold, or salvaged for parts, but instead shall be destroyed or salvaged only for scrap metal. Any vehicle which is forfeited pursuant to this chapter and has only transported prepackaged materials or products, precursors, or any other materials which have not been subjected to extraction either directly or indirectly from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis extraction, shall not be deemed contaminated with methamphetamine under this section.
- (9) When money or property is seized in a joint operation involving more than one (1) law enforcement agency or prosecutorial office, the apportionment of funds to each pursuant to subsection (4) of this section shall be made among the agencies in a manner to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

**Effective:** June 24, 2015

**History:** Amended 2015 Ky. Acts ch. 100, sec. 1, effective June 24, 2015. -- Amended 2007 Ky. Acts ch. 124, sec. 13, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 99, sec. 551, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 491, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 445, sec. 3, effective July 13, 1990. -- Created 1984 Ky. Acts ch. 101, sec. 3, effective July 13, 1984.

### **218A.425 Valuation of property retained for official use.**

When seized property is retained for official use by law enforcement agencies under this chapter the value of the property shall be determined as follows:

- (1) Vehicles shall be valued at their tax value;
- (2) All other property shall be valued at its fair cash value by the property valuation administrator;
- (3) Property shall be valued as of the time of sale by the law enforcement agency.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 101, sec. 4, effective July 13, 1984.

**218A.430 Repealed, 1990.**

**218A.435 Repealed, 2007.**

**218A.440 Statement filed listing property seized -- Investigation of utilization of proceeds.**

- (1) Each law enforcement agency seizing money or property pursuant to KRS 218A.415 shall, at the close of each fiscal year, file a statement with the Auditor of Public Accounts, and with the secretary of justice and public safety containing, a detailed listing of all money and property seized in that fiscal year and the disposition thereof. The listing shall identify all property so seized.
- (2) Any agency failing to report as required by this section shall be liable to the state for the full value of all property and money so seized. The Attorney General shall institute civil actions for recovery of money or property obtained or retained in violation of KRS 218A.405 to 218A.460.
- (3) The Auditor of Public Accounts, the secretary of justice and public safety or the Attorney General may at any time initiate an inquiry to determine that property is being forfeited as required by KRS 218A.405 to 218A.460.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 85, sec. 255, effective June 26, 2007; and ch. 124, sec. 15, effective June 26, 2007. -- Amended 1990 Ky. Acts ch. 445, sec. 5, effective July 13, 1990. -- Created 1984 Ky. Acts ch. 101, sec. 7, effective July 13, 1984.

**Legislative Research Commission Note (6/26/2007).** This section was amended by 2007 Ky. Acts chs. 85 and 124, which do not appear to be in conflict and have been codified together.

**218A.450 Lien on forfeited property -- Action by trustee -- Release of lien.**

- (1) The Commonwealth shall have a lien on all property, real or personal, which is forfeit to the Commonwealth by virtue of KRS 218A.410. This lien shall not be defeated by gift, devise, sale, alienation, or any means whatever except by sale to a subsequent bona fide purchaser for value without actual or constructive notice of the lien. The lien shall commence from the time the property becomes forfeit and shall have priority over any other obligation or liability following that time but shall be subordinate to any then existing perfected security interest on the property that is not itself subject to forfeiture.
- (2) The Commonwealth may file on the official records of any one (1) or more counties a forfeiture lien notice of the lien created in subsection (1) of this section. No filing fee or other charge shall be required as a condition for filing the forfeiture lien notice, and the appropriate clerk shall, upon the presentation of a forfeiture lien notice, immediately record it in the official records.
- (3) The forfeiture lien notice shall be signed by an attorney authorized to institute a forfeiture action on behalf of the Commonwealth. The notice shall set forth the following information:
  - (a) A description of the property which is subject to the lien;

