

KENTUCKY

Controlled Substances Act
And
Associated Administrative Regulations



Cabinet For Health And Family Services
Office Of The Inspector General
Drug Enforcement And Professional Practices Branch

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FOR KRS CHAPTER 218A

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FOR 902 KAR CHAPTER 55

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KRS Chapter 218A

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KENTUCKY ADMINISTRATIVE REGULATIONS
TITLE 902
CHAPTER 55
CONTROLLED SUBSTANCES

- 902 KAR 55:010. Licensing of manufacturers and wholesalers
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- 902 KAR 55:020. Schedule II substances
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KRS 218a

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.

- (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 listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) "Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;
- (6) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (7) (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;
- (8) "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;
- (9) "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;
 - (10) "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;
 - (11) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
 - (12) "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;
 - (13) "Drug" means:
 - (a) Substances recognized as drugs in the official United States Pharmacopoeia, 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;
- (14) "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;
 - (15) "Hazardous chemical substance" includes any chemical substance used or intended 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;
 - (16) "Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;
 - (17) "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;

- (18) "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;
- (19) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (20) "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 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;
- (21) "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 industrial hemp as defined in KRS 260.850;
- (22) "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;
- (23) "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;
- (24) "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;
- (25) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (26) "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;
- (27) "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.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (28) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (29) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (30) "Physical injury" has the same meaning it has in KRS 500.080;
- (31) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (32) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (33) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced practice registered nurse as authorized under KRS 314.011, 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;
- (34) "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;

- (35) "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;
- (36) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (37) "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;
- (38) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (39) "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;
- (40) "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*;
- (41) "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;
- (42) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;

- (43) "Serious physical injury" has the same meaning it has in KRS 500.080;
- (44) "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-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) Naphthylmethylindoles: 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 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;
- (45) "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, alkylenedioxy, 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); 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;
- (46) "Synthetic drugs" means any synthetic cannabinoids or piperazines or any synthetic cathinones;
 - (47) "Telehealth" has the same meaning it has in KRS 311.550;
 - (48) "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;
 - (49) "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;
 - (50) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
 - (51) "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 25, 2013

History: 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

Legislative Research Commission Note (6/25/2013). This statute was amended by 2013 Ky. Acts chs. 26 and 134, which do not appear to be in conflict and have been codified together.

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 similar to synthetic drugs.

- (1) The Cabinet for Health and Family Services shall administer this chapter and may by regulation add substances to or delete or reschedule all substances enumerated in the schedules set forth in 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 dependence liability; and
 - (h) 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) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the Cabinet for Health and Family Services, the Cabinet for Health and Family Services may similarly control the substance under this chapter by regulation. If hydrocodone or any drug containing hydrocodone is rescheduled to Schedule II in this manner, the prescriptive authority existing on March 19, 2013, of any practitioner licensed under the laws of the Commonwealth to prescribe, dispense, or administer hydrocodone or drugs containing hydrocodone shall remain inviolate and shall continue to exist to the same extent as if those drugs had remained classified as Schedule III controlled substances.
- (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 a substance substantially similar to a synthetic cannabinoid or piperazine or a synthetic cathinone. 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: March 19, 2013

History: 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.

218A.030 Controlled substances -- How scheduled.

The controlled substances listed or to be listed in the schedules provided for in this chapter are included by whatever official, common, usual, chemical, or trade name designated.

History: Created 1972 Ky. Acts ch. 226, sec. 4.

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 Schedule I controlled substances.

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

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine;
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphenol; Methyl-desorphine; Methyl-dihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon;
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including but not limited to Methcathinone, Cat, and Ephedrone); synthetic drugs; or salvia;
- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid; and
- (5) Any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (a) 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2,5H-NBOMe);
- (b) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2,5I-NBOMe);
- (c) -(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2,5B-NBOMe); or
- (d) -(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2,5C-NBOMe).

Effective: March 19, 2013

History: Amended 2013 Ky. Acts ch. 26, sec. 2, effective March 19, 2013. -- Amended 2012 Ky. Acts ch. 108, sec. 5, effective April 11, 2012. -- Amended 2011 Ky. Acts ch. 45, sec. 4, effective March 16, 2011. -- Amended 2010 Ky. Acts ch. 149, sec. 5, effective April 13, 2010; and ch. 160, sec. 5, effective April 26, 2010. -- Amended 2005 Ky. Acts ch. 99, sec. 530, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 401, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 426, sec. 473, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 412, sec. 3, effective July 15, 1994. Amended 1992 Ky. Acts ch. 441, sec. 2, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 161, sec. 1, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 6.

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;
- (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 Schedule II controlled substances.

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

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by 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), but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation: Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone-Intermediate; 4-cyano-2-dimethylamino-4; 4-diphenyl butane; Moramide-Intermediate; 2-methyl-3-morpholino-1; 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine, Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
 - (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
 - (b) Phenmetrazine and its salts;
 - (c) Methylphenidate.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 532, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 475, effective July 15, 1998 and ch. 606, sec. 67, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 412, sec. 4, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 441, sec. 3, effective July 14, 1992. -- Amended 1978 Ky. Acts ch. 286, sec. 1, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts

ch. 226, sec. 8.

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 Schedule III controlled substances.

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

- (1) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system: Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid; chlorhexadol; glutethimide; lysergic acid; lysergic acid amide; methyprylon; sulfondiethylmethane; sulfonethylmethane; sulfonmethane.
- (2) Nalorphine.
- (3) Pentazocine (parenteral or injectable form only).
- (4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - (a) Not more than one and four-fifths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (b) Not more than one and four-fifths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts;
 - (c) 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;
 - (d) 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;
 - (e) Not more than one and four-fifths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (f) Not more than three hundred (300) milligrams of ethylmorphine, 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 ingredients in recognized therapeutic amounts;
 - (g) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (h) Not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.

- (i) The Cabinet for Health and Family Services may except by regulation any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (1) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.
- (5) Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroid substances, or any isomer, ester, salt, or derivative thereof:
- (a) Boldenone;
 - (b) Clostebol;
 - (c) Dehydrochlormethyltestosterone;
 - (d) Drostanolone;
 - (e) Ethylestrenol;
 - (f) Fluoxymesterone;
 - (g) Formebolone;
 - (h) Mesterolone;
 - (i) Methandienone;
 - (j) Methandriol;
 - (k) Methenolone;
 - (l) Methyltestosterone;
 - (m) Mibolerone;
 - (n) Nandrolone;
 - (o) Norethandrolone;
 - (p) Oxandrolone;
 - (q) Oxymesterone;
 - (r) Oxymetholone;
 - (s) Stanolone;
 - (t) Stanozolol;
 - (u) Testolactone;
 - (v) Testosterone; and
 - (w) Trenbolone.
- (6) This section shall not apply to any material, compound, mixture, or preparation containing any quantity of an anabolic steroid substance, or any isomer, ester, salt, or derivative thereof that is expressly intended for administration through implant to livestock or other nonhuman species, and that is approved by the United States Food and Drug Administration for such use.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 534, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 477, effective July 15, 1998. -- Amended

1992 Ky. Acts ch. 441, sec. 4, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 160, sec. 1, effective July 13, 1990. -- Amended 1980 Ky. Acts ch. 161, sec. 2, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 10.

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 Schedule IV controlled substances.

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

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system: chloral betaine; chloral hydrate; ethchlorvynol; ethinamate; meprobamate; paraldehyde; petrichloral.
- (2) The Cabinet for Health and Family Services may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subsection (1) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 536, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 479, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 12.

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 Schedule V controlled substances.

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services the controlled substances listed in this section are included in Schedule V:

Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone: Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 538, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 481, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art VI, sec. 107(3); and ch. 308, sec. 40. -- Created 1972 Ky. Acts ch. 226, sec. 14.

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.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 synthetic drugs or 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 synthetic drugs or 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.

Effective: April 11, 2012

History: 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.
 - (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.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 heroin or 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 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) Except as provided in paragraph (b) of this subsection, any person who violates the provisions 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.
 - (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 offense or subsequent offense.

Effective: June 8, 2011

History: 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, 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 a Class A misdemeanor for the first offense and 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: June 8, 2011

History: 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.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;
 - (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)

Catchline at repeal: Theft of a controlled substance -- Not considered theft under KRS Chapter 514.

History: Repealed 2013 Ky. Acts ch. 82, sec. 2, effective June 25, 2013. -- Amended 2011 Ky. Acts ch. 2, sec. 15, effective June 8, 2011. -- Created 1998 Ky. Acts ch. 301, sec. 15, effective July 15, 1998.

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.

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.

Catchline at repeal: Trafficking in synthetic cannabinoid agonists or piperazines --
Penalty.

History: Repealed 2012 Ky. Acts ch. 108, sec. 17, effective April 11, 2012. --
Created 2010 Ky. Acts ch. 149, sec. 1, effective April 13, 2010.

218A.1427 Repealed, 2012.

Catchline at repeal: Possession of synthetic cannabinoid agonists or piperazines --
Penalty.

History: Repealed 2012 Ky. Acts ch. 108, sec. 17, effective April 11, 2012. --
Amended 2011 Ky. Acts ch. 2, sec. 17, effective June 8, 2011. -- Created 2010
Ky. Acts ch. 149, sec. 2, effective April 13, 2010.

218A.1428 Repealed, 2012.

Catchline at repeal: Manufacture of synthetic cannabinoid agonists or piperazines
-- Penalty.

History: Repealed 2012 Ky. Acts ch. 108, sec. 17, effective April 11, 2012. --
Created 2010 Ky. Acts ch. 149, sec. 3, effective April 13, 2010.

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 A misdemeanor for the first offense and a Class D 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 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 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: April 11, 2012

History: 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
 - (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.

Catchline at repeal: Trafficking in methamphetamine -- Penalties.

History: Repealed 2000 Ky. Acts ch. 169, sec. 2, effective July 14, 2000. --
Created 1998 Ky. Acts ch. 606, sec. 60, effective July 15, 1998.

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 or combination of drug products containing more than nine (9) grams of ephedrine, 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.1442, 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;
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: June 20, 2005

History: 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
 - (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 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.

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 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 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

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.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

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.

Catchline at repeal: Trafficking in substituted cathinones -- Penalty.

History: Repealed 2012 Ky. Acts ch. 108, sec. 17, effective April 11, 2012. --
Created 2011 Ky. Acts ch. 45, sec. 1, effective March 16, 2011.

218A.1454 Repealed, 2012.

Catchline at repeal: Possession of substituted cathinones -- Penalty.

History: Repealed 2012 Ky. Acts ch. 108, sec. 17, effective April 11, 2012. --
Created 2011 Ky. Acts ch. 45, sec. 2, effective March 16, 2011.

218A.1455 Repealed, 2012.

Catchline at repeal: Manufacturing substituted cathinones Penalty.

History: Repealed 2012 Ky. Acts ch. 108, sec. 17, effective April 11, 2012. --
Created 2011 Ky. Acts ch. 45, sec. 3, effective March 16, 2011.

218A.150 License required to manufacture controlled substances.

- (1) No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce, or prepare controlled substances, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Cabinet for Health and Family Services. The Cabinet for Health and Family Services may adopt regulations and set reasonable fees relating to the issuance and renewal of such licenses. All such licenses shall expire on June 30, following the date of issue, unless renewed. All such fees shall be deposited in a revolving fund to be used by the cabinet in carrying out the provisions of this chapter.
- (2) No person shall manufacture any controlled substance except under the direct supervision of a pharmacist.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 539, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 482, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 16.

218A.160 Criteria for issuance of license -- Appeal.

- (1) No manufacturer's or wholesaler's license shall be issued pursuant to this chapter unless the applicant therefor has furnished satisfactory proof:
 - (a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to controlled substances and is of good moral character or, if the applicant be an association or corporation that the managing officers are of good moral character;
 - (b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.
- (2) No license shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.
- (3) The Cabinet for Health and Family Services may suspend or revoke any license for cause.
- (4) Upon appeal of any action taken under authority of this section, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 540, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 483, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 129, effective July 15, 1996. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 17.

218A.170 Sale, distribution, administration, or prescription of controlled substances by licensed manufacturers, distributors, wholesalers, pharmacists, or practitioners.

- (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 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.
- (4) 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.
- (5) 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.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 301, sec. 23, effective July 15, 1998. --
Created 1972 Ky. Acts ch. 226, sec. 18.

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 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) 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.
- (5) Within twenty-four (24) months of the National Council for Prescription Drug Programs developing and making available national standards for electronic prior authorization, each governmental unit of the Commonwealth promulgating administrative regulations relating to electronic prescribing shall consider such electronic prescribing and electronic prior authorization standards 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: July 12, 2012

History: 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 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 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 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 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: March 4, 2013

History: 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 -- 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) 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.
- (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 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: March 4, 2013

History: 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 methamphetamine or controlled substance in Schedule II may be dispensed without the written, facsimile, or electronic prescription of a practitioner. A prescription for a controlled substance in Schedule II may be dispensed by a facsimile prescription only as specified in administrative regulations promulgated by the cabinet. 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 and facsimile prescriptions for controlled substances shall be dated and signed by the practitioner on the date issued and shall bear 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.
- (5) All oral, facsimile, or electronic prescriptions 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 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 8, 2011

History: 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.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

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.

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 -- Pilot or continuing project -- Continuing education programs -- Reports of failure to comply with section -- Administrative regulations.

- (1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy. 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 dispenser within the Commonwealth who is licensed, permitted, or otherwise authorized to prescribe or dispense a controlled substance to a person in Kentucky shall report to the Cabinet for Health and Family Services the data required by this section, except that 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 drug, other than any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, dispensed by a practitioner at 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; 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 federalwide 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) Data for each controlled substance that is dispensed shall include but not be limited to the following:
 - (a) Patient identifier;
 - (b) National drug code of the drug dispensed;
 - (c) Date of dispensing;
 - (d) Quantity dispensed;
 - (e) Prescriber; and

- (f) Dispenser.
- (5) 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.
- (6) 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, 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 peace officer 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 (7) 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 requests information and certifies that the requested information is for the purpose of:
 - 1. Providing medical or pharmaceutical treatment to a bona fide current or prospective patient; or
 - 2. 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.
- (7) 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

- (b) Indicative of improper, inappropriate, or illegal prescribing or dispensing practices by a practitioner or drug seeking by a Medicaid recipient.
- (8) 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 (6)(b) of this section who is authorized to receive data or a report may share that information with any other persons specified in subsection (6)(b) of this section authorized to receive data or a report if the persons specified in subsection (6)(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 (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(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 (6)(e) of this section may share the report with the patient or person authorized to act on the patient's behalf and place the report in the patient's medical record, with that individual report then being 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.
- (9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(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.
- (10) 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.

