

1 AN ACT relating to taxation of prescription opioids and making an appropriation
2 therefor.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO
5 READ AS FOLLOWS:

6 *As used in Sections 1 to 8 of this Act:*

- 7 *(1) "Administer" has the same meaning as in KRS 315.010;*
- 8 *(2) "Commissioner" means the commissioner of the Department of Revenue;*
- 9 *(3) "Department" means the Department of Revenue;*
- 10 *(4) "Dispense" has the same meaning as in KRS 315.010;*
- 11 *(5) "Distribute" has the same meaning as in KRS 218A.010;*
- 12 *(6) "Dose" means a single pill, capsule, ampule, liquid, or other form of*
13 *administration available as a single unit;*
- 14 *(7) "Mail order pharmacy" means any person that dispenses prescription drugs by*
15 *mail or carrier to a patient who resides in this Commonwealth;*
- 16 *(8) "Person" has the same meaning as in KRS 138.130;*
- 17 *(9) "Pharmacy" has the same meaning as in KRS 315.010;*
- 18 *(10) "Practitioner" has the same meaning as in KRS 218A.010;*
- 19 *(11) "Prescription drug" has the same meaning as in KRS 315.010;*
- 20 *(12) "Sale" means the disposal of a prescription drug to another person for*
21 *consideration or in furtherance of commercial distribution;*
- 22 *(13) "Opioid" means opium, an opiate, or any salt, compound, derivative, or*
23 *preparation thereof;*
- 24 *(14) "Taxpayer" has the same meaning as in KRS 131.010; and*
- 25 *(15) (a) "Wholesale opioid distributor" means any person who is:*
26 *1. Engaged in the distribution of opioids; and*
27 *2. Involved in the actual, constructive, or attempted transfer of opioids in*

1 *this Commonwealth, primarily other than to the ultimate consumer.*

2 **(b) "Wholesale opioid distributor" includes but is not limited to any of the**
3 **following that are engaged in the distribution of opioids in this**
4 **Commonwealth, with facilities located in this Commonwealth or in any**
5 **other state or jurisdiction:**

6 **1. Wholesalers;**

7 **2. Repackagers; and**

8 **3. Manufacturers.**

9 **(c) "Wholesale opioid distributor" does not include any common carrier or**
10 **person hired solely to transport prescription drugs.**

11 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO
12 READ AS FOLLOWS:

13 **(1) Effective January 1, 2018, a tax shall be imposed upon all wholesale opioid**
14 **distributors and all mail order pharmacies at the rate of one cent (\$0.01) per dose**
15 **distributed or dispensed to persons located in this Commonwealth.**

16 **(2) The tax revenues shall be appropriated in the following manner:**

17 **(a) Sixty percent (60%) shall be appropriated to the addiction and neonatal**
18 **addiction care fund established in Section 5 of this Act;**

19 **(b) Fifteen percent (15%) shall be appropriated to the opioid drug taskforce**
20 **fund established in Section 6 of this Act;**

21 **(c) Fifteen percent (15%) shall be appropriated to the drug courts fund**
22 **established in Section 7 of this Act; and**

23 **(d) Ten percent (10%) shall be appropriated to the opioid education fund**
24 **established in Section 8 of this Act.**

25 **(3) On or before the twentieth day of the month following the month in which any**
26 **opioids are sold, the wholesale opioid distributor or mail order pharmacy shall**
27 **file with the department a tax return in such form as the department may require**

1 and remit the amount of the tax due. A tax return is required for each month
2 even though there may be no tax liability.

3 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) Beginning January 1, 2018, no person shall distribute or dispense opioids to
6 persons located in this Commonwealth without a valid and current license as
7 provided in this section.

8 (2) Every wholesale opioid distributor and mail order pharmacy shall, prior to
9 January 1, 2018, and annually before each January 1 thereafter, file an
10 application for a license in such form as the department may prescribe. Every
11 application shall be accompanied by a licensing fee of five hundred dollars
12 (\$500) and shall be signed by:

13 (a) The owner, if a natural person;

14 (b) A member or partner, if the person is an association, limited liability
15 company, limited liability partnership, or partnership;

16 (c) An executive officer, if the person is a corporation, or some person
17 specifically authorized by the corporation to sign the application, to which
18 shall be attached written evidence of his or her authority; or

19 (d) A licensed certified public accountant, or an attorney licensed to practice
20 law in the Commonwealth of Kentucky, acting on behalf of the person.

21 (3) If any wholesale opioid distributor or mail order pharmacy fails to comply with
22 any provisions of Sections 1, 2, 3, and 4 of this Act or any administrative
23 regulation promulgated by the department relating thereto, the department may
24 order the revocation of the license held by the taxpayer.