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- (b) The name of the owner of record of the property subject to the lien if known;
  - (c) The date and place of seizure or location of any property not seized but subject to forfeiture;
  - (d) The violation of law alleged with respect to forfeiture of the property;
  - (e) A reference to any judicial proceeding pending against the property with reference to forfeiture, including the name of the county or counties where the proceeding has been brought, and, if known at the time of filing of the forfeiture lien notice, the case number of the proceeding, and the name of the defendant;
  - (f) The name and address of the attorney filing the forfeiture lien notice.
- (4) The attorney filing the forfeiture lien notice shall, as soon as practicable after filing, furnish to any owner or lienholder of record either a copy of the recorded notice or a copy of the notice with annotation on it of the county or counties in which the notice has been recorded. Failure to provide a copy of the notice shall not invalidate or otherwise affect the lien.
- (5) In conjunction with any forfeiture proceeding, an attorney representing the Commonwealth may file, without prior court order, in any county, a lis pendens under the provisions of KRS 382.440, and any person acquiring an interest in the subject real property or interest in it, if the real property or interest is acquired subsequent to the filing of lis pendens, shall take the interest subject to any subsequent judgment of forfeiture.
- (6) (a) A trustee who acquires actual knowledge that a forfeiture lien notice or a forfeiture proceeding has been filed against any property to which he holds legal or record title, shall immediately furnish to the attorney representing the Commonwealth the following:
- 1. The name and address of the holder of the beneficial interest in the property, as known to the trustee;
  - 2. The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the personal or real property;
  - 3. If requested by the attorney representing the Commonwealth, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the personal or real property.
- (b) Any trustee who knowingly fails to comply with the provisions of this section is guilty of a Class D felony.
- (7) Any trustee who knowingly transfers or conveys title to personal or real property for which a forfeiture lien notice has been filed at the time of the transfer or conveyance in the county where the personal or real property is located shall be liable to the Commonwealth for the greater of:
- (a) The amount of proceeds received directly from the property named in the forfeiture lien notice as a result of the transfer or conveyance;
  - (b) The amount of proceeds received by the trustee as a result of the transfer or conveyance and distributed to the holder of the beneficial interest in the property named in the forfeiture lien notice; or
  - (c) The fair market value of the interest of the property named in the forfeiture lien



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notice transferred or conveyed;

but if the trustee transfers or conveys the personal or real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the discretion of the beneficiary or his designee, the trustee's liability shall not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.

- (8) The Commonwealth may bring a civil proceeding in any Circuit Court against the trustee to recover from the trustee the amounts set forth in subsection (7) of this section, and the Commonwealth shall also be entitled to recover investigative costs and attorney's fees incurred.
- (9)
  - (a) The provisions of this section shall not apply to any transfer or conveyance by a trustee under a court order, unless the court order is entered in an action between the trustee and the beneficiary.
  - (b) Unless the trustee has actual knowledge that property is named in a forfeiture lien notice, this section shall not apply to:
    1. Any conveyance by a trustee required under the terms of any trust agreement where the trust agreement is a matter of public record prior to the filing of any forfeiture lien notice; or
    2. Any transfer or conveyance by a trustee to all of the persons who own a beneficial interest in the trust.
- (10) The term of a forfeiture lien notice shall be for a period of six (6) years from the date of filing unless a renewal forfeiture lien notice has been filed, and, in such case, the term of the renewal forfeiture lien notice shall be for a period of six (6) years from the date of its filing. The Commonwealth shall be entitled to only one (1) renewal of the forfeiture lien notice.
- (11) The attorney who filed the forfeiture lien notice may release in whole or part any forfeiture lien notice or may release any personal or real property or interest in it from the forfeiture lien notice upon the terms and conditions he determines. Any executed release of a forfeiture lien notice shall be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of forfeiture lien notice.
- (12) If no court proceeding to obtain an order of forfeiture is pending against the property named in a forfeiture lien notice at the time of its filing, for purposes only of contesting the notice, it shall be treated as a seizure pursuant to KRS 218A.415.
- (13) An agent of the Commonwealth shall have a continuing right to inspect property against which a forfeiture lien has been placed pursuant to this section and the Commonwealth shall have the authority to stay any civil foreclosure or repossession actions concerning property subject to the lien pending final order of forfeiture.