- (11) Intentional failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.
- (12) Intentional disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.
- (13) (a) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, may submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot or continuing project to study, create, or maintain a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances.
 - (b) The pilot project shall:
 - 1. Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and
 - 2. Study the use of an interactive system that includes a relational data base with query capability.
 - (c) Funding to create or maintain a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances may be sought for a statewide system or for a system covering any geographic portion or portions of the state.
- (14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.
- (15) 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.
- (16) (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.

- (17) 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.
- (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 (8) of this section to request the correction of inaccurate information contained in the system relating to that patient; and
 - (b) Beginning July 1, 2013, a requirement that data be reported to the system under subsection (3) of this section within one (1) day of dispensing.

Effective: March 4, 2013

History: 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 (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;
 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 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) 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;
 - (c) 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;

- (d) 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;
 - (e) 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;
 - (f) 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;
 - (g) 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
 - (h) 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) 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.
- (5) 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.
 - (6) 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.
 - (7) 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: March 4, 2013

History: 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 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(7) 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.
 - (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 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.

Effective: July 20, 2012

History: 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 or 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 with an organization administering the exchange of interstate data on behalf of the prescription monitoring program of one (1) or more states, to share prescription drug monitoring information if the other state's prescription drug monitoring program or the organization's data exchange program is compatible with the program in Kentucky. If the secretary elects to evaluate the prescription drug monitoring program of another state or organization as authorized by this section, priority shall be given to a state that is contiguous with the borders of the Commonwealth or an organization that offers connectivity with a contiguous state.
- (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;
 - (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) The secretary shall prepare an annual report to the Governor and the Legislative Research Commission that summarizes any agreement under this section and that analyzes the effectiveness of that agreement in monitoring the prescribing and dispensing of controlled substances in the Commonwealth.
- (5) Any agreement between the cabinet and another state 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 20, 2012

History: 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, effective July 13, 2004.

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.

Catchline at repeal: Controlled substances -- Violation -- Use of confidential informants.

History: Repealed 1990 Ky. Acts ch. 88, secs. 92 and 93, effective July 1, 1992. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 209, effective January 2, 1978. -- Created 1972 Ky. Acts ch. 226, sec. 28.

Note: Repeal of this section became effective July 1, 1992, in compliance with 1992 Ky. Acts ch. 324, secs. 30 and 33.

218A.270 Repealed, 1984.

Catchline at repeal: Substances and property, subject to forfeiture -- Procedure and exemptions.

History: Repealed 1984 Ky. Acts ch. 101, sec. 8, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 419, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 124, sec. 1, effective June 17, 1978. -- Created 1972 Ky. Acts ch. 226, sec. 29.

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 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 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.

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 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

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 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 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 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.
- 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;
- 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

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 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.

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 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.

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 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.

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 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 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 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 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 (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) Other provisions of this section notwithstanding, 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.
 - (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 26, 2007

History: 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.

Catchline at repeal: Maximum ceilings on proceeds.

History: Repealed 1990 Ky. Acts ch. 445, sec. 10, effective July 13, 1990. --
Created 1984 Ky. Acts ch. 101, sec. 5, effective July 13, 1984.

218A.435 Repealed, 2007.

Catchline at repeal: Asset forfeiture trust fund -- Management -- Distribution.

History: Repealed 2007 Ky. Acts ch. 124, sec. 17, effective June 26, 2007; amended 2007 Ky. Acts ch. 85, sec. 254, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 99, sec. 552, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 492, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 211, sec. 80, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 445, sec. 6, effective July 13, 1990. -- Created 1984 Ky. Acts ch. 101, Ky. Acts ch. 6, effective July 13, 1984.

Legislative Research Commission Note (6/26/2007). Under KRS 446.260, the repeal of this section in 2007 Ky. Acts ch. 124 prevails over its amendment in 2007 Ky. Acts ch. 85.

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;
 - (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 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 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 be 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.

218A.500 Definitions for KRS 218A.500 and 218A.510 -- Unlawful practices -- 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 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; bonges; 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) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.

Effective: April 26, 2010

History: 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.

Legislative Research Commission Note (4/26/2010). This section was amended by 2010 Ky. Acts chs. 149 and 160, which do not appear to be in conflict and have been codified together.

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;
- (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.

218A.990 Repealed, 1992.

Catchline at repeal: Penalties.

History: Repealed 1992 Ky. Acts ch. 441, sec. 30, effective July 14, 1992; and amended 1992 Ky. Acts ch. 442, sec. 7. -- Amended 1990 Ky. Acts ch. 160, sec. 3, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 181, sec. 1, effective July 15, 1988; ch. 182, sec. 1, effective July 15, 1988; ch. 219, sec. 1, effective July 15, 1988; ch. 220, sec. 1, effective July 15, 1988; ch. 221, sec. 1, effective July 15, 1988; ch. 229, sec. 1, effective July 15, 1988; and ch. 389, sec. 1, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 80, sec. 1, effective July 15, 1982; ch. 237, sec. 1, effective July 15, 1982; ch. 413, sec. 1, effective July 15, 1982; and ch. 419, sec. 4, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 161, sec. 3, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 384, sec. 75, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(1). -- Created 1972 Ky. Acts ch. 226, sec. 31.

Legislative Research Commission Note (7/14/92). This section was amended by the 1992 Regular Session of the General Assembly and also repealed. Pursuant to KRS 446.260, the repeal prevails.

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

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.

902 KAR
Chapter 55

902 KAR 55:010. Licensing of manufacturers and wholesalers.

RELATES TO: KRS 218A.150(1), 218A.160, 218A.170, 218A.200, 21 C.F.R. 210.1-210.3, 211.1-211.208, 1301.01-1301.93, 1304.01-1304.33

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 211.090, 218A.150(1), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.150, 218A.160 and 218A.170 authorize the Cabinet for Health Services to license manufacturers and wholesalers of controlled substances. This administrative regulation establishes uniform requirements for the licensing of manufacturers and wholesalers.

Section 1. Definitions. (1) "Health care entity" means any organization, or business that provides diagnostic, medical, surgical, dental treatment, or rehabilitative care.

(2) "Manufacturer" means a person engaged in the commercial manufacture of a controlled substance.

(3) "Wholesale distribution" means distribution of a controlled substance to a person other than a consumer or a patient, and shall not include:

(a) An intracompany sale; or

(b) A distribution by:

1. A charitable organization that meets the criteria established in 26 USC 501(c)(3) to a nonprofit affiliate of the organization to the extent permitted by law;

2. A hospital or health care entity which is a member of a group-purchasing organization to other hospitals or health care entities that are members of the organization; or

3. A pharmacy that is exempt pursuant to 902 KAR 55:060.

(4) "Wholesaler" means a person who is engaged in the wholesale distribution of a controlled substance, including:

(a) Own-label distributor;

(b) Private-label distributor;

(c) Jobber;

(d) Broker;

(e) Warehouse, including a manufacturers' or distributors' warehouse, chain drug warehouse, or wholesale drug warehouse;

(f) Independent wholesale drug trader; and

(g) Pharmacy that conducts wholesale distributions.

Section 2. License Required and Exceptions. (1) A separate license shall be required for each location from which a manufacturer or wholesaler makes a wholesale distribution of a controlled substance into the Commonwealth.

(2) If a location has more than one (1) registration with the Drug Enforcement Administration, each registrant that distributes in the Commonwealth shall obtain a separate license.

(3) A license to distribute controlled substances shall not be transferred or assigned.

(4) A license shall not be required for an agent or employee of a licensee if the agent or employee is acting in the usual course of business or employment.

Section 3. Application for License or Renewal. (1) An application for a manufacturer's or wholesaler's license shall be submitted to the Cabinet for Health Services on "Application for New License as Manufacturer or Wholesaler of Controlled Substances", DCB-10 form, and include the following information:

(a) The name, business address and telephone number of the prospective licensee;

(b) All trade or business names used by the licensee;

(c) Name, address, and telephone number of each contact person for controlled substance handling, storage, and recordkeeping;

(2) An application for a manufacturer's or wholesaler's license shall include the following information about the ownership of the business:

(a) The type of ownership of operation;

(b) If an individual or sole proprietorship, the full name of the individual or proprietor and the name of the business entity;

(c) If a partnership, the name and address of each partner and the name of the partnership;

(d) If a limited liability company, the name and address of each manager and member; and

(e) If a corporation, the name and title of each corporate officer and director, the corporate names, and the names of the state of incorporation.

(3) A description of the business, the physical facilities, and the type security provided.

(4) A change in the information required by subsection (1), (2), or (3) shall be submitted to the cabinet:

(a) Within thirty (30) days from the date of the change, or at the time of license renewal, whichever occurs first; and

(b) On a "License Update Manufacturer or Wholesaler of Controlled Substances", DCB-11 or an "Application for Renewal License as Manufacturer or Wholesaler of Controlled Substances", DCB-12.

Section 4. Qualifications for License or Renewal. (1) The cabinet shall consider the following factors in reviewing the qualifications of an applicant to engage in the manufacture or wholesale distribution of controlled substances:

(a) A conviction of the applicant or its managing officers under any federal, state, or local law relating to controlled substances;

(b) A felony conviction of the applicant or its managing officers;

(c) An applicant's history with state or federal regulatory agencies as related to the manufacture or distribution of controlled substances;

(d) The furnishing of false or fraudulent information in connection with an application for a license from a federal, state or local government agency;

(e) Suspension or revocation by federal, state, or local government of a license currently or previously held by the applicant for the manufacture or distribution of controlled substances;

(f) Compliance with licensing requirements under previously granted licenses, if any;

(g) Compliance with requirements to maintain or make available to the cabinet or to federal, state, or local law enforcement officials those records required by KRS 218A.200;

(h) The criteria listed in KRS 218A.160; and

(i) Violations of applicable federal law, rule or regulation or state law, or administrative regulation governing a controlled substance that relates to Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs in 21 CFR 210.1 to 210.3 or Current Good Manufacturing Practice for Finished Pharmaceuticals in 21 CFR 211.1 to 211.208, adopted by the U.S. Food and Drug Administration.

(2) A license shall be renewed if the cabinet finds that the applicant:

(a) Qualifies for a license pursuant to subsection (1) of this section;

(b) Complies with Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances 21 CFR 1301.01 through 1301.93, adopted by the Drug Enforcement Administration;

(c) Complies with Records and Reports of Registrants 21 CFR 1304.01 through 1304.33, adopted by the U.S. Drug Enforcement Administration;

(d) Complies with KRS 315.036 and 201 KAR 2:105; and

(e) Complies with KRS 218A.200.

(3) A manufacturer or wholesaler not located within the Commonwealth of Kentucky may obtain a license or license renewal on the basis of reciprocity if:

(a) The out-of-state manufacturer or wholesaler possesses a valid license granted by another state and the legal standards for licensure in the other state are no less stringent than the standards established by this administrative regulation;

(b) The out-of-state manufacturer or wholesaler is currently registered with the U.S. Drug Enforcement Administration; and

(c) The state in which it is licensed extends reciprocity to manufacturers and distributors licensed by Kentucky.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 5. License Fees; Renewals. (1) An application for a license under the provisions of this administrative regulation shall be submitted to the Cabinet for Health Services on an "Application for New License as Manufacturer or Wholesaler of Controlled Substances" DCB-10 form and shall be accompanied by a license fee of \$240.

(2) An application to renew a license shall be submitted to the Cabinet for Health Services on an "Application for Renewal License as Manufacturer or Wholesaler of Controlled Substances", DCB-12 form, and shall be accompanied by a renewal fee of \$175.

Section 6. Recordkeeping. (1) Records shall be maintained in accordance with KRS 218A.200 and with 21 CFR 1304.01 to 1304.33, adopted by the U.S. Drug Enforcement Administration.

(2) Records or copies of records that relate to distributions within the Commonwealth shall be made available to the cabinet upon request.

Section 7. License Termination, Lapse, Suspension or Revocation. (1) A license issued pursuant to this administrative regulation shall be

suspended or revoked for cause.

- (2) A license shall terminate if the licensee dies or ceases legal existence.
- (3) A license shall lapse if the renewal application and renewal fee have not been filed with the cabinet prior to June 30 of each year.
- (4) A lapsed license shall be void and an application for a new license shall be required.
- (5) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for New License as Manufacturer or Wholesaler of Controlled Substances (8/98)", DCB-10;
- (b) "License Update Manufacturer or Wholesaler of Controlled Substances (8/98)", DCB-11;
- (c) "Application for Renewal License as Manufacturer or Wholesaler of Controlled Substances (8/98)", DCB-12.

(2) This material may be inspected, copied, or obtained at the Cabinet for Health Services, Department for Public Health, Drug Control and Professional Practices, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. - 4:30 p.m. (Recodified from 901 KAR 1:010, 4-14-82; Am. 8 Ky.R. 1181; 1601; eff. 6-25-82; 11 Ky.R. 1673; eff. 6-4-85; 14 Ky.R. 2084; eff. 6-22-88; 17 Ky.R. 136; eff. 9-13-90; 22 Ky.R. 2480; 8-1-96; 25 Ky.R. 625; 1628; eff. 1-19-99.)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS 218A.010-218A.050, 21 C.F.R. 1308.11

STATUTORY AUTHORITY: KRS 194A.050, 218A.020, 218A.040, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health and Family Services to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and 21 C.F.R. 1308.11, the Cabinet for Health and Family Services designates the substances set forth in this administrative regulation as Schedule I controlled substances. This administrative regulation differs from the federal regulation, 21 C.F.R. 1308.11, because it designates substances that are substantially similar to synthetic cannabinoids as Schedule I controlled substances. The Cabinet for Health and Family Services recognizes that synthetic cannabinoids have significant abuse potential and inclusion on Kentucky's Schedule I list will help reduce the risk to public health.

Section 1. Opiates. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphacetylmethadol (except Levo-alphacetylmethadol LAAM);
- (2) Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidinyl -N-phenylacetamide;
- (3) Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (4) Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N- phenylpropanamide;
- (5) Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpro-panamide;
- (6) Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenylpropanamide;
- (7) Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;
- (8) Difenoxin;
- (9) 3-Methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide;
- (10) 3-methylthiofentanyl N-3-methyl-1-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;
- (11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
- (12) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide;
- (13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);
- (14) Thénylfentanyl, N-1-(2-thienyl) methyl-4-piperidyl-N-phenyl-propanamide;
- (15) Thiofentanyl N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinylpropan-amide; and
- (16) Tilidine.

Section 2. Opium Derivatives. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Drotebanol; and
- (2) Etorphine (except hydrochloride salt).

