

1 AN ACT relating to substance use disorders.

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

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

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

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

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

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

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

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

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

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

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

1 recommendations of the initial clinical assessment; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Policy.

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

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

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

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

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

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

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

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

24 2. As ordered by the court.

25 (7) An employer may:

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

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

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

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

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

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

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

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

4 ➔SECTION 2. A NEW SECTION OF KRS 309.080 TO 309.089 IS CREATED
5 TO READ AS FOLLOWS:

6 (1) An applicant for certification as a certified alcohol and drug counselor associate

7 I shall pay the board the initial fee for certification, and shall:

8 (a) Be at least eighteen (18) years of age;

9 (b) Have obtained a high school diploma or high school equivalency diploma;

10 (c) Have completed forty (40) classroom hours of board-approved curriculum,
11 twenty (20) hours of which shall have been obtained in the previous two (2)
12 years, that includes:

13 1. Screening assessment and engagement;

14 2. Treatment planning, collaboration, and referral;

15 3. Counseling; and

16 4. Professional and ethical responsibilities;

17 (d) Be under the ongoing supervision of a board-approved supervisor for no
18 less than two (2) hours, two (2) times a month in the practice of drug and
19 alcohol counseling; and

20 (e) Submit a signed statement agreeing to practice by the code of ethical
21 standards adopted by the board.

22 (2) During the first twelve (12) months after an initial certificate has been issued, a
23 certified alcohol and drug counselor associate I shall complete at least thirty (30)
24 additional classroom hours of board-approved curriculum as specified in
25 subsection (1)(c)1. to 4. of this section.

26 ➔SECTION 3. A NEW SECTION OF KRS 309.080 TO 309.089 IS CREATED
27 TO READ AS FOLLOWS:

1 An applicant for certification as a certified alcohol and drug counselor associate II
2 shall pay the board the initial fee for certification, and shall:

3 (1) Be certified by the board as a certified alcohol and drug counselor associate I for
4 a period of at least eight (8) months;

5 (2) Have four hundred (400) hours of documented chemical dependency counseling-
6 related compensated work or supervised internship experience of which a
7 minimum of eighty (80) hours shall be in chemical dependency counseling and
8 all of which shall have been under the direct supervision of:

9 (a) A certified alcohol and drug counselor who has at least two (2) years of
10 post-certification experience and has attended the board-sponsored
11 supervision training; or

12 (b) A licensed clinical alcohol and drug counselor who has at least twelve (12)
13 months of post-licensure experience or has attended the board-sponsored
14 supervision training; and

15 (3) Have seventy (70) hours of approved classroom hours of board-approved
16 curriculum of which twenty (20) hours shall have been obtained in the previous
17 two (2) years and shall be in addition to the classroom hours required in Section
18 2 of this Act for a certified alcohol and drug counselor associate I.

19 ➔Section 4. KRS 309.080 is amended to read as follows:

20 As used in KRS 309.080 to 309.089, unless the context otherwise requires:

21 (1) "Board" means the Kentucky Board of Alcohol and Drug Counselors;

22 (2) "Certified alcohol and drug counselor associate I" means a person certified by
23 the board who meets the requirements of Section 2 of this Act;

24 (3) "Certified alcohol and drug counselor associate II" means a person certified by
25 the board who meets the requirements of Section 3 of this Act;

26 (4) "Certified alcohol and drug counselor" means a person certified by the board who
27 meets the requirements in KRS 309.083;

1 ~~(5)~~~~(3)~~ "Certificate holder" means an alcohol and drug counselor who is certified
2 pursuant to KRS 309.080 to 309.089;

3 ~~(6)~~~~(4)~~ "Licensed clinical alcohol and drug counselor" means a person licensed by the
4 board who meets the requirements of KRS 309.0832;

5 ~~(7)~~~~(5)~~ "Licensed clinical alcohol and drug counselor associate" means a person
6 licensed by the board who meets the requirements of KRS 309.0833;

7 ~~(8)~~~~(6)~~ "Licensee" means a clinical alcohol and drug counselor who is licensed
8 pursuant to KRS 309.080 to 309.089;

9 ~~(9)~~~~(7)~~ "Practice of alcohol and drug counseling":

10 (a) Means the assessment and counseling of an individual, family, or group
11 dealing with an alcohol or drug problem or addiction; and

12 (b) Does not include the diagnosis or treatment of a mental health condition, or
13 the administration or interpretation of psychological tests;

14 ~~(10)~~~~(8)~~ "Registered alcohol and drug peer support specialist" means a person
15 registered by the board who meets the requirements in KRS 309.0831; and

16 ~~(11)~~~~(9)~~ "Registrant" means an alcohol and drug peer support specialist who is
17 registered pursuant to KRS 309.080 to 309.089.