**Effective:** July 13, 1990

**History:** Created 1990 Ky. Acts ch. 445, sec. 8, effective July 13, 1990.

### **218A.460 Jurisdiction -- Ancillary hearing -- Application of forfeiture procedures.**

- (1) Jurisdiction in all forfeiture proceedings shall vest in the court where the conviction occurred regardless of the value of property subject to forfeiture.
- (2) Following conviction of a defendant for any violation of this chapter, the court shall

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conduct an ancillary hearing to forfeit property if requested by any party other than the defendant or Commonwealth. The Commonwealth's attorney, or county attorney if the proceeding is in District Court, shall initiate the hearing by filing a motion requesting entry of a final order of forfeiture upon proof that the property was being used in violation of the provisions of this chapter. The final order of forfeiture by the court shall perfect in the Commonwealth or appropriate law enforcement agency, as provided in KRS 218A.420, right, title, and interest in and to the property. The Commonwealth may transfer any real property so forfeited by deed of general warranty.

- (3) If the property subject to forfeiture is of a type for which title or registration is required by law, or if the owner of the property is known in fact to the Commonwealth at the time of the hearing, or if the property is subject to a perfected security interest in accordance with the Uniform Commercial Code, KRS Chapter 355, the attorney representing the Commonwealth shall give notice of the ancillary hearing by registered mail, return receipt requested, to each person having such interest in the property, and shall publish notice of the forfeiture once each week for two (2) consecutive weeks in a newspaper of general circulation as defined in KRS Chapter 424 in the county where the forfeiture proceedings will occur. The notice shall be mailed and first published at least four (4) weeks prior to the ancillary hearing and shall describe the property; state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the ancillary hearing will be held and the date of the hearing. However, the Commonwealth shall be obligated only to make a diligent search and inquiry as to the owner of subject property; and if, after diligent search and inquiry, the Commonwealth is unable to ascertain the owner, the actual notice requirements by mail shall not be applicable.
- (4) Unless otherwise expressly provided in KRS 218A.410, the burden shall be upon claimant to property to prove by preponderance of the evidence that it is not subject to forfeiture. Any claimant other than a person who holds title or registration to the property or who has a perfected security interest in the property shall be required to post a bond equivalent to ten percent (10%) of the appraised value of the property with the clerk of the court before being allowed to litigate the claim. The bond shall offset the costs of litigation incurred by the Commonwealth. A claimant may proceed in forma pauperis with leave of court upon sworn petition subject to the applicable rules and subject to the provisions of law concerning perjury.
- (5) The procedures for forfeiture proceedings as established in KRS 218A.405 to 218A.460 shall apply to any property subject to forfeiture which is pending as of July 13, 1990.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 124, sec. 16, effective June 26, 2007. -- Created 1990 Ky. Acts ch. 445, sec. 9, effective July 13, 1990.

**Drug Paraphernalia**

**218A.500 Definitions for KRS 218A.500 and 218A.510 -- Unlawful practices -- Substance abuse treatment outreach program -- Informing peace officer about presence of needles or other sharp objects before search --Retail pharmacy exception -- Penalties.**

As used in this section and KRS 218A.510:

(1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

It includes but is not limited to:

- (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
- (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
- (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and
- (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured

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metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.

(2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

(3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(5) (a) This section shall not prohibit a local health department from operating a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes.

(b) To operate a substance abuse treatment outreach program under this subsection, the local health department shall have the consent, which may be revoked at any time, of the local board of health and:

1. The legislative body of the first or home rule class city in which the program would operate if located in such a city; and
2. The legislative body of the county, urban-county government, or consolidated local government in which the program would operate.

(c) Items exchanged at the program shall not be deemed drug paraphernalia under this section while located at the program.

(6) (a) Prior to searching a person, a person's premises, or a person's vehicle, a peace officer may inquire as to the presence of needles or other sharp objects in the areas to be searched that may cut or puncture the officer and offer to not charge a person with possession of drug paraphernalia if the person declares to the officer the presence of the needle or other sharp object. If, in response to the offer, the person admits to the presence of the needle or other sharp object prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object.