Section 3. Hallucinogenic Substances. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers if the existence of these salts: isomers, including the optical position and geometric isomers; and salts of isomers is possible within the specific chemical designation;

- (1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl)indole);
- (2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA, 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);
- (3) 2, 5-dimethoxyamphetamine (2,5-DMA);
- (4) 2, 5-dimethoxy-4-ethylamphetamine (DOET);
- (5) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);
- (6) 3, 4-methylenedioxymethamphetamine (MDMA);
- (7) 4-methoxyamphetamine (PMA, 4-methoxy-alpha-methylphen-ethylamine, paramethoxyamphetamine);
- (8) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
- (9) N-hydroxy-3, 4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-hydroxy MDA);
- (10) Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo b,d pyran);
- (11) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);
- (12) Thiophene analog of phencyclidine (1-(1-(2-thienyl)cyclo-hexyl)piperidine, TCP, TCPy); and
- (13) 1-1-(2-thienyl) cyclohexylpyrrolidine (TCPy).

Section 4. Depressants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone; and
- (2) Methaqualone.

Section 5. Stimulants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);
- (2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopro-piophenone, 2-aminopropiophenone, and norephedrone);
- (3) (±)cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);
- (4) N,N-dimethylamphetamine (N,N-alpha-trimethyl-benzeneetha-namine, N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;

- (5) N-ethylamphetamine;
- (6) Fenethylamine; and
- (7) Methcathinone (2-(methylamino)-propiofenone, alpha (methylamino)-propiofenone, alpha (methylamino)-propiofenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiofenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431), its salts, optical isomers and salts of optical isomers.

Section 6. Synthetic Cannabinoids. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any substance, compound, mixture, or preparation which contains any quantity of any synthetic cannabinoid and is not an FDA approved drug, including the following:

- (1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);
- (2) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11);
- (3) 2-(2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5H-NBOMe);
- (4) 2-(4-iodo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5K-NBOMe);
- (5) 2-(4-bromo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5B-NBOMe); and
- (6) 2-(4-chloro-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5C-NBOMe). (Recodified from 901 KAR 1:015, 4-14-82; Am. 11 Ky.R. 1674; eff. 6-4-85; 12 Ky.R. 266; eff. 9-10-85; 1175; eff. 2-4-86; 13 Ky.R. 1944; eff. 6-9-87; 15 Ky.R. 863; eff. 11-4-88; 20 Ky.R. 659; eff. 10-21-93; 39 Ky.R. 1789; 2032; eff. 5-3-2013.)

902 KAR 55:020. Schedule II substances.

RELATES TO: KRS 218A.010-218A.030, 218A.060-218A.070, 21 C.F.R. 1308.12

STATUTORY AUTHORITY: KRS 218A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule II controlled substances.

Section 1. Depressants. (1) Except as provided in subsection (2) of this section, the Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances:

- (a) Amobarbital;
- (b) Glutethimide;
- (c) Pentobarbital; and
- (d) Secobarbital.

(2) A suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any of their salts, which has been approved by the United States Food and Drug Administration for marketing only as a suppository, shall be in Schedule III.

Section 2. Immediate Precursors. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances:

(1) Immediate precursors to amphetamine and methamphetamine and substances:

- (a) Phenyl-2-propanone;
- (b) P2P;
- (c) Benzyl methyl ketone; and
- (d) Methyl benzyl ketone; and

(2) Immediate precursors to phencyclidine:

- (a) 1-phenylcyclohexylamine; and
- (b) 1-piperidinocyclohexanecarbonitrile, also known as PCC.

Section 3. Hallucinogenic Substances. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances: Nabilone, also known as (plus or minus) - trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

Section 4. Opium and Derivatives. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, opium and opiates, and a salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmeferne, naloxone, and naltrexone, and their respective salts, but including the following:

- (1) Raw opium;
- (2) Opium extracts;
- (3) Opium fluid;
- (4) Powdered opium;
- (5) Granulated opium;
- (6) Tincture of opium;
- (7) Codeine;
- (8) Ethylmorphine;
- (9) Etorphine hydrochloride;
- (10) Hydrocodone;
- (11) Hydromorphone;
- (12) Metopon;
- (13) Morphine;
- (14) Oxycodone;
- (15) Oxymorphone; and

(16) Thebaine.

Section 5. Opiates. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers if the existence of such isomers, esters, ethers, or salts is possible within the specific chemical designation, dextroprorphan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Bulk dextropropoxyphene, in nondosage forms;
- (3) Carfentanil;
- (4) Levo-alpha-acetylmethadol (LAAM);
- (5) Remifentanil; and
- (6) Sufentanil. (Recodified from 901 KAR 1:020, 4-14-82; Am. 11 Ky.R. 1675; eff. 6-4-85; 12 Ky.R. 1176; eff. 2-4-86; 13 Ky.R. 1945; eff. 6-9-87; 17 Ky.R. 3048; eff. 6-19-91; 20 Ky.R. 859; eff. 12-6-93; 26 Ky.R. 1237; 1561; eff. 2-1-2000.)

902 KAR 55:025. Schedule III substances.

RELATES TO: KRS 218A.010-218A.030, 218A.080, 218A.090, 21 C.F.R. 1308.13, 21 U.S.C. 801, 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule III controlled substances.

Section 1. Amphetamine and Methamphetamine Combination Products. The Cabinet for Health Services designates the following amphetamine and methamphetamine combination products as Schedule III Controlled Substances:

- (1) A tablet or capsule containing:
 - (a) Methamphetamine hydrochloride 1 mg.;
 - (b) Conjugated estrogens-equine 0.25 mg.;
 - (c) Methyl testosterone 2.5 mg; and
- (2) A liquid containing, in each 15 cc:
 - (a) Methamphetamine hydrochloride 1 mg.;
 - (b) Conjugated estrogens-equine 0.25 mg.;
 - (c) Methyl testosterone 2.5 mg.

Section 2. Stimulants. The Cabinet for Health Services designates as Schedule III controlled substances a material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of those isomers if the existence of the salts, isomers or salts of isomers is possible within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Chlortermine; and
- (4) Phendimetrazine.

Section 3. Depressants. The Cabinet for Health Services designates as Schedule III controlled substances the following:

- (1) A material, compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital, or any of their salts, and at least one other active medicinal ingredient which is not a controlled substance;
- (2) A suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any of their salts, which has been approved by the United States Food and Drug Administration for marketing only as a suppository;
- (3) A drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 USC Chapter 9. Gamma hydroxybutyric acid is also known as:
 - (a) GHB;
 - (b) Gamma-hydroxybutyrate;
 - (c) 4-hydroxybutyrate;
 - (d) 4-hydroxybutanoic acid;
 - (e) Sodium oxybate; or
 - (f) Sodium oxybutyrate;
- (4) Ketamine, its salts, isomers, and salts of isomers. Ketamine is also known as (\pm) -2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and
- (5) Tiletamine and zolazepam or any of their salts:
 - (a) Tiletamine is also known as 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.
 - (b) Zolazepam is also known as 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-dizepin-7(1H)one, flupyrzopon.

Section 4. Pentazocine Drug Products. The Cabinet for Health Services designates, in addition to the parenteral or injectable form of Pentazocine which is designated as a Schedule III controlled substance by KRS 218A.090(3), a material, compound, mixture, or preparation which contains a quantity of Pentazocine, including its salts.

Section 5. Anabolic Steroids. The Cabinet for Health Services designates as Schedule III Controlled Substances, in addition to those listed in

KRS 218.090(5), a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers, if the existence of salts of isomers is possible within the specific chemical designation:

- (1) Chlorotestosterone;
- (2) Dihydrotestosterone; and
- (3) Methandranone.

Section 6. Hallucinogenic Substances. The Cabinet for Health Services designates as Schedule III controlled substances, in addition to those listed in KRS 218A.090, a material, compound, mixture, or preparation which contains a quantity of dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product. Dronabinol is also known as:

- (1) (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-ol; or
- (2) (-)- delta-9-(trans)- tetrahydrocannabinol.

Section 7. Narcotics. The Cabinet for Health Services designates as Schedule III controlled substance a material, compound, mixture, or preparation which contains any quantity of buprenorphine, or its salts. (Recodified from 901 KAR 1:025, 4-14-82; Am. 11 Ky.R. 1676; eff. 6-4-85; 13 Ky.R. 1946; eff. 6-9-87; 15 Ky.R. 865; eff. 11-4-88; 17 Ky.R. 3283; eff. 6-19-91; 20 Ky.R. 861; eff. 12-6-93; 26 Ky.R. 1238; 1562; eff. 2-1-2000; 29 Ky.R. 817; 1277; eff. 10-16-02.)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010-218A.030, 218A.100, 218A.110, 21 C.F.R. 1308.14, 21 U.S.C. 801, 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to add, delete, or reschedule substance enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances controlled under federal law. This administrative regulation designates Schedule IV controlled substances. This administrative regulation differs from the federal regulation because it designates the following substances as a Schedule IV controlled substance: Tramadol, Carisoprodol, and Nalbuphine. The Cabinet for Health and Family Services recognizes that Tramadol, Carisoprodol, and Nalbuphine have significant abuse potential and inclusion on Kentucky's Schedule IV list will help reduce the risk to public health.

Section 1. Stimulants. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including their salts, isomers whether optical, position, or geometric, and salts of the isomers, if the existence of the salts, isomers, and salts of isomers is possible:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Pemoline, including organometallic complexes and chelates;
- (9) Phentermine;
- (10) Pipradrol;
- (11) Sibutramine; and
- (12) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

Section 2. Depressants. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Bromazepam;
- (3) Camazepam;
- (4) Carisoprodol;
- (5) Chlordiazepoxide;
- (6) Clobazam;
- (7) Clonazepam;
- (8) Clorazepate;
- (9) Clotiazepam;
- (10) Cloxazolam;
- (11) Delorazepam;
- (12) Diazepam;
- (13) Dichloralphenazone;
- (14) Estazolam;
- (15) Ethyl loflazepate;
- (16) Fludiazepam;
- (17) Flunitrazepam;

- (18) Flurazepam;
- (19) Halazepam;
- (20) Haloxazolam;
- (21) Ketazolam;
- (22) Loprazolam;
- (23) Lorazepam;
- (24) Lormetazepam;
- (25) Mebutamate;
- (26) Medazepam;
- (27) Methohexital;
- (28) Midazolam;
- (29) Nimetazepam;
- (30) Nitrazepam;
- (31) Nordiazepam;
- (32) Oxazepam;
- (33) Oxazolam;
- (34) Pinazepam;
- (35) Prazepam;
- (36) Quazepam;
- (37) Temazepam;
- (38) Tetrazepam;
- (39) Triazolam;
- (40) Zaleplon;
- (41) Zolpidem; and
- (42) Zopiclone.

Section 3. Fenfluramine. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains any quantity of Fenfluramine, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

Section 4. Narcotics. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation containing a quantity of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, as set forth below:

- (1) Butorphanol;
- (2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane);
- (3) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and
- (4) Nalbuphine.

Section 5. Central Analgesics. The Cabinet for Health and Family Services designates as a Schedule IV controlled substance material, compound, mixture, or preparation which contains any quantity of Tramadol or its salts. (Recodified from 901 KAR 1:030, 4-14-82; Am. 11 Ky.R. 1678; eff. 6-4-85; 12 Ky.R. 1177; eff. 2-4-86; 13 Ky.R. 1948; eff. 6-9-87; 15 Ky.R. 866; eff. 11-4-88; 20 Ky.R. 862; 1701; eff. 2-10-94; 22 Ky.R. 1900; 2302; eff. 6-6-96; 25 Ky.R. 627; 1630; eff. 1-19-99; 26 Ky.R. 902; 1170; eff. 12-15-99; 29 Ky.R. 819; 1277; eff. 10-16-2002; 33 Ky.R. 1436; 1820; eff. 2-2-07; 34 Ky.R. 2607; 35 Ky.R. 1198; eff. 12-5-2008.)

902 KAR 55:035. Schedule V substances.

RELATES TO: KRS 218A.010-218A.030, 218A.120, 218A.130, 21 C.F.R. 1308.15, 21 U.S.C. 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to add, delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances controlled under federal law. This administrative regulation designates Schedule V controlled substances.

Section 1. Schedule V Controlled Substances. The Cabinet for Health and Family Services hereby designates as Schedule V controlled substances, in addition to those specified by KRS 218A.130, the following:

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. A compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(b) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(c) Not more than two and five-tenths (2.5) milligrams of diphenoxylate hydrochloride and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(d) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(e) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(2) Stimulants. A material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(3) Depressants. A material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts: Pregabalin.

Section 2. Dispensing Without Prescription. A controlled substance listed in Schedule V which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, if:

(1) The medicinal preparation contains in addition to the controlled substances, some drug or drugs conferring upon it medicinal qualities other than those possessed by the controlled substances alone;

(2) Not more than 240cc (eight (8) ounces) nor more than forty-eight (48) dosage units of any such controlled substance containing opium, is dispensed at retail to the same purchaser in any given forty-eight (48) hour period;

(3) The labeling and packaging is in accordance with the requirements of the federal and state Food, Drug, and Cosmetic Act and the United States Pharmacopeia;

(4) The preparation is dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of KRS Chapter 218A;

(5) The preparation is not displayed in areas open to the public;

(6) The dispensing is made only by a pharmacist, and not by a nonpharmacist employee even if under the supervision of a pharmacist. Although, after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist;

(7) The purchaser is at least eighteen (18) years of age;

(8) The pharmacist requires every purchaser of a controlled substance under this section, not known to him, to furnish suitable identification, including proof of age if appropriate; and

(9) The dispensing of exempt controlled substances under this administrative regulation is recorded in a bound book, maintained by the pharmacist, which shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the substance to the purchaser. The book shall be maintained in accordance with the recordkeeping requirements of KRS 218A.200. (Recodified from 901 KAR 1:032, 4-14-82; Am. 11 Ky.R. 1679; eff. 6-4-85; 15 Ky.R. 868; eff. 11-4-88; 20 Ky.R. 660; eff. 10-21-93; 29 Ky.R. 1407; eff. 1-15-2003; 33 Ky.R. 1438; 1821; eff. 2-2-07.)

902 KAR 55:040. Excluded over-the-counter products.

RELATES TO: KRS 218A.020-218A.130

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250, EO-96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.020(4) requires the Cabinet for Health Services to exclude products that may be lawfully sold over the counter (without prescription) from the provisions of KRS Chapter 218A. The purpose of this administrative regulation is to exclude certain over-the-counter products from the provisions of KRS Chapter 218A.