18 ➔Section 5. KRS 309.0805 is amended to read as follows:

19 (1) No person shall use the title "licensed clinical alcohol and drug counselor,"
20 "licensed clinical alcohol and drug counselor associate," "certified alcohol and drug
21 counselor," **"certified alcohol and drug counselor associate II," "certified alcohol
22 and drug counselor associate I,"** or "registered alcohol and drug peer support
23 specialist," or hold himself or herself out as a "licensed clinical alcohol and drug
24 counselor," "licensed clinical alcohol and drug counselor associate," "certified
25 alcohol and drug counselor," or "registered alcohol and drug peer support specialist"
26 unless he or she is licensed, certified, or registered pursuant to KRS 309.080 to
27 309.089.

1 (2) Nothing in KRS 309.080 to 309.089 shall apply to persons licensed, certified, or
2 registered under any other provision of the Kentucky Revised Statutes, including
3 but not limited to physicians, social workers, psychologists, marriage and family
4 therapists, art therapists, nurses, or students in accredited training programs in those
5 professions, and nothing in KRS 309.080 to 309.089 shall be construed to limit,
6 interfere with, or restrict the practice, descriptions of services, or manner in which
7 they hold themselves out to the public.

8 (3) Nothing in KRS 309.080 to 309.089 shall be construed to alter, amend, or interfere
9 with the practice of those who render counseling services, including but not limited
10 to employment counseling, job placement counseling, vocational rehabilitation
11 counseling, pastoral counseling based on any tenet of one's religious beliefs, or
12 school counseling.

13 (4) Nothing in KRS 309.080 to 309.089 shall apply to the activities and services of a
14 student intern or trainee who is pursuing a program of studies in alcohol and drug
15 counseling at an accredited institution of higher education, if these activities are
16 performed under the supervision or direction of an approved supervisor and the
17 activities are part of the supervised program of studies.

18 ➔Section 6. KRS 309.0813 is amended to read as follows:

19 The board shall:

20 (1) Promulgate administrative regulations pursuant to KRS Chapter 13A for the
21 administration and enforcement of KRS 309.080 to 309.089;

22 (2) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing a
23 code of ethics, standards of practice, and continuing education for licensed clinical
24 alcohol and drug counselors, licensed clinical alcohol and drug counselor
25 associates, certified alcohol and drug counselors, **certified alcohol and drug**
26 **counselor associates II, certified alcohol and drug counselor associates I,** and
27 registered alcohol and drug peer support specialists;

- 1 (3) Approve and disapprove, at least once every other month~~[twice a year]~~, those
2 persons who shall be licensed, certified, or registered under KRS 309.080 to
3 309.089;
- 4 (4) Approve the examination required of applicants for licensure or certification as
5 alcohol and drug counselors and applicants for registration as alcohol and drug peer
6 support specialists, and promulgate administrative regulations pursuant to KRS
7 Chapter 13A for the administration and grading of the examination;
- 8 (5) Promulgate administrative regulations pursuant to KRS Chapter 13A to define the
9 process to register with the board as a registered alcohol and drug peer support
10 specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug
11 counselor associate, or licensed clinical alcohol and drug counselor;
- 12 (6) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing
13 grounds and procedures for denying, suspending, failing to reissue, or revoking a
14 license, certificate, or registration, and issuing reprimands and admonishments
15 pursuant to KRS 309.080 to 309.089;
- 16 (7) Hold a hearing pursuant to KRS Chapter 13B upon the request of an aggrieved
17 licensee, licensee associate, certificate holder, or registrant, or an applicant for a
18 license, certificate, or registration;
- 19 (8) Employ needed personnel and establish their duties and compensation;
- 20 (9) Maintain a register of licensed clinical alcohol and drug counselors, licensed
21 clinical alcohol and drug counselor associates, certified alcohol and drug
22 counselors, and registered alcohol and drug peer support specialists;
- 23 (10) Keep a complete record of the board's proceedings;
- 24 (11) Investigate suspected or alleged violations of KRS 309.080 to 309.089 and the
25 administrative regulations promulgated pursuant to KRS 309.080 to 309.089;
- 26 (12) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing
27 an initial licensure fee, certification fee, registration fee, and annual renewal fees