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- (b) The exemption under this subsection shall not apply to any other drug paraphernalia that may be present and found during the search or to controlled substances present in other than residual or trace amounts.
- (7) (a) This section shall not prohibit the retail sale of hypodermic syringes and needles without a prescription in pharmacies.
  - (b) Hypodermic syringe and needle inventory of a pharmacy shall not be deemed drug paraphernalia under this section.
- (8) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 56, sec. 2, effective June 29, 2021. -- Amended 2015 Ky. Acts ch. 66, sec. 18, effective March 25, 2015. -- Amended 2010 Ky. Acts ch. 149, sec. 14, effective April 13, 2010; and ch. 160, sec. 14, effective April 26, 2010. -- Amended 1992 Ky. Acts ch. 441, sec. 8, effective July 14, 1992. -- Created 1982 Ky. Acts ch. 413, sec. 2, effective July 15, 1982

### **218A.510 Factors to be considered in determining whether object is drug paraphernalia.**

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of KRS 218A.500 (2), (3) or (4);
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of KRS 218A.500(2), (3) or (4); the innocence of an owner, or of anyone in control of the object, as to a direct violation of KRS 218A.500(2), (3) or (4) shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

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- (13) The existence and scope of legitimate uses for the object in the community;
- (14) Expert testimony concerning its use.

**Effective:** July 15, 1982

**History:** Created 1982 Ky. Acts ch. 413, sec. 3, effective July 15, 1982.

### Penalties

#### **218A.990 Repealed, 1992.**

#### **218A.991 Revocation or denial of operator's license.**

- (1) Whenever a person who is seventeen (17) years of age or younger but not less than fourteen (14) years of age is convicted of a violation of any offense in this chapter or is adjudicated delinquent as a result of any act which would be an offense under this chapter, the court may, in addition to any other penalty:
  - (a) If the person has a motor vehicle or motorcycle operator's license, recommend the revocation of the license for a period not to exceed one (1) year, if it is the person's first offense;
  - (b) If the person has a motor vehicle or motorcycle operator's license, recommend the revocation of the license for two (2) years, if it is a second or subsequent offense so long as the suggested period of revocation does not extend beyond the person's eighteenth birthday; and
  - (c) If the person has no motor vehicle or motorcycle operator's license, in the event of a first offense, recommend that no such license shall be issued to such person for the period described in paragraph (a) of this subsection and in the event of a second or subsequent offense, recommend that no license shall be issued to such person for the period described in paragraph (b) of this subsection.
- (2) Each court recommending the revocation of a motor vehicle operator's license or motorcycle operator's license or recommending the denial of such license pursuant to this section shall notify the Transportation Cabinet of the violation and the terms of the suggested revocation or denial.
- (3) Upon notice of such recommendation, the Transportation Cabinet shall forthwith revoke the license of that person, or deny to that person a license for the period recommended by the court. If through inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.
- (4) Licenses revoked pursuant to this section shall be retained by the Transportation Cabinet for the period of revocation and shall be returned to the person after the expiration of the revocation period upon payment of the reinstatement fees and satisfaction of other requirements for the reinstatement of revoked licenses as may be required by the Transportation Cabinet.
- (5) Revocations of operator's licenses and denials of licenses pursuant to this section shall be in addition to any other suspension, revocation, or denial of motor vehicle or motorcycle operator's licenses authorized by law.

**Effective:** July 13, 1984

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**History:** Created 1984 Ky. Acts ch. 115, sec. 1, effective July 13, 1984.

### **218A.992 Enhancement of penalty when in possession of a firearm at the time of commission of offense.**

- (1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:
  - (a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or
  - (b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.
- (2) The provisions of this section shall not apply to a violation of KRS 218A.210, 218A.1450, 218A.1451, or 218A.1452.

**Effective:** April 11, 2012

**History:** Amended 2012 Ky. Acts ch. 108, sec. 14, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 45, sec. 13, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 15, effective April 13, 2010; and ch. 160, sec. 15, effective April 26, 2010. -- Amended 2005 Ky. Acts ch. 150, sec. 12, effective June 20, 2005. -- Created 1994 Ky. Acts ch. 396, sec. 5, effective July 15, 1994.

### **218A.993 Penalty for chapter provisions without a specific penalty.**

Any person who violates any provision of this chapter for which a specific penalty is not otherwise provided shall be guilty of a Class B misdemeanor.

**Effective:** July 15, 1994

**History:** Created 1994 Ky. Acts ch. 412, sec. 1, effective July 15, 1994.

### **218A.994 Applicability of penalties in KRS Chapter 506 to this chapter.**

Unless this chapter provides a specific penalty for the same act, the provisions of KRS Chapter 506 shall apply to offenses under this chapter.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 301, sec. 21, effective July 15, 1998.