Section 1. Excluded Over-the-counter Products. The Cabinet for Health Services excludes the following products from the provisions of KRS Chapter 218A:

- (1) Asthma-Ese®, tablet, NDC code 00349-2018: phenobarbital 8.10 mg.;
- (2) Azma-Aids®, tablet, NDC code 00367-3153: phenobarbital 8 mg;
- (3) Bronkolixir®, elixir, NDC code 00057-1004: phenobarbital 0.8 mg/ml;
- (4) Bronkotabs®, tablet, NDC code 00057-1005: phenobarbital 8 mg.;
- (5) Choate's Leg Freeze®, liquid: chloral hydrate 246.67 mg/ml.;
- (6) Guiaphed® Elixir, elixir, NDC code 00182-1377: phenobarbital 4 mg/ml;
- (7) Primatene (P-tablets)®, tablet, NDC code 0573-2940: phenobarbital 8 mg.;
- (8) Tedral®, tablet, NDC code 00071-1230: phenobarbital 8 mg.;
- (9) Tedral Elixir®, elixir, NDC code 00071-0242: phenobarbital 40 mg./ml.;
- (10) Tedral S.A.®, tablet, NDC code 00071-1231: phenobarbital 8 mg.;
- (11) Tedral Suspension®, suspension, NDC code 00071-0237: phenobarbital 80 mg./ml.;
- (12) Tedrigen®, tablet, NDC code 00182-0134: phenobarbital 8 mg.;
- (13) Theophed®, tablet, NDC code 00719-1945: phenobarbital 8 mg; and
- (14) Vicks Inhaler®, inhaler, NDC code 23900-0010: l-Desoxyephedrine 113 mg. (Recodified from 901 KAR 1:040, 4-14-82; Am. 11 Ky.R. 1679; eff. 6-4-85; 18 Ky.R. 1471; eff. 2-7-92; 19 Ky.R. 1665; 2251; eff. 3-17-93; 20 Ky.R. 863; eff. 12-6-93; 21 Ky.R. 1393; eff. 1-9-95; 23 Ky.R. 3985; 24 Ky.R. 126; eff. 7-16-97.)

902 KAR 55:045. Exempt prescription products.

RELATES TO: KRS 218A.020-218A.130, 21 C.F.R. 1308.31-1308.32

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(3) provides that if a controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. This administrative regulation exempts from the provisions of KRS Chapter 218A that stimulant or depressant products have been exempted pursuant to federal regulation.

Section 1. Exempt Prescription Products. The Cabinet for Health Services exempts the following prescription products from the provisions of KRS 218A.150 - 218A.180 and 218A.200:

- (1) Acetaminophen 325mg/Butalbital 50 mg, tablet, NDC 00456-0674: butalbital 50 mg;
- (2) Acetaminophen 500mg/Butalbital 50 mg, tablet, NDC 00456-0671: butalbital 50 mg;
- (3) ALAGESIC Tablets, tablet, NDC 55726-0300: butalbital 50 mg;
- (4) Alkaloids of Belladonna and Phenobarbital, tablet, NDC 00377-0527: phenobarbital 16.20 mg;
- (5) Amaphen Capsules (reformulated), capsule, NDC 11311-0954: butalbital 50 mg;
- (6) Aminophylline and Phenobarbital, enteric coated tablet, NDC 00115-2156: phenobarbital 15 mg;
- (7) Aminophylline and Phenobarbital Tablets, tablet, NDC 00115-2154: phenobarbital 15 mg;
- (8) Anaspaz PB, tablet, NDC 00225-0300: phenobarbital 15 mg;
- (9) Anolor 300 Capsules, capsule, NDC 51674-0009: butalbital 50 mg;
- (10) Anoquan Modified Formula, capsule, NDC 00166-0881: butalbital 50 mg;
- (11) Anti-Spas Elixir, elixir, NDC 00719-4090: phenobarbital 3.24 mg/ml;
- (12) Anti-Spas Tablets, tablet, NDC 00719-1091: phenobarbital 16.20 mg;
- (13) Antispas, tablet, NDC 00377-0622: phenobarbital 16.20 mg;
- (14) Antispasmodic, tablet, NDC 00364-0020: phenobarbital 16 mg;
- (15) Antispasmodic, tablet, NDC 00367-4118: phenobarbital 16.20 mg;
- (16) Antispasmodic, tablet, NDC 03547-0777: phenobarbital 16.20 mg;
- (17) Antispasmodic Elixir, elixir, NDC 00182-0686: phenobarbital 3.24 mg/ml;
- (18) Antispasmodic Elixir, elixir, NDC 00364-7002: phenobarbital 3.20 mg/ml;
- (19) Antispasmodic Elixir, elixir, NDC 00832-8009: phenobarbital 3.24 mg/ml;
- (20) Antispasmodic Tablets, tablet, NDC 00182-0129: phenobarbital 16.20 mg;
- (21) Antispasmodic Tablets, tablet, NDC 47679-0158: phenobarbital 16.2 mg;
- (22) Antispasmodic Tablets, tablet, NDC 00839-5055: phenobarbital 16 mg;
- (23) Antrocol, capsule, NDC 00095-0041: phenobarbital 16 mg;
- (24) Antrocol Elixir, elixir, NDC 00095-0042: phenobarbital 3 mg/ml;
- (25) Antrocol Tablets, tablet, NDC 00095-0040: phenobarbital 16 mg;
- (26) Arco-Lase Plus, tablet, NDC code 00275-0045: phenobarbital 8 mg;
- (27) Atropine Sulfate with Phenobarbital, tablet, NDC 00463-6035: phenobarbital 15 mg;
- (28) Axotal, tablet, NDC 00013-1301: butalbital 50 mg;
- (29) Azpan, tablet, NDC 00172-3747: phenobarbital 8 mg;
- (30) B-A-C Tablets, tablet, NDC 00259-1256: butalbital 50 mg;
- (31) Bancap, capsule, NDC 00456-0546: butalbital 50 mg;
- (32) Barbeloid (Revised) Green, tablet, NDC 00377-0365: phenobarbital 16.20 mg;
- (33) Barbeloid Yellow, tablet, NDC 00377-0498: phenobarbital 16.20 mg;
- (34) Barbidonna Elixir, elixir, NDC 00037-0305: phenobarbital 3.20 mg/ml;
- (35) Barbidonna No 2, tablet, NDC 00037-0311: phenobarbital 32 mg;
- (36) Barbidonna Tablets, tablet, NDC 00037-0301: phenobarbital 16 mg;
- (37) Barophen, elixir, NDC 00472-0981: phenobarbital 3.24 mg/ml;
- (38) Bel-phen-ergot s Tablets, tablet, NDC 00182-1847: phenobarbital 40 mg;
- (39) Bel-Phen-Ergot-S Tablets, tablet, NDC 00719-1686: phenobarbital 40 mg;

- (40) Bel-Tabs, tablet, NDC 00677-1171: phenobarbital 40 mg;
- (41) Belladrenal, tablet, NDC 00078-0028: phenobarbital 50 mg;
- (42) Belladrenal-S, sustained release tablet, NDC 00078-0027: phenobarbital 50 mg;
- (43) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00179-0045: phenobarbital 3.24 mg/ml;
- (44) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00737-1283: phenobarbital 3 mg/ml;
- (45) Belladonna Alkaloids with Phenobarbital, tablet, NDC 51079-0168: phenobarbital 16.20 mg;
- (46) Belladonna Alkaloids and Phenobarbital, tablet, NDC 00143-1140: phenobarbital 16.20 mg;
- (47) Bellalphen, tablet, NDC 00223-0425: phenobarbital 16.20 mg;
- (48) Bellamine Tablets, tablet, NDC 00904-2548: phenobarbital 40 mg;
- (49) Bellamor Tablets, tablet, NDC 00839-7370: phenobarbital 40 mg;
- (50) Bellergal-S, sustained release tablet, NDC 00078-0031: phenobarbital 40 mg;
- (51) Bellophen, tablet, NDC 00115-2400: phenobarbital 16.20 mg;
- (52) Bilezyme Plus, tablet, NDC 00249-1112: phenobarbital 8 mg;
- (53) Bladder Mixture Plus Phenobarbital, liquid, NDC 11326-1624: phenobarbital 2.92 mg/ml;
- (54) Blue Cross Butalbital, APAP and Caffeine Tablets, tablet, NDC 00879-0567: butalbital 50 mg;
- (55) Broncholate, capsule, NDC 00563-0277: phenobarbital 8 mg;
- (56) Broncomar, elixir, NDC 12939-0128: butabarbital 1 mg/ml;
- (57) Bucet Capsules, capsule, NDC 00785-2307: butalbital 50 mg;
- (58) Bucet Tablets, tablet, NDC 00785-2307: butalbital 50 mg;
- (59) Butace, capsule, NDC code 00539-0906: butabarbital 50 mg;
- (60) Butacet Capsules, capsule, NDC 53121-0133: butalbital 50 mg;
- (61) Butalbital, Acetaminophen and Caffeine Capsules, capsule, NDC 46672-0228: butalbital 50 mg;
- (62) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52555-0079: butalbital 50 mg;
- (63) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 54696-0513: butalbital 50 mg;
- (64) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00302-0490: butalbital 50 mg;
- (65) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0053: butalbital 50 mg;
- (66) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0059: butalbital 50 mg;
- (67) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00832-1102: butalbital 50 mg;
- (68) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52446-0544: butalbital 50 mg;
- (69) Butalbital and Acetaminophen Tablets, tablet, NDC 00879-0543: butalbital 50 mg;
- (70) Butalbital and Acetaminophen Tablets 50/325, tablet, NDC 46672-0099: butalbital 50 mg;
- (71) Butalbital and Acetaminophen Tablets 50/650, tablet, NDC 46672-0098: butalbital 50 mg;
- (72) Butalbital, APAP and Caffeine, tablet, NDC 00302-0490: butalbital 50 mg;
- (73) Butalbital, APAP and Caffeine Tablets, tablet, NDC 00182-1274: butalbital 50 mg;
- (74) Butalbital Compound Capsules, capsule, NDC 53506-0103: butalbital 50 mg;
- (75) Butalbital with Acetaminophen and Caffeine Tablets, tablet, NDC 00143-1787: butalbital 50 mg;
- (76) Butibel Elixir, elixir, NDC 00037-0044: butabarbital sodium 3 mg/ml;
- (77) Butibel Tablets, tablet, NDC 00037-0046: butabarbital sodium 15 mg;
- (78) Cafatine-PB Tablets, tablet, NDC 00904-1750: pentobarbital sodium 30 mg;
- (79) Cafergot P-B Suppository, suppository, NDC 00078-0035: pentobarbital 60 mg;
- (80) Cafergot P-B Tablets, tablet, NDC 00078-0036: pentobarbital sodium 30 mg;
- (81) C.D.P. Plus Capsules, capsule, NDC 00182-1856: chlordiazepoxide HCl 5 mg;
- (82) Cephadyn, tablet, NDC 95702-0650: butalbital 50 mg.;
- (83) Charspast, tablet, NDC 00377-0500: phenobarbital 16.20 (83) mg;
- (84) Chlordiazepoxide HCl and Clidinium Br., capsule, NDC 57247-1003: chlordiazepoxide 5 mg;
- (85) Chlordiazepoxide HCl 5 mg and Clidinium BR 2.5 mg, capsule, NDC 52446-0096: chlordiazepoxide HCL 5 mg;
- (86) Chlordiazepoxide Hydrochloride + Clidinium Bromide, capsule, NDC 47679-0268: chlordiazepoxide HCl 5 mg;
- (87) Chlordiazepoxide with Clidinium Bromide, capsule, NDC 46193-0948: chlordiazepoxide HCl 5 mg;
- (88) Chlordinium, capsule, NDC 00719-1208: chlordiazepoxide HCl 5 mg;
- (89) Chlordinium Sealets, capsule, NDC 00580-0084: chlordiazepoxide HCl 5 mg;

- (90) Clindex, capsule, NDC 00536-3490: chlordiazepoxide HCL 5 mg;
- (91) Clinibrax Capsules, capsule, NDC 00832-1054: chlordiazepoxide HCl 5 mg;
- (92) Clinoxide, capsule, NDC 00879-0501: chlordiazepoxide HCl 5 mg;
- (93) CON-TEN, capsule, NDC 11584-1029: butalbital 50 mg;
- (94) Digestokraft, tablet, NDC 00796-0237: butabarbital sodium 8 mg;
- (95) Digestokraft, tablet, NDC 00377-0460: butabarbital sodium 8 mg;
- (96) Dilantin with Phenobarbital 1/2, capsule, NDC 00071-0531: phenobarbital 32 mg;
- (97) Dilantin with Phenobarbital 1/4, capsule, NDC 00071-0375: phenobarbital 16 mg;
- (98) Dolmar, capsule, NDC 12939-0812: butalbital 50 mg;
- (99) Donalixir, elixir, NDC 00471-0095: phenobarbital 3.24 mg/ml;
- (100) Donna-Sed, elixir, NDC 00298-5054: phenobarbital 3.24 mg/ml;
- (101) Donnatal Capsules, capsule, NDC 00031-4207: phenobarbital 16.20 mg;
- (102) Donnatal Elixir, elixir, NDC 00031-4221: phenobarbital 3.24 mg/ml;
- (103) Donnatal Extentabs, sustained release tablet, NDC 00031-4235: phenobarbital 48.60 mg;
- (104) Donnatal No 2, tablet, NDC 00031-4264: phenobarbital 32.40 mg;
- (105) Donnatal Tablets, tablet, NDC 00031-4250: phenobarbital 16.20 mg;
- (106) Donnazyme, enteric coated tablet, NDC 00031-4649: phenobarbital 8.10 mg;
- (107) Donphen, tablet, NDC 00093-0205: phenobarbital 15 mg;
- (108) E-Caff PB Tablets, tablet, NDC 00185-0982: pentobarbital 30 mg;
- (109) Endolar, capsule, NDC 00588-7777: butalbital 50 mg;
- (110) Ephedrine and Sodium Phenobarbital, tablet, NDC 00377-0109: phenobarbital sodium 16.20 mg;
- (111) Ephedrine with Phenobarbital, tablet, NDC 00463-6086: phenobarbital 15 mg;
- (112) EQUI-CET Tablets, tablet, NDC 57779-0111: butalbital 50 mg;
- (113) Ergocaff-PB Tablets, tablet, NDC 00536-3801: pentobarbital sodium 30 mg;
- (114) Esgic Capsules, capsule, NDC 00456-0631: butalbital 50 mg;
- (115) ESGIC-PLUS, NDC 00456-0676, tablet, contains butalbital 50 mg;
- (116) Esgic Tablets, tablet, NDC 0456-0630: butalbital 50 mg;
- (117) Espasmotex, tablet, NDC code 11475-0835: phenobarbital 20 mg;
- (118) Ezol, capsule, NDC 45985-0578: butalbital 50 mg;
- (119) Fabophen Tablets, tablet, NDC 00904-3280: butalbital 50 mg;
- (120) Febridyne Plain Capsules, capsule, NDC 05383-0001: butalbital 50 mg;
- (121) FEMCET Capsules, capsule, NDC 50474-0703: butalbital 50 mg;
- (122) Fioricet, capsule, NDC 00078-0084: butalbital 50 mg;
- (123) G-1 Capsules, capsule, NDC 43797-0244: butalbital 50 mg;
- (124) G.B.S., tablet, NDC 00456-0281: phenobarbital 8 mg;
- (125) Gustase Plus, tablet, NDC 00249-1121: phenobarbital 8 mg;
- (126) Hybephen, tablet, NDC 00029-2360: phenobarbital 15 mg;
- (127) Hyosital White, tablet, NDC 00361-2131: phenobarbital 16.20 mg;
- (128) Hyosophen Capsules, capsule, NDC 00536-3926: phenobarbital 16 mg;
- (129) Hyosophen Tablets, tablet, NDC 00536-3920: phenobarbital 16.20 mg;
- (130) Hypnaldyne, tablet, NDC 00298-1778: phenobarbital 16.20 mg;
- (131) Hytrophen, tablet, NDC 00917-0244: phenobarbital 16.20 mg;
- (132) IDE-Cet Tablets, tablet, NDC 00814-3820: butalbital 50 mg;
- (133) ISOCET Tablets, tablet, NDC 00536-3951: butalbital 50 mg;
- (134) Isolate Compound, elixir, NDC 00472-0929: phenobarbital 0.40 mg/ml;
- (135) Isolate Compound Elixir, elixir, NDC 00364-7029: phenobarbital 0.40 mg/ml;
- (136) Isopap Capsules, capsule, NDC 11735-0400: butalbital 50 mg;
- (137) Isophed, liquid, NDC 00298-5680: phenobarbital 0.40 mg/ml;
- (138) Isuprel, elixir, NDC 00024-0874: phenobarbital 0.40 mg/ml;
- (139) Isuprel Compound, elixir, NDC 00057-0874: phenobarbital 0.40 mg/ml;