1 not to exceed three hundred dollars (\$300) each;

2 (13) Take legal action as necessary to restrain or enjoin violations of KRS 309.080 to
3 309.089 and the administrative regulations promulgated pursuant to KRS 309.080
4 to 309.089;

5 (14) Submit an annual report to the Governor and the Legislative Research Commission
6 by January 1 of each year, which lists all hearings conducted by the board and the
7 decisions rendered; and

8 (15) Collect and deposit all fees, fines, and other moneys owed to the board into the
9 State Treasury to the credit of the revolving fund established in KRS 309.082.

10 ➔Section 7. KRS 309.083 is amended to read as follows:

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

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

14 (2) Have obtained a baccalaureate degree, unless the applicant is certified by the board
15 as a certified alcohol and drug counselor associate II;

16 (3) Have completed the minimum work experience and supervision requirements for
17 alcohol and drug counselors by the International Certification and Reciprocity
18 Consortium with supervised hours being~~[six thousand (6,000) hours of board-~~
19 ~~approved experience working with persons having a substance use disorder, three~~
20 ~~hundred (300) hours of which shall have been]~~ under the direct supervision of:

21 (a) A certified alcohol and drug counselor who has at least two (2) years of post-
22 certification experience and has attended the board-sponsored supervision
23 training; or

24 (b) A licensed clinical alcohol and drug counselor who has at least twelve (12)
25 months~~[two (2) years]~~ of post-licensure experience or has attended the
26 board-sponsored supervision training;

27 (4) Meet all minimum supervision, education, and training requirements of the

- 1 **International Certification and Reciprocity Consortium for the Alcohol and Drug**
2 **Counselor (ADC)** ~~Have completed at least two hundred seventy (270) classroom~~
3 ~~hours of board-approved curriculum];~~
- 4 (5) Have passed a written examination **for alcohol and drug counselors** that has been
5 approved by the International Certification **and** Reciprocity Consortium ~~on~~
6 ~~Alcoholism and Drug Abuse];~~
- 7 (6) Have signed an agreement to abide by the standards of practice and code of ethics
8 approved by the board;
- 9 (7) Have completed at least six (6) hours of ethics training; three (3) hours of domestic
10 violence training; and two (2) hours of training in the transmission, control,
11 treatment, and prevention of the human immunodeficiency virus;
- 12 (8) Have submitted two (2) letters of reference from certified or licensed clinical
13 alcohol and drug counselors;
- 14 (9) Live or work at least a majority of the time in Kentucky; and
- 15 (10) Have complied with the requirements for the training program in suicide
16 assessment, treatment, and management in KRS 210.366 and any administrative
17 regulations promulgated thereunder.
- 18 ➔Section 8. KRS 309.0831 is amended to read as follows:
- 19 An applicant for registration as an alcohol and drug peer support specialist shall pay the
20 board an initial fee for registration, and shall:
- 21 (1) Be at least eighteen (18) years of age;
- 22 (2) Have obtained a high school diploma or equivalent;
- 23 (3) Have completed five hundred (500) hours of board-approved experience working
24 with persons having a substance use disorder, twenty-five (25) hours of which shall
25 have been under the direct supervision of:
- 26 (a) A certified alcohol and drug counselor who has at least two (2) years post-
27 certification experience **and has attended the board-sponsored supervision**

1 training; or

2 (b) A licensed clinical alcohol and drug counselor who has at least twelve (12)
3 months of post-licensure experience or has attended the board-sponsored
4 supervision training;

5 (4) Have completed at least forty (40)~~[sixty (60)]~~ classroom hours of board-approved
6 curriculum;

7 (5) Have passed a written examination that has been approved by the board;

8 (6) Have signed an agreement to abide by the standards of practice and code of ethics
9 approved by the board;

10 (7) Attest to being in recovery for a minimum of one (1) year~~[two (2) years]~~ from a
11 substance-related disorder;

12 (8) Have completed at least sixteen (16) hours of ethics training; three (3) hours of
13 domestic violence training; two (2) hours of training in the transmission, control,
14 treatment, and prevention of the human immunodeficiency virus; ten (10) hours of
15 advocacy training; ten (10) hours of training in mentoring and education; and ten
16 (10) hours of training in recovery support;

17 (9) Have submitted two (2) letters of reference from certified alcohol and drug
18 counselors or licensed clinical alcohol and drug counselors;

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

20 (11) Have complied with the requirements for the training program in suicide
21 assessment, treatment, and management in KRS 210.366 and any administrative
22 regulations promulgated thereunder.