- (140) Kinesed, tablet, NDC 00038-0220: phenobarbital 16 mg;
- (141) Levsin with Phenobarbital Elixir, elixir, NDC 00091-4530: phenobarbital 3 mg/ml;
- (142) Levsin with Phenobarbital Tablets, tablet, NDC 00091-3534: phenobarbital 15 mg;
- (143) Levsin-PB, drops, NDC 00091-4536: phenobarbital 15 mg/ml;
- (144) Levsinex with Phenobarbital, sustained release capsule, NDC 00091-3539: phenobarbital 45 mg;
- (145) Librax, capsule, NDC 00140-0007: chlordiazepoxide HCl 5 mg;
- (146) Lufyllin-EPG Elixir, elixir, NDC 00037-0565: phenobarbital 1.60 mg/ml;
- (147) Lufyllin-EPG Tablets, tablet, NDC 00037-0561: phenobarbital 16 mg;
- (148) Malatal, tablet, NDC 00166-0748: phenobarbital 16.20 mg;
- (149) Margesic Capsules, capsule, NDC 00682-0804: butalbital 50 mg;
- (150) Medigesic Tablets, tablet, NDC 52747-0311: butalbital 50 mg;
- (151) Menrium 5-2, tablet, NDC 00140-0023: chlordiazepoxide 5 mg;
- (152) Menrium 5-4, tablet, NDC 00140-0024: chlordiazepoxide 5 mg;
- (153) Menrium 10-4, tablet, NDC 00140-0025: chlordiazepoxide 10 mg;
- (154) Micomp-PB Tablets, tablet, NDC 55053-0525: pentobarbital sodium 30 mg;
- (155) Milprem-200, tablet, NDC 00037-5501: meprobamate 200 mg;
- (156) Milprem-400, tablet, NDC 00037-5401: meprobamate 400 mg;
- (157) Mudrane, tablet, NDC 00095-0050: phenobarbital 8 mg;
- (158) Mudrane GG Elixir, elixir, NDC 00095-0053: phenobarbital 0.50 mg/ml;
- (159) Mudrane GG Tablets, tablet, NDC 00095-0051: phenobarbital 8 mg;
- (160) Pacaps Capsules, capsule, NDC 10892-0116: butalbital 50 mg;
- (161) Pacaps Modified Formula, capsule, NDC 48534-0884: butalbital 50 mg;
- (162) Panzyme, tablet, NDC 00377-0491: phenobarbital 8.10 mg;
- (163) Panzyme, tablet, NDC 00314-0310: phenobarbital 8.10 mg;
- (164) PB Phe-Bell, tablet, NDC 12908-7006: phenobarbital 16.20 mg;
- (165) Phedral C.T., tablet, NDC 00298-1173: phenobarbital 8.10 mg;
- (166) Phenerbel-S Tablets, tablet, NDC 00536-4234: phenobarbital 40 mg;
- (167) Phenobarbital, Ergotamine and Belladonna Tablets, tablet, NDC 00781-1701: phenobarbital 40 mg;
- (168) Phenobarbital and Hyoscyamine Sulfate, tablet, NDC 00764-2057: phenobarbital 16.20 mg;
- (169) Phrenilin, tablet, NDC 00086-0050: butalbital 50 mg;
- (170) Phrenilin Forte, capsule, NDC 00086-0056: butalbital 50 mg;
- (171) PMB-200, tablet, NDC 00046-0880: meprobamate 200 mg;
- (172) PMB-400, tablet, NDC 00046-0881: meprobamate 400 mg;
- (173) Private Formula No 3095, tablet, NDC 00252-3095: phenobarbital sodium 15 mg;
- (174) Pulsaphen, tablet, NDC 00377-0652: phenobarbital 15 mg;
- (175) Pulsaphen Gray, tablet, NDC 00917-0113: phenobarbital 15 mg;
- (176) Quadrinal Suspension, suspension, NDC 00044-4580: phenobarbital 2.40 mg/ml;
- (177) Quadrinal Tablets, tablet, NDC 00044-4520: phenobarbital 24 mg;
- (178) Quibron Plus Capsules, capsule, NDC 00087-0518: butabarbital 20 mg;
- (179) Quibron Plus Elixir, elixir, NDC 00087-0511: butabarbital 1.33 mg/ml;
- (180) Repan Capsules, capsule, NDC 00642-0163: butalbital 50 mg;
- (181) Repan Tablets, tablet, NDC 00642-0162: butalbital 50 mg;
- (182) Rexatal Tablets, tablet, NDC 00478-5477: phenobarbital 16.52 mg;
- (183) Rogesic Capsules, capsule, NDC 31190-0008: butalbital 50 mg;
- (184) Sangesic, tablet, NDC 00511-1627: butalbital 30 mg;
- (185) Sedapap-10 Tablets, tablet, NDC 00259-1278: butalbital 50 mg;
- (186) Sedapar Elixir, elixir, NDC 00349-4100: phenobarbital 3.24 mg/ml;
- (187) Sedapar Tablets, tablet, NDC 00349-2355: phenobarbital 16.20 mg;
- (188) Sedarex No 3, tablet, NDC 00144-1575: phenobarbital 16.20 mg;
- (189) Seds, tablet, NDC 00418-4072: phenobarbital 16.20 mg;

- (190) Soniphen, enteric coated tablet, NDC 0456-0429: phenobarbital 16 mg;
- (191) Spaslin, tablet, NDC 00165-0029: phenobarbital 16.20 mg;
- (192) Spasmalones, tablet, NDC 00653-0002: phenobarbital 16 mg;
- (193) Spasmolin, tablet, NDC 00115-4652: phenobarbital 15 mg;
- (194) Spastemms Elixir, elixir, NDC 00463-9023: phenobarbital 3.24 mg/ml;
- (195) Spastemms Tablets, tablet, NDC 0463-6181: phenobarbital 15 mg;
- (196) Spastolate, tablet, NDC 00814-7088: phenobarbital 16.20 mg;
- (197) Spastrin Tablets, tablet, NDC 54580-0124: phenobarbital 40 mg;
- (198) Susano, elixir, NDC 00879-0059: phenobarbital 3.24 mg/ml;
- (199) Susano, tablet, NDC 00879-0058: phenobarbital 16.20 mg;
- (200) Tedral SA, sustained release tablet, NDC 00071-0231: phenobarbital 25 mg;
- (201) Tencet, tablet, NDC 47649-0370: butalbital 50 mg;
- (202) Tencet Capsules, capsule, NDC 47649-0560: butalbital 50 mg;
- (203) T-E-P, tablet, NDC 00364-0266: phenobarbital 8.10 mg;
- (204) T.E.P., tablet, NDC 00157-0980: phenobarbital 8 mg;
- (205) Theodrine Tablets, tablet, NDC 00536-4648: phenobarbital 8 mg;
- (206) Theophen, tablet, NDC code 12634-0101: phenobarbital 8 mg;
- (207) Theophenyllin, tablet, NDC 00839-5111: phenobarbital 8 mg;
- (208) Theophylline Ephedrine and Phenobarbital, tablet, NDC 00143-1695: phenobarbital 8 mg;
- (209) Triad, tablet, NDC 00785-2306: butalbital 50 mg;
- (210) Triad Capsules, capsule, NDC 00785-2305: butalbital 50 mg;
- (211) Triaprin, capsule, NDC 00217-2811: butalbital 50 mg;
- (212) Truxaphen, tablet, NDC 00377-0541: phenobarbital 16.20 mg;
- (213) Two-Dyne Revised, tablet, NDC 00314-2229: butalbital 50 mg;
- (214) Wescophen-S, tablet, NDC 00917-0135: phenobarbital 30 mg;
- (215) Wescophen S-II, tablet, NDC 00377-0628: phenobarbital 30 mg;
- (216) Wesmatic Forte, tablet, NDC 00917-0845: phenobarbital 8 mg;
- (217) Wesmatic Forte, tablet, NDC 00377-0426: phenobarbital 8.10 mg; and
- (218) Zebutal, capsule, NDC 59630-0170: butalbital 50. (Recodified from 901 KAR 1:041, 4-14-82; Am. 11 Ky.R. 1680; eff. 6-4-85; 18 Ky.R. 1472; eff. 2-7-92; 19 Ky.R. 1666; 2251; eff. 3-17-93; 20 Ky.R. 864; eff. 12-6-93; 21 Ky.R. 1394; eff. 1-9-95; 23 Ky.R. 4228; eff. 7-16-97; 25 Ky.R. 629; 1631; eff. 1-19-99; 26 Ky.R. 903; 1171; eff. 12-15-99.)

902 KAR 55:060. Requirements for distribution of small amounts of controlled substances without manufacturer's or wholesaler's licenses.

RELATES TO: KRS 218A.010-218A.020, 218A.150-218A.200, 21 C.F.R. 1304.03, 1305.03, 1307.11

STATUTORY AUTHORITY: KRS 194.050, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. KRS 218A.170(2) provides that all sales and distributions of controlled substances shall be in accordance with the federal controlled substances laws, including the requirements governing the use of order forms. The purpose of this administrative regulation is to provide for the distribution of small amounts of controlled substances by pharmacies to practitioners or other pharmacies, without the necessity of obtaining a state license as a manufacturer or a wholesaler, in accordance with applicable federal laws and regulations.

Section 1. Distribution of Controlled Substances by Pharmacy to Practitioner or other Pharmacy. (1) A pharmacy may distribute a quantity of a controlled substance to a practitioner or another pharmacy, without being licensed as a manufacturer or wholesaler in Kentucky if it:

- (a) Is licensed in Kentucky;
- (b) Is registered with the U.S. Drug Enforcement Administration; and
- (c) Makes the distribution to a practitioner or pharmacy that is registered with the U.S. Drug Enforcement Administration.

(2) The distribution shall be recorded by the distributing pharmacy and by the receiving practitioner or pharmacy in accordance with KRS 218A.200;

(3) A readily retrievable record of the distribution shall be maintained showing:

- (a) Date of distribution;
- (b) Name, form and quantity of the substance distributed; and
- (c) Name, address and registration number of the purchaser.

(4) The total number of dosage units of all controlled substances distributed by a pharmacy pursuant to this administrative regulation during a twelve (12) month period shall not exceed five (5) percent of the total number of dosage units of all controlled substances distributed and dispensed by the pharmacy during the twelve (12) month period. If the five (5) percent limitation is expected to be exceeded, the pharmacy shall obtain a license to distribute controlled substances in accordance with KRS 218A.160 and 218A.170; and

(5) A prescription shall not be issued by a practitioner to obtain any controlled substance for the purpose of general dispensing, administering or office use. (Recodified from 901 KAR 1:070, 4-14-82; Am. 11 Ky.R. 1681; eff. 6-4-85; 18 Ky.R. 1244; 1890; eff. 11-25-91; 20 Ky.R. 1425; eff. 1-10-94.)

902 KAR 55:065. Return of prescription drugs prohibited, exceptions.

RELATES TO: KRS 217.005-217.215, 217.992

STATUTORY AUTHORITY: KRS 194.050, 211.090, 217.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125 authorizes the Cabinet for Human Resources to administer the provisions of KRS 217.005 to 217.215 and 217.992. The purpose of this administrative regulation is to prevent the dispensing of prescription drugs that may be adulterated or misbranded.

Section 1. Return of Prescription Drugs Prohibited; Exceptions. (1) No pharmacist, practitioner, or agent thereof shall accept the return of a prescription drug for reuse or resale unless:

(a) The drug is in a sealed container by which it can be readily determined by a pharmacist employed by the dispensing pharmacy or by the dispensing practitioner that entry or attempted entry by any means has not been made;

(b) The drug container meets the standards of the United States Pharmacopoeia for storage conditions including temperature, light sensitivity, moisture, chemical, and physical stability;

(c) The drug labeling and packaging has not been altered or defaced and the identity of the drug, its potency, lot number, and expiration date are legible;

(d) The drug does not require refrigeration; and

(e) The drug is returned to a pharmacist employed by the dispensing pharmacy or to the dispensing practitioner within fourteen (14) days.

(2) Subsection (1)(d) and (e) of this section shall be waived if all other conditions are met and if:

(a) The drug was dispensed for a patient in a health care facility licensed by the Cabinet for Human Resources;

(b) The drug has not come into the physical possession of the person for whom it was prescribed;

(c) The drug has been under the continuous control of personnel in the health care facility who are trained and knowledgeable in the storage and administration of drugs;

(d) The drug has been properly stored in an area which is regularly inspected by a pharmacist; and

(e) The drug is not expired.

(3) Drugs distributed within an acute care facility shall be exempt from the provisions of subsection (1)(a), (d) and (e) of this section.

(4) Nothing in this administrative regulation shall be construed to require a pharmacist or practitioner to accept the return of a prescription drug. (15 Ky.R. 1618; Am. 1853; eff. 3-15-89; 20 Ky.R. 2226; eff. 3-14-94.)

902 KAR 55:070. Storage of controlled substances in an emergency medication kit in certain long-term care facilities.

RELATES TO: KRS 218A.180, 218A.200

STATUTORY AUTHORITY: KRS 194A.050 194.050, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.250 directs the Cabinet for Health and Family Services to adopt rules and administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. This administrative regulation authorizes the storage in an emergency medication kit in certain long-term care facilities of limited quantities of controlled substances to be administered if prescribed by an authorized practitioner.

Section 1. Storage of Controlled Substances in an Emergency Medication Kit. A pharmacy provider may store controlled substances in an emergency medication kit in a residential hospice facility, nursing home, nursing facility, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded if the following conditions are met:

(1) Written policies and procedures of the facility regarding the procurement, use, storage, security, replacement, and recordkeeping of controlled substances in the kit shall be filed with the facility and with the provider pharmacy;

(2) Controlled substances in the kit shall be the property of the provider pharmacy, which is responsible for their proper labeling, storage, security, and accountability;

(3) Controlled substances stored in the kit shall be selected jointly by the facility's medical director or other physician, consultant pharmacist, and the director of nursing;

(4) Controlled substances in the kit shall not exceed six (6) individual doses each of six (6) different controlled substances;

(5) Controlled substances in the kit shall be administered only upon the order of an authorized practitioner who determines that the patient has an immediate medical need;

(6) Access to the controlled substances in the kit shall be limited to a physician, pharmacist, registered nurse, or other person authorized by law in this state to access and administer the prescribed medication;

(7) The provider pharmacy shall be notified by the facility within twenty-four (24) hours after the kit has been opened;

(8) The prescribing practitioner shall issue a written prescription for the controlled substances to the provider pharmacy within seventy-two (72) hours after administration of a controlled substance from the kit;

(9) The facility shall maintain a record of the administration of controlled substances from the kit in accordance with applicable state and federal laws;

(10) The provider pharmacy shall document documents a physical inventory of the controlled substances in the kit at least monthly; and

(11) The loss of any controlled substance from the kit shall be reported to the Cabinet for Health and Family Services in accordance with KRS 218A.200(6) and to the Federal Drug Enforcement Administration in accordance with 21 C.F.R. 1301.74(c).

Section 2. The Cabinet for Health and Family Services may deny, suspend, or revoke the privilege of storing controlled substances in an emergency medication kit if any provision in Section 1 of this administrative regulation is violated. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. (15 Ky.R. 1352; eff. 12-13-88; Am. 20 Ky.R. 2227; eff. 3-14-94; 22 Ky.R. 2481; eff. 8-1-96; 33 Ky.R. 2218; 2973; eff. 4-6-07.)

902 KAR 55:075. Sale of seized and forfeited controlled substances.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 218A.250, 218A.420(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.420(2) directs the Cabinet for Human Resources to promulgate administrative regulations to determine a proper buyer for controlled substances which are seized and forfeited under this chapter. The purpose of this administrative regulation is to prevent the sale of controlled substances that may be adulterated or misbranded.

Section 1. Sale of Seized and Forfeited Controlled Substances. A person shall not sell or purchase controlled substances which have been seized and forfeited under KRS Chapter 218A unless, prior to the sale:

(1) A written request for permission to sell or purchase such controlled substances is made to the Cabinet for Human Resources, Drug Control Branch; and

(2) The controlled substances are inspected by a pharmacist of the Cabinet for Human Resources, Drug Control Branch; and

(3) If a pharmacist of the Cabinet for Human Resources, Drug Control Branch, has made a written determination that tests or assays are necessary in order to determine whether the controlled substances have been adulterated or misbranded under the provisions of KRS 217.055 and 217.065, the person who submitted the request:

(a) Has had such tests or assays performed at his expense;

(b) Certified and submitted the results of such tests or assays to the pharmacist; and

(c) Has taken action required by the pharmacist after his review of the results of tests or assays that have been certified and submitted; and

(4) The person who submitted the request specifies the buyer and certifies that the buyer is:

(a) Licensed under the provisions of applicable statutes of the Commonwealth of Kentucky to perform the following acts related to controlled substances:

1. Administer;

2. Conduct chemical analysis;

3. Conduct research;

4. Dispense;

5. Distribute;

6. Manufacture;

7. Prescribe; or

8. Repackage; and

(b) Registered with the Drug Enforcement Administration, U.S. Department of Justice; and

(5) Permission is granted, in writing, by the Cabinet for Human Resources. (17 Ky.R. 3606; Am. 18 Ky.R. 703; eff. 8-21-91.)

902 KAR 55:080. Written prescriptions to be signed by practitioner.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to clarify who is authorized to sign a prescription for controlled substances and the form of the signature, which must be in accordance with federal regulation.

Section 1. A written prescription for a controlled substance shall be signed only by a practitioner who is authorized to prescribe controlled substances under the laws of the jurisdiction in which he is licensed to practice his profession.

Section 2. A written prescription for a controlled substance shall be written with ink, indelible pencil or typewriter and may be prepared by an agent for the practitioner's signature. The prescription shall be manually signed by the practitioner which may be in the same manner as he would sign a check or legal document. (17 Ky.R. 3607; eff. 7-17-91.)

902 KAR 55:080. Written prescriptions to be signed by practitioner.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to clarify who is authorized to sign a prescription for controlled substances and the form of the signature, which must be in accordance with federal regulation.

Section 1. A written prescription for a controlled substance shall be signed only by a practitioner who is authorized to prescribe controlled substances under the laws of the jurisdiction in which he is licensed to practice his profession.

Section 2. A written prescription for a controlled substance shall be written with ink, indelible pencil or typewriter and may be prepared by an agent for the practitioner's signature. The prescription shall be manually signed by the practitioner which may be in the same manner as he would sign a check or legal document. (17 Ky.R. 3607; eff. 7-17-91.)

902 KAR 55:090. Exempt anabolic steroid products.

RELATES TO: KRS 218A.010-218A.030, 218A.080-218A.090, 21 C.F.R. 1308.13, 1308.33-1308.34, 21 U.S.C. 801, 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation exempts certain anabolic steroid products from the licensing, distribution, and recordkeeping provisions of KRS Chapter 218A.

Section 1. Exempt Anabolic Steroid Products. The Cabinet for Health Services exempts the following anabolic steroid containing compounds, mixtures, or preparations from the provisions of KRS 218A.150 - 218A.180 and 218A.200:

- (1) Androgyn L.A.®, vial, NDC number 0456-1005: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- (2) Andro-Estro 90-4®, vial, NDC number 0536-1605: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- (3) Component E-H® in process granulation, pail or drum: testosterone propionate 10 parts, estradiol benzoate 1 part;
- (4) Component E-H® in process pellets, pail: testosterone propionate 25 mg, estradiol benzoate 2.5 mg/pellet;
- (5) Component TE-S® in process granulation, pail or drum: trenbolone acetate 5 parts, estradiol USP 1 part;
- (6) Component TE-S® in process pellets, pail: trenbolone acetate 120 mg, estradiol USP 24 mg/pellet;
- (7) DepANDROGYN®, vial, NDC number 0456-1020: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (8) DEPO-T.E.®, vial, NDC number 52765-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (9) Depo-Testadiol®, vial, NDC number 0009-0253: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (10) depTESTROGEN®, vial, NDC number 51698-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (11) Duomone®, vial, NDC number 52047-360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- (12) DURATESTRIN®, vial, NDC number 43797-016: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (13) DUO-SPAN II®, vial, NDC number 0684-0102: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (14) Estratest®, tablet, NDC number 0032-1026: esterified estrogens 1.25 mg, methyltestosterone 2.5 mg;
- (15) Estratest HS®, tablet, NDC number 0032-1023: esterified estrogens 0.625 mg, methyltestosterone 1.25 mg;
- (16) Menogen®, tablet, NDC number 59243-0570: esterified estrogens 1.25 mg, methyltestosterone 2.5 mg.;
- (17) Menogen HS®, tablet, NDC number 59243-0560: esterified estrogens 0.625 mg, methyltestosterone 1.25 mg.;
- (18) PAN ESTRA TEST®, vial, NDC number 0525-0175: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (19) Premarin with Methyltestosterone®, tablet, NDC number 0046-0879: conjugated estrogens 1.25 mg, methyltestosterone 10.0 mg;
- (20) Premarin with Methyltestosterone®, tablet, NDC number 0046-0878: conjugated estrogens 0.625 mg, methyltestosterone 5.0 mg;
- (21) Synovex H in-process bulk pellets, drum: testosterone propionate 25 mg., estradiol benzoate 2.5 mg.;
- (22) Synovex H Pellets in-process granulation, drum: testosterone propionate 10 parts, estradiol benzoate 1 part;
- (23) Synovex Plus®, in-process bulk pellets, drum: trenbolone acetate 25 mg., estradiol benzoate 3.5 mg/pellet;
- (24) Synovex Plus®, in-process ganulation, drum: trenbolone acetate 25 parts, estradiol benzoate 3.5 parts;
- (25) TEST-ESTRO Cypionates®, vial, NDC number 0536-9470: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (26) Testagen®, vial, NDC number 55553-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (27) Testoderm®, 4 mg/d, patch, NDC number 17314-4608: testosterone 10 mg.;
- (28) Testoderm®, 6 mg/d, patch, NDC number 17314-4609: testosterone 15 mg.;
- (29) Testoderm®, with Adhesive, 4 mg/d, patch, export only: testosterone 10 mg;
- (30) Testoderm®, with Adhesive, 6 mg/d, patch, NDC number 17314-2836: testosterone 15 mg.;
- (31) Testoderm®, in-process film, sheet: testosterone 0.25 mg/cm²;
- (32) Testoderm®, with Adhesive, in-process film, sheet: testosterone 0.25 mg/cm²;
- (33) Testosterone Cyp 50 Estradiol Cyp 2, vial, NDC number 0814-7737: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (34) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 54274-530: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (35) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0182-3069: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (36) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0364-6611: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (37) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0402-0257: testosterone cypionate 50 mg/ml, estradiol cypionate

2 mg/ml;

(38) Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0182-3073: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(39) Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0364-6618: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(40) Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0402-0360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(41) Testosterone Ophthalmic Solutions, ophthalmic solutions: testosterone $\leq 0.6\%w/v$;

(42) Tilapia Sex Reversal Feed (Investigational), Rangen, Inc., plastic bags: methyltestosterone 60 mg/kg fish feed; and

(43) Tilapia Sex Reversal Feed (Investigational), Zeigler Brothers, Inc, plastic bags: methyltestosterone 60 mg/kg fish feed. (19 Ky.R. 2207; eff. 4-21-93; Am. 21 Ky.R. 1395; eff. 1-9-95; 23 Ky.R. 3986; eff. 7-16-97; 26 Ky.R. 907; 1174; eff. 12-15-99; 29 Ky.R. 820; 1278; eff. 10-16-02.)

902 KAR 55:095. Prescription for Schedule II controlled substance - facsimile transmission or partial filling.

RELATES TO: KRS 218A.070, 218A.180, 218A.200, 21 C.F.R. 1306.05, 1306.11-1306.14

STATUTORY AUTHORITY: KRS 194.050, 218A.250, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.250 directs the Cabinet for Health Services to promulgate administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to permit the transmission of prescriptions for Schedule II controlled substances between the prescriber and dispenser via facsimile, on a limited basis, in order to facilitate the delivery of medications to certain patients whose medication needs change quickly and whose prescription should be communicated rapidly. This administrative regulation also permits the partial filling of prescriptions for Schedule II controlled substances to certain patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

Section 1. Definitions. (1) "Hospice" means a hospice program licensed by the Cabinet for Health Services.

(2) "Long-term care facility" means a nursing home, skilled nursing facility, nursing facility as defined in Pub.L. 100-203, intermediate care facility, or intermediate care facility for the mentally retarded.

Section 2. Transmission by Facsimile of a Prescription for a Schedule II Controlled Substance. (1) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05 and 902 KAR 55:080 for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(2) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05 and 902 KAR 55:080 for a Schedule II controlled substance for a resident of a long-term care facility may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05 and 902 KAR 55:080 for a schedule II controlled substance for a hospice patient may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

(4)(a) The facsimile prescription shall serve as the written prescription, required by KRS 218A.180(1) for the dispensing of a Schedule II controlled substance.

(b) Within seven (7) calendar days after transmitting a facsimile prescription for a Schedule II controlled substance, the prescribing practitioner shall deliver the original written prescription to the dispensing pharmacy.

(c) A practitioner who fails to deliver the original written prescription within the period specified in paragraph (b) of this subsection shall be deemed to have violated KRS 218A.1404(3).

Section 3. Partial Filling of a Prescription for a Schedule II Controlled Substance. (1) Except as provided in subsection (2) of this section a pharmacist may partially fill a prescription for a controlled substance listed in Schedule II if the pharmacist:

(a) Is unable to dispense the full quantity prescribed;

(b) Makes a notation of the quantity dispensed on the face of the written prescription; and

(c) Dispenses the remaining portion of the prescription within seventy-two (72) hours of the first partial filling. No further quantity shall be dispensed without a new written prescription.

(2) A written prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a documented terminal illness may be dispensed in partial quantities, including but not limited to individual dosage units if:

(a) The pharmacist records on the face of the prescription whether the patient is "terminally ill" or an "LTCF patient";

(b) The pharmacist records on the back of the written prescription or on another appropriate record, uniformly maintained and readily retrievable, the following data:

1. The date of the partial dispensing;
2. The quantity dispensed;
3. The remaining quantity authorized to be dispensed; and
4. The identification of the dispensing pharmacist;

(c) The pharmacist contacts the practitioner prior to dispensing the partial quantity if there is any question whether the patient is terminally ill, since both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient;

(d) The total quantity dispensed in all partial dispensings does not exceed the quantity prescribed; and

(e) No dispensing occurs beyond sixty (60) days from date of issuance of the prescription.

(3) A prescription that is partially filled and does not comply with the requirements of subsection (1) or (2) of this section shall be deemed to have been filled in violation of KRS 218A.200(3), (4) and 21 C.F.R. 1306.13. (21 Ky.R. 2589; Am. 22 Ky.R. 291; eff. 7-26-95; 24 Ky.R. 1165; eff. 1-12-98.)