23 ➔Section 9. KRS 309.0832 is amended to read as follows:

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

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

27 (2) Have obtained from a regionally accredited college or university or a college or

1 university accredited by an agency recognized by the United States Department of
2 Education:

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

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

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

8 (3) Meet all education and supervision requirements of the International
9 Certification and Reciprocity Consortium for the Advanced Alcohol and Drug
10 Counselor (AADC);

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

13 (5)~~(4)~~ Have passed a written examination as specified by the board in administrative
14 regulation;

15 (6)~~(5)~~ Have signed an agreement to abide by the standards of practice and code of
16 ethics approved by the board;

17 (7)~~(6)~~ Have completed at least six (6) hours of ethics training; three (3) hours of
18 domestic violence training; and two (2) hours training in the transmission, control,
19 treatment, and prevention of the human immunodeficiency virus, in addition to the
20 educational requirements in subsection (2) of this section;

21 (8)~~(7)~~ Have submitted two (2) letters of reference from certified alcohol and drug
22 counselors or licensed clinical alcohol and drug counselors;

23 (9)~~(8)~~ Live or work at least a majority of the time in Kentucky;

24 (10)~~(9)~~ Have complied with the requirements for the training program in suicide
25 assessment, treatment, and management in KRS 210.366 and any administrative
26 regulations promulgated thereunder; and

27 (11)~~(10)~~ Have completed two thousand (2,000) hours of board-approved experience

1 working with persons having a substance use disorder, three hundred (300) hours of
2 which shall have been under the direct supervision of a licensed clinical alcohol and
3 drug counselor.

4 ➔Section 10. KRS 309.0833 is amended to read as follows:

- 5 (1) An applicant for licensure as a licensed clinical alcohol and drug counselor
6 associate shall:
- 7 (a) Pay the board the initial fee for licensure;
 - 8 (b) Complete the requirements under KRS 309.0832(1) to (9); and
 - 9 (c) Obtain a board-approved supervisor of record.
- 10 (2) Upon completion of the hours of board-approved experience specified in KRS
11 309.0832(11)~~(10)~~, a licensed clinical alcohol and drug counselor associate may
12 apply to the board for licensure as a licensed clinical alcohol and drug counselor.

13 ➔Section 11. KRS 309.088 is amended to read as follows:

- 14 (1) The board may permit an out-of-state licensed clinical alcohol and drug counselor,
15 certified alcohol and drug counselor, *certified alcohol and drug counselor*
16 *associate II, certified alcohol and drug counselor associate I,* or alcohol and drug
17 peer support specialist to obtain a license, certificate, or registration by reciprocity
18 if:
- 19 (a) The out-of-state licensee, certificate holder, or registrant possesses a valid
20 license, certificate, or registration from another jurisdiction that grants the
21 same privileges to persons licensed, certified, or registered by this state as
22 Kentucky grants to persons licensed, certified, or registered by the other
23 jurisdiction;
 - 24 (b) The requirements for licensure, certification, or registration are substantially
25 similar to the requirements in KRS 309.080 to 309.089; and
 - 26 (c) The out-of-state licensee, certificate holder, or registrant seeking licensure,
27 certification, or registration states that he or she has studied, is familiar with,

1 and shall abide by KRS 309.080 to 309.089 and the administrative regulations
2 promulgated thereunder.

3 (2) If the requirements for licensure, certification, or registration under KRS 309.080 to
4 309.089 are more restrictive than the standards of the other jurisdiction, then the
5 out-of-state licensee, certificate holder, or registrant shall comply with the
6 additional requirements in KRS 309.080 to 309.089 to obtain a reciprocal license,
7 certificate, or registration.

8 ➔Section 12. Sections 2 to 11 of this Act shall take effect on March 1, 2021.