902 KAR 55:100. Laetrile manufacturing standards.

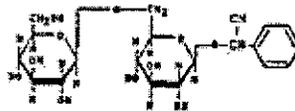
RELATES TO: KRS 217.950, 217.952, 311.950-311.966, 311.991

STATUTORY AUTHORITY: KRS 194.050, 217.950, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.950 provides that Amygdalin (laetrile) may be manufactured in this state subject to licensing by the Cabinet for Human Resources and directs the Secretary for Human Resources to adopt administrative regulations which prescribe minimum standards for manufacturers in preparing, compounding, processing, and packaging the substance. The secretary is also directed to establish standards of purity and make periodic tests and inspections of both the facilities for manufacture and samples to ascertain the purity, quality, and identity. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.

Section 1. Intent. In adopting an administrative regulation relating to the manufacture of Amygdalin (laetrile), the Cabinet for Health Services takes official notice that this substance has not been approved by the Federal Food and Drug Administration and that the interstate shipment of the substance has been held to be illegal. This administrative regulation is adopted in recognition of existing federal restrictions.

Section 2. Definitions. (1) "Amygdalin", laetrile means Amygdalin, D-mandelonitrile-beta-D-glucoside-6-beta-D-Glucoside, including all dosage forms.



It includes:

- (a) D-Amygdalin; and
- (b) D, L-Amygdalin.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Current good manufacturing practices" means 21 CFR 210.1 to 210.3 - Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding of Drugs and 21 CFR 211.1 to 211.208 - Current Good Manufacturing Practice for Finished Pharmaceuticals adopted by the U.S. Food and Drug Administration.

Section 3. Licensing Requirements. (1) A person, partnership, association, corporation, or other business organization shall not manufacture, prepare, or compound Amygdalin in this state without a license from the cabinet.

(2) Application for a license shall be made on Form DCB-1, "Application for License to Manufacture Amygdalin", provided by the cabinet, and shall include the training and experience of personnel and a description of the facilities, equipment, and materials to be used in the manufacture of Amygdalin.

(3) A license shall not be issued to manufacture Amygdalin unless the applicant:

- (a) Is of good moral character, or if the applicant is an association or corporation, its officers are of good moral character;
- (b) Is in compliance with "Current Good Manufacturing Practices";
- (c) Has qualified personnel to perform assigned tasks;
- (d) Submits the formula, including all components, involved in the manufacture of the product;
- (e) Submits a label which discloses all information required for a prescription drug, including a disclosure of possible side effects;
- (f) Is financially responsible; and
- (g) Is in compliance with all provisions of this administrative regulation.

Section 4. License Expiration; Renewal. (1) Every license issued by the cabinet to manufacture Amygdalin shall expire on June 30 of each year following the date of issuance unless suspended or revoked.

(2) A license shall not be renewed by the cabinet to manufacture Amygdalin unless the applicant is in compliance with the provisions of this administrative regulation.

Section 5. Manufacturing Practices. The current good manufacturing practices in manufacturing, processing, packing, or holding of drugs in 21 CFR 210.1 to 210.3 and the current good manufacturing practice for finished pharmaceuticals in 21 CFR 211.1 to 211.208 adopted by the U.S.

Food and Drug Administration shall apply.

Section 6. Standards of Identity, Purity, and Tests for D-Amygdalin.

(1) Powder form:

(a) Molecular formula: $C_{20}H_{27}NO_{11}$;

(b) Molecular weight: 457.4;

(c) Description: White powder - melting range: varies with water of crystallization and previous melting;

(d) Solubility: (mg/ml) water 125, ethanol 0.33, ten (10) percent ethanol 20, ether insoluble, methylene chloride insoluble;

(e) Stability:

1. Solution: (10 mg/ml) Determined by gas chromatography of TMS derivative:

pH 6 phosphate buffer	Stable at least twenty-four (24) hours
pH 8 phosphate buffer	No more than fifteen (15) percent L-Amygdalin formed in twenty-four (24) hours
0.1 N HCl	No more than sixty-five (65) percent decomposition in ten (10) minutes
0.1 N NaOH	No more than fifty-six (56) percent decomposition in ten (10) minutes

2. Bulk: A sample stored at sixty (60) degrees Celsius for thirty (30) days showed no degradation as indicated by gas chromatography;

(f) Elemental composition:

Carbon	52.51
Hydrogen	5.95
Nitrogen	3.06
Oxygen	38.48

(g) Water: The compound shall not contain more than six (6) percent water, determined by Karl-Fischer;

(h) Infrared spectrum: The infrared spectrum conforms to reference material;

(i) Ultraviolet absorption: (H_2O) a solution has the following absorption peaks (alpha max) and extinction coefficients (E):

Alpha max	E
268 nm	214
262 nm	312
257 nm	287
252 nm	203
208 nm	7400

(j) Nuclear magnetic resonance: (D_2O)

Chemical Shift (δ)	Pattern	No. Protons	Assignment
3.2-5.2	m	14	Glucosyl protons
5.9	s	1	H - C - C = N
7.6	s	5	Phenyl protons

(k) Optical rotation:

$$[\alpha]_D^{20} = -42^\circ (H_2O)$$

Merck Index, 8th Ed. (1968);

(l) Gas chromatography:

1. Column: three (3) percent OV-1 on 100/200 Chromosorb W, AW-DMCS in glass column;
2. Oven temperature: 250 degrees to 275 degrees Celsius programmed at one (1) degree per minute;
3. Carrier gas: N₂, thirty-five (35) ml. per minute;
4. Sample: TMS-derivative of the sample (Prepare by dissolving one (1) mg. of the sample in five-tenths (0.5) ml. tri-sil with gentle heat.);
5. Detection: Flame ionization at 300 degrees Celsius;

(m) Thin layer chromatography:

1. Adsorbent: SiO₂:HF;
2. Solvent system: n-BuOH/HOAc/H₂O (6:3:1);
3. Sample applied: 100Y, 200Y, (H₂O);
4. Detection: UV, I₂, KBR Spray;

(n) Purity: The compound shall not contain more than one (1) percent total impurities other than water;

(o) Suggested identity tests: IR, UV & NMR Spectra; and

(p) Suggested assay procedures: Thin layer and gas chromatography.

(2) Tablet form:

TEST	SPECIFICATION
Assay:	Ninety (90)-110 percent of label
HPLC Method Column-Lichrosorb RP8, 300 mm. x 4 mm. Mobile phase 25% CH ₃ OH in H ₂ O Flow rate - 2 ml./min. Detector/sensitivity-uv at 254 nm/0.02 aufs	The total of all uv absorbing impurities shall not exceed five (5) of this chromatogram
Disintegration: Current USP method	100% within fifteen (15) minutes
Dissolution: Current USP method	100% within thirty (30) minutes
Weight variation	Conforms to current USP
Thin layer chromatography (Methanol extraction) Adsorbent: Silica gel GF Solvent system: n-BuOH/HOAc/H ₂ O, 4/1/1 Sample applied: 200, 100Y (MeOH) References: D,L-Amygdalin, 100Y (H ₂ O) D,L-Amygdalinamide, 2, 4Y (H ₂ O) D,L-Amygdalin acid, 3, 5Y (H ₂ O) Detection: uv, I ₂ , H ₂ SO ₄ - charring.	Compares favorably to reference material

Section 7. Standards of Identity, Purity, and Tests for D,L-Amygdalin. (1) Powder form:

- (a) Molecular formula: C₂₀H₂₇NO₁₁;
- (b) Molecular weight: 457.4;
- (c) Description: White powder;
- (d) Solubility: (mg./ml.) Water 350; Methanol 100+; Chloroform 0.1;

(e) Stability:

1. Solution: A solution of ten (10) mg. in one (1) ml. water shows no degradation as indicated by gas chromatography, after twenty-four (24) hours.

2. Bulk: A sample stored at sixty (60) degrees Celsius for thirty (30) days shows no degradation as indicated by gas chromatography.

(f) Elemental composition:

Carbon	52.51
Hydrogen	5.95
Nitrogen	3.06
Oxygen	38.48

(g) Water: The compound shall not contain more than six (6) percent water, determined by Karl-Fischer;

(h) Infrared spectrum: The infrared spectrum conforms to reference material;

(i) Ultraviolet absorption: (H₂O)

Alpha max	E
268 nm	206
262 nm	300
257 nm	280
252 nm	200

(j) Optical rotation:

$$[\alpha]_D^{21} = -52 \cdot (1120)$$

(k) Nuclear magnetic resonance: (D₂O)

Chemical Shift (δ)	Pattern	No. Protons	Assignment
3.2-5.2	m	14	Glucosyl protons
5.9	s	½	H - C - C = N (L-form)
6.1	s	½	H - C - C = N (D-form)
7.6	s	5	Phenyl protons

Internal Reference for Assay: Pyrocatechol, 6.95;

(l) Gas chromatography:

1. Column: three (3) percent OV-1 on 100/200 Chromosorb W-HP glass column, 6' x 2 mm;

2. Carrier gas: N₂, forty (40) ml. per minute;

3. Oven temperature: 240 degrees to 275 degrees Celsius programmed at two (2) ml. per minute;

4. Sample: TMS-derivative (Prepare by dissolving one (1) mg. in five-tenths (0.5) ml. tri-sil with gentle heat.);

5. Detection: FID at 280 degrees Celsius;

(m) Thin layer chromatography:

1. Adsorbent: SiO₂-GF;

2. Solvent system: n-BuOH/HOAc/H₂O (12:3:1);

3. Sample: 100Y, 200Y, (H₂O);

4. Detection: I₂, UV, (NH₄)₂SO₄ - charring;

(n) Purity: The compound consists of about 50:50 D,L-material. There shall not be more than three (3) percent total organic impurities. The compound shall not contain more than six (6) percent water;

(o) Suggested identity tests:

1. Infrared spectrum;
 2. Ultraviolet absorption; or
 3. Nuclear magnetic resonance;
- (p) Suggested assay procedures:
1. Thin layer chromatography;
 2. Karl-Fischer determination; or
 3. Gas chromatography.

(2) Sterile injectable form:

TEST	SPECIFICATION
Content uniformity	Ninety (90) to 110 percent of label
HPLC Method Column-300 mm. x 4 mm. I.D. Lichrosorb RP8 Mobile phase - 25% CH ₃ OH in H ₂ O Flow rate - 2 ml./min. Detector/sensitivity-uv at 254 nm./0.02 aufs.	The total of all uv absorbing impurities shall not exceed five (5) percent of this chromatogram.
Moisture - determine by Karl-Fischer	less than two (2) percent
Weight variation	Conforms to current USP
pH of reconstituted solution	4.0 to 8.0
Color of solution	Colorless
Clarity and completeness of solution	Conforms to current USP
Particulate matter	Conforms to current USP
USP sterility test	Sterile
USP pyrogen test	Nonpyrogenic at 600 mg./kg.
Thin layer chromatography Adsorbent: Silica gel GF Solvent system: n-BuOH/HOAc/H ₂ O, 4/1/1 Sample applied: 400, 200Y (H ₂ O) References: D,L-Amygdalin, 200Y (H ₂ O) D,L-Amygdalinamide, 1, 2Y (H ₂ O) D,L-Amygdalin acid, 1, 2Y (H ₂ O) Detection: uv, I ₂ , 30% H ₂ SO ₄ - charring.	Compares favorably to reference material

Section 8. Adulterated Amygdalin. Amygdalin shall be adulterated if:

- (1) It consists in whole or in part of a filthy, putrid, or decomposed substance;
- (2) Produced, prepared, packed, or held under unsanitary conditions where it may have been contaminated with filth or rendered injurious to health;
- (3) Its container is composed in whole or in part of a poisonous or deleterious substance which may render the contents injurious to health;
- (4) Its strength differs from, or its quality or purity falls below, the standard set forth in this administrative regulation. The determination of strength, quality, or purity shall be made in accordance with the tests or methods of assay in this administrative regulation;
- (5) Its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or
- (6) It has been:
 - (a) Mixed or packed to reduce its quality or strength; or

(b) Substituted wholly or in part,

Section 9. Misbranded Amygdalin. (1) Amygdalin shall be misbranded if:

(a) Labeling is false or misleading in any particular;

(b) In package form, unless it bears a label containing:

1. Name and place of business of the manufacturer, and name and place of business of the packer or distributor, if other than manufacturer;

and

2. An accurate statement of the quantity of the contents in weight, measure, or numerical count; reasonable variations shall be permitted;

(c) A word, statement, or other information required by 21 CFR 201.1 to 201.319 and this administrative regulation to appear on the label or labeling is not prominently placed with clarity (compared with other words, statements, designs, or devices, in the labeling) and in terms likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) The label does not state:

1. The common or usual name of Amygdalin;

2. Directions for use; and

3. Warnings against:

a. Use in pathological conditions where a danger to health exists;

b. Use by children where a danger to health exists; and

c. Unsafe dosage, methods, or duration of administration or application;

(e) It has been found by the cabinet to be apt to deteriorate, unless it is packaged in a manner to protect public health, and its label bears a statement of precautions;

(f) The container is made, formed, or filled to be misleading;

(g) It is an imitation of another substance;

(h) It is offered for sale under the name of another substance;

(i) It is dangerous to health if used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling;

(j) Intended for use by man unless, prior to dispensing, its label bears the statement "Caution: Kentucky law prohibits dispensing without prescription;" or

(k) The label, as originally packed, directs that it is to be dispensed or sold only on prescription, unless dispensed or sold on a prescription of an authorized practitioner, and its label, as dispensed, bears the name and place of business of the dispenser or seller, the serial number and date of the prescription, and the name of the licensed practitioner. Amygdalin prescriptions shall not be refilled.

(2) Amygdalin sold on a prescription of a practitioner shall be exempt from the requirements of this section if:

(a) The practitioner is licensed by law to administer Amygdalin; and

(b) Amygdalin bears a label containing:

1. The name and place of business of the seller;

2. The serial number and date of the prescription;

3. The name of the practitioner; and

4. The name of the patient for whom prescribed.

(3) It is not the intention of subsection (1)(b)1 of this section to require the name and place of business of the wholesaler to appear upon the label of the package.

Section 10. Inspections. The cabinet or its duly authorized agent shall have free access at all reasonable times to a factory, warehouse, or establishment in which Amygdalin is manufactured, processed, packed, or held for sale for the purpose of:

(1) Inspecting the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling, to determine if any of the provisions of this administrative regulation are being violated.

(2) Securing samples or specimens of Amygdalin. It shall be the duty of the cabinet to make or cause to be made examinations of samples secured under the provisions of this section to determine if a provision of this administrative regulation is being violated.

(3) Examining or reproducing books, papers, documents, or other evidence pertaining to Amygdalin.

Section 11. Detention or Quarantine of Amygdalin if Adulterated or Misbranded. (1) If a duly authorized agent of the cabinet finds, or has probable cause to believe, that any Amygdalin is adulterated or misbranded pursuant to this administrative regulation, the agent shall affix a tag or marking, giving notice that Amygdalin is, or is suspected of being, adulterated or misbranded and has been detained or quarantined. The tag or

marking shall be a warning not to remove or dispose of Amygdalin until permission for removal or disposal is given by the agent or the district court. A person shall not remove or dispose of detained or quarantined Amygdalin without permission.

(2) If Amygdalin detained or quarantined under subsection (1) of this section has been found by the agent to be adulterated or misbranded, the agent shall petition the judge of the district court where the Amygdalin is detained or quarantined for an order for condemnation. Nothing in this section shall require the cabinet or its agent to go to court if destruction of the quarantined Amygdalin is accomplished by agreement made in writing with the owner. If the agent has found Amygdalin detained or quarantined is not adulterated or misbranded, the agent shall remove the tag or marking.

Section 12. Revocation or Suspension of License. (1) The cabinet may suspend or revoke a license to manufacture Amygdalin for violation of a provision of this administrative regulation after proper notice and an opportunity for a due process hearing.

(2) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 13. Incorporation by Reference. (1) Form DCB-1, "Application for License to Manufacture Amygdalin", revised October 1993, is being incorporated by reference. This form may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(2) 21 CFR 201.1 to 201.319, revised as of April 1, 1995, is being incorporated by reference. A copy may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m. A copy may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) 21 CFR 210.1 to 210.3, revised as of April 1, 1995, is being incorporated by reference. A copy may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m. A copy may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(4) 21 CFR 211.1 to 211.208, revised as of April 1, 1995, is being incorporated by reference. A copy may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m. A copy may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (23 Ky.R. 1300; eff. 9-18-96.)

902 KAR 55:105. Controlled substance prescription blanks.

RELATES TO: KRS 218A.030-218A.140, 218A.204, 218A.170-218A.240, 218A.281, 218A.282, 218A.284, 218A.286, 218A.288

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 211.090, 218A.204, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.204 requires the cabinet to promulgate administrative regulations that establish security requirements for a prescription blank used by a practitioner to write a prescription for a controlled substance. The purpose of this administrative regulation is to establish minimum requirements that will decrease the potential for forgery or alteration of a prescription or a prescription blank for a controlled substance.

Section 1. Definitions. (1) "Logo" means a symbol utilized by an individual, a pharmacy, professional practice, professional association, or hospital.

(2) "Security prescription blank" means a prescription blank that complies with the requirements of Section 3 of this administrative regulation.

Section 2. Security Prescription Blanks Required. (1) Beginning January 1, 1999, a written prescription for a controlled substance shall be on a security prescription blank unless, pursuant to Section 7 of this administrative regulation, the cabinet has granted a waiver to the practitioner who wrote the prescription or to the pharmacy that dispenses it.

(2) A practitioner who is licensed in Kentucky and in another state shall utilize a security prescription blank for writing a prescription for a controlled substance while practicing his profession within the Commonwealth unless, pursuant to Section 7 of this administrative regulation, the cabinet has granted a waiver to the practitioner or to the pharmacy that dispenses the controlled substance.

Section 3. Requirements of a Security Prescription Blank. (1) A prescription for a controlled substance shall contain the following security features:

(a) A latent, repetitive "void" pattern screened at five (5) percent in pantone green shall be printed across the entire front of the prescription blank. If a prescription is photocopied, the word "void" shall appear in a pattern across the entire front of the prescription;

(b) A watermark shall be printed on the backside of the prescription blank so that it shall only be seen at a forty-five (45) degree angle. The watermark shall consist of the words "Kentucky Security Prescription", and appear horizontally in a step-and-repeated format in five (5) lines on the back of the prescription using twelve (12) point Helvetica bold type style;

(c) An opaque] symbol shall appear in the upper right-hand corner, one-eighth (1/8) of an inch from the top of the prescription blank and five-sixteenths (5/16) of an inch from the right side of the prescription blank. The symbol shall be three-fourths (3/4) of an inch in size and disappear if the prescription copy is lightened;

(d) Six (6) quantity check off boxes shall be printed on the form and the following quantities shall appear:

1. 1-24;
2. 25-49;
3. 50-74;
4. 75-100;
5. 101-150;
6. 151 and over;

(e) A logo may appear on the prescription blank. The upper left one (1) inch square of the prescription blank shall be reserved for a logo;

(f) The following statement shall be printed on the bottom of the prescription blank: "Prescription is void if more than one (1) prescription is written per blank";

(g) Refill options shall appear below any logo on the left side of the prescription blank in the following order: Refill NR 1 2 3 4 5; and

(h) A prescription blank shall be four and one-quarter (4 1/4) inches high and five and one-half (5 1/2) inches wide.

(2) A prescription shall bear the preprinted, stamped, typed, or manually printed name, address and telephone number of the prescribing practitioner.

(3) A prescription blank for a controlled substance shall not contain:

(a) An advertisement on the front or the back of the prescription blank;

(b) The preprinted name of a controlled substance; or

(c) The written, typed, or rubber-stamped name of a controlled substance until the prescription blank is signed, dated and issued to a patient.

(4) A prescription blank for a controlled substance shall provide space for the patient's name and address, the practitioner's signature and the practitioner's DEA registration number.

Section 4. Other Requirements. (1) Only one (1) prescription shall be written per prescription blank.

(2) A quantity check-off box that corresponds to the quantity prescribed shall be marked.

(3) If a prescribed drug is a schedule III, IV or V controlled substance, a refill option shall be marked.

(4) If a prescription for a schedule III, IV, or V controlled substance will be transmitted to a pharmacy by facsimile, the practitioner or the practitioner's agent shall, prior to transmission, write or stamp "FAXED" on the face of the original prescription along with the date and the person's initials.

(5) If a pharmacist uses due diligence in ascertaining the validity of a prescription, a prescription for a schedule III, IV, or V controlled substance that is transmitted to a pharmacy by facsimile shall be exempt from the requirement of green ink in Section 3(1)(a) of this administrative regulation and the requirement of a watermark in Section 3(1)(b) of this administrative regulation.

(6) If a prescription for a schedule III, IV or V controlled substance has been transmitted to a pharmacy by facsimile, the transmitting practitioner shall file the original prescription in the patient's record.

Section 5. Exceptions. A pharmacist shall not be required to use a security prescription blank to record an oral prescription or a transferred prescription for a Schedule III, IV, or V controlled substance.

Section 6. Printers, Reproducers or Distributors of Security Prescription Blanks. (1) A printer, reproducer or distributor of security prescription blanks shall require a written purchase order or request for security prescription blanks. A written purchase order or request shall remain on file for two (2) years.

(2) A purchase order or request shall be signed by:

(a) A practitioner whose name shall be printed on the security prescription blanks; or

(b) The chief medical official of a health care facility or pharmacist-in-charge of a pharmacy, if the security prescription blanks are requested on behalf of a practitioner who stamps, types or manually prints his name, address, telephone number and DEA number on the security prescription blank.

(3) The provisions of this section shall not apply to distributions between printers, reproducers, or distributors.

Section 7. Waiver of Security Prescription Blanks. (1) A practitioner or a pharmacy may apply in writing to the cabinet for a waiver from the requirement for security prescription blanks. A request for a waiver shall include:

(a) A detailed statement of the security features provided by the system proposed by the applicant for the prevention of forgery or alteration of an original prescription; or

(b) The format of the alternative prescription blank.

(2) The system or prescription blank proposed by the applicant shall provide a level of security equivalent to a security prescription blank.

(3) The cabinet shall grant or deny the application in writing within sixty (60) days after the request is received.

(4) When a waiver has been granted, the cabinet may suspend or revoke the waiver if the alternative system or alternative prescription blank does not provide security equivalent to a security prescription blank.

(5) Upon notification of denial, suspension, or revocation of the waiver of the requirement for a security prescription blank, the practitioner or pharmacy may request a hearing. The administrative hearing shall be conducted in accordance with 902 KAR 1:400. (25 Ky.R. 721; Am. 1074; 1366; eff. 12-16-98.)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(9), 218A.202, 218A.240

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. This administrative regulation establishes criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

- (a) 1. Is directly employed by the Cabinet for Health and Family Services; or
2. Is employed by an agent or contractor of the cabinet;
- (b) Has undergone KASPER training; and
- (c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(9), and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy which has a DEA number; and

(b) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(4) "Health facility" is defined by KRS 216B.015(13).

(5) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(6) "Patient identifier" means a patient's:

- (a) Full name;
- (b) Address, including zip code;
- (c) Date of birth; and
- (d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(7) "Practitioner" is defined by KRS 218A.010(33).

(8) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

Section 2. Data Reporting. (1) A dispenser or a health facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b).

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

- (a) Patient identifier;
- (b) National drug code of the drug dispensed;
- (c) Metric quantity of the drug dispensed;
- (d) Date of dispensing;
- (e) Estimated day's supply dispensed;
- (f) Drug Enforcement Administration registration number of the prescriber;
- (g) Serial number assigned by the dispenser; and
- (h) The Drug Enforcement Administration registration number of the dispenser.

(3)(a) Prior to July 1, 2013, the data identified in subsection (2) of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.

(b) Prior to July 1, 2013, a dispenser that dispenses a controlled substance for the direct administration of the controlled substance to or for a patient in a licensed health facility shall not be required to transmit the data identified in subsection (2) of this section.

(c) Effective July 1, 2013, the data identified in subsection (2) of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.

(4)(a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or
2. The dispenser cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5) An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (8) of this section, the data shall be transmitted by:

- (a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;
- (b) Secure File Transfer Protocol;
- (c) https protocol; or
- (d) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the format established by the "ASAP Telecommunications Format for Controlled Substances", developed by the American Society for Automation in Pharmacy, Version 4.1, or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for Controlled Substances", shall report the data identified in subsection (2) of this section using an Internet accessible web portal designated by the cabinet.

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at www.chfs.ky.gov/KASPER.

(3) A request for a KASPER provider report made by a peace officer authorized to receive data under KRS 218A.202, or a designated

representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the "Request for KASPER Report (Law Enforcement and Licensure Boards)", Form DCB-15L.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may query KASPER for a report on the decedent.

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used in the Social Security field.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the number "000-00-0000" shall be used in the Social Security field.

(5) If a patient is an animal, the number "000-00-0000" shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall be authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER for a period of two (2) years plus the current year prior to its transfer to the State Archives and Records Commission.

Section 8. Error Resolution. (1) A patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic to whom a report has been disclosed under KRS 218A.202(8) or this administrative regulation may request that information contained in KASPER be corrected if the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic believes that any information is inaccurate. The patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic shall:

(a) Contact the dispenser who reported the information required by Section 2(2) of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database within seven (7) days of the request for the correction; and

(b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic that the corrected information has been transmitted.

(3) If a dispenser maintains that information regarding the dispensing of a controlled substance was correctly reported to KASPER and the KASPER system generates a report with inaccurate information, the dispenser shall contact the Drug Enforcement and Professional Practices Branch (DEPPB) to identify the source of an error in the KASPER report, and the cabinet shall correct the information in the KASPER database.

(4) Upon correction of information in the KASPER database pursuant to subsection (3) of this section, cabinet staff shall notify the patient, patient's representative, practitioner, pharmacist, health facility, private practitioner's office or clinic within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

Section 10. Disclosure of Data or Report. (1) The cabinet shall only disclose data to the persons and entities authorized to receive that data under KRS 218A.202(6).

(2) As a condition precedent to the disclosure of data or a report pursuant to KRS 218A.202(6)(f), a hospital or long-term care facility shall maintain, and provide upon request by the cabinet, a copy of the hospital or long-term care facility's policy for the management of KASPER data and reports which:

(a) Describes the hospital or long-term care facility's internal procedures for educating the designated employee or employees on the:

1. Proper use of the KASPER system;

2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and

3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and

(b) Describes the hospital or long-term care facility's internal procedures for auditing the account, including:

1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and

2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the Office of Inspector General.

(4)(a) An individual authorized to receive data under KRS 218A.202(6) shall not provide the data to any other entity except as provided in KRS 218A.202(8) and paragraph (b) of this subsection.

(b) In addition to the purposes authorized under KRS 218A.202(8)(e), and pursuant to KRS 218A.205(2)(a) and (6), a practitioner or pharmacist who obtains KASPER data or a report under KRS 218A.202(6)(e)1. or who in good faith believes that any person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance, may report suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board.

(5) A hospital or long-term care facility shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, Version 4.1, November 2009; and

(b) "Request for KASPER Report (Law Enforcement and Licensure Boards)", Form DCB-15L, 12/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (25 Ky.R. 966; Am. 1367; eff. 12-16-1998; 32 Ky.R. 1927; 33 Ky.R. 120; eff. 7-24-2006; 34 Ky.R. 2609; 35 Ky.R. 283; eff. 9-5-2008; 2615; eff. 7-31-2009; 39 Ky.R. 629; 1218; 1413; 2033; eff. 3-4-2013.)

902 KAR 55:115. Drug possession by hospice or home health agency.

RELATES TO: KRS 217.005-217.215, 217.992

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 217.125, 315.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.300 authorizes the Cabinet for Health Services to promulgate administrative regulations that implement the possession of certain drugs by a hospice or home health agency. The purpose of this administrative regulation is to establish criteria that a pharmacy, hospice or home health agency must meet in order to insure that drugs belonging to a pharmacy, that are stored in a hospice or home health agency, are safe and effective for administration to patients.

Section 1. Authorized Employees. A pharmacy may place a legend drug listed in KRS 315.300 with an authorized employee of a hospice or a home health agency if the pharmacy maintains a record of the license that authorizes the employee to administer legend drugs.

Section 2. Written Agreement. Each party to a written agreement between a pharmacy and a home health agency or a pharmacy and a hospice shall maintain a copy of the written agreement.

Section 3. Protocol. (1) A protocol required by KRS 315.300 may be included in the written agreement or may be a separate document.

(2) If the protocol is a separate document, a copy shall be maintained by the pharmacy and by the hospice or home health agency.

(3) The protocol shall be reviewed not less than annually and modified if necessary.

Section 4. Records. (1) The pharmacy record of a drug placed with authorized employees of a hospice or home health agency shall be retained for five (5) years.

(2) The record of a drug administered by authorized employees of a hospice or home health agency shall be retained by the pharmacy for five (5) years. (25 Ky.R. 723; Am. 1369; eff. 12-16-98.)