25 (4) Any person, including any officer of a corporation, who distributes or dispenses
26 opioids to persons located in this Commonwealth without obtaining a license or
27 after a license has been suspended or revoked, shall be guilty of a Class A

1 *misdemeanor and shall be assessed a fine of no less than five hundred dollars*
2 *(\$500). The distribution of each dose of any opioid shall be considered a separate*
3 *violation for the purpose of this penalty. This penalty shall be in addition to the*
4 *civil penalties provided by Section 4 of this Act.*

5 *(5) (a) The department may, by administrative regulation promulgated in*
6 *accordance with KRS Chapter 13A, require any person requesting a license*
7 *or holding a license under this section to supply such information*
8 *concerning his business, sales, or any privilege exercised, as is deemed*
9 *reasonably necessary for the regulation of the licensees, and to protect the*
10 *revenues of the state.*

11 *(b) Failure on the part of the applicant or licensee to comply with Sections 1, 2,*
12 *3, and 4 of this Act or any administrative regulations promulgated*
13 *thereunder shall be grounds for the denial or revocation of any license*
14 *issued by the department, after due notice and a hearing by the department.*

15 *(c) The commissioner may assign a time and place for the hearing and may*
16 *appoint a conferee who shall conduct a hearing, receive evidence, and hear*
17 *arguments.*

18 *(d) The conferee shall thereupon file a report with the commissioner together*
19 *with a recommendation as to the denial or revocation of the license.*

20 *(e) From any denial or revocation made by the commissioner on the report, the*
21 *licensee may appeal to the Kentucky Board of Tax Appeals as provided by*
22 *KRS 131.340.*

23 *(f) Any person whose license has been revoked for the willful violation of any*
24 *provision of Sections 1, 2, 3, and 4 of this Act or any administrative*
25 *regulations promulgated thereunder shall not be entitled to any license*
26 *provided for in this section, or have any interest in any license, either*
27 *disclosed or undisclosed, either as an individual, partnership, corporation,*

1 or otherwise, for a period of two (2) years after the revocation.

2 (6) No license issued pursuant to this section shall be transferable or negotiable,
3 except that a license may be transferred between an individual and a corporation,
4 if that individual is the exclusive owner of that corporation, or between a
5 subsidiary corporation and its parent corporation.

6 (7) (a) Every wholesale opioid distributor and mail order pharmacy distributing or
7 dispensing opioids in this Commonwealth shall keep written records of all
8 shipments of opioids to persons within this state, and shall submit to the
9 department monthly reports of such shipments.

10 (b) All books, records, invoices, and documents required by this section shall be
11 preserved in a form prescribed by the department for not less than six (6)
12 years from the making of the records unless the department authorizes, in
13 writing, the destruction of the records.

14 (8) Any license issued by the department under this section shall not be construed to
15 waive or condone any violation that occurred or may have occurred prior to the
16 issuance of the license and shall not prevent subsequent proceedings against the
17 licensee.

18 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) The department shall administer the provisions of Sections 1 to 8 of this Act and
21 shall have all the powers, rights, duties, and authority with respect to
22 promulgation of administrative regulations, assessment, collection, refunding,
23 and administration of the taxes levied by Section 2 of this Act conferred generally
24 on it by the Kentucky Revised Statutes including KRS Chapters 131, 134, and
25 135.

26 (2) (a) As soon as practicable after each return is received, the department shall
27 examine and audit it. If the amount of tax computed by the department is

- 1 greater than the amount returned by the taxpayer, the excess shall be
2 assessed within four (4) years from the date the return was filed, except:
3 1. As provided in subsection (5) of this section; and
4 2. In the case of a failure to file a return or of a fraudulent return, the
5 excess may be assessed at any time.
6 (b) A notice of such assessment shall be mailed to the taxpayer.
7 (c) The time for filing a return may be extended by agreement between the
8 taxpayer and the department.
9 (3) For the purpose of subsections (1) and (5) of this section, a return filed before the
10 last day prescribed by law for filing the return shall be considered as filed on the
11 last day.
12 (4) Any final ruling, order, or determination of the department with regard to the
13 administration of this chapter may be reviewed only in the manner provided in
14 KRS 131.110 and 131.310 to 131.370.
15 (5) In the case of a return where the taxpayer underpays the tax due by twenty-five
16 percent (25%) or more, the remainder shall be assessed by the department within
17 six (6) years from the date the return was filed.
18 (6) Any person who violates any of the provisions of Sections 1 to 8 of this Act shall
19 be subject to the uniform civil penalties imposed pursuant to KRS 131.180.
20 (7) Any tax not paid on or before the due date shall bear interest at the tax interest
21 rate as defined in KRS 131.183 from the date due until paid.
22 (8) (a) Notwithstanding any other provisions of this chapter to the contrary, the
23 president, vice president, secretary, treasurer, or any other person holding
24 any equivalent corporate office of any corporation subject to the provisions
25 of this chapter shall be personally and individually liable, both jointly and
26 severally, for the taxes imposed under Section 2 of this Act.
27 (b) Neither the corporate dissolution nor withdrawal of the corporation from

1 the state nor the cessation of holding any corporate office shall discharge
2 the foregoing liability of any person.

3 (c) The personal and individual liability shall apply to each and every person
4 holding the corporate office at the time the taxes become or became due. No
5 person will be personally and individually liable pursuant to this section
6 who had no authority in the management of the business or financial
7 affairs of the corporation at the time that the taxes imposed by this chapter
8 become or became due.

9 (9) (a) Notwithstanding any other provisions of this chapter, KRS 275.150, 362.1-
10 306(3) or predecessor law, or 362.2-404(3) to the contrary, the managers of
11 a limited liability company, the partners of a limited liability partnership,
12 and the general partners of a limited liability limited partnership or any
13 other person holding any equivalent office of a limited liability company,
14 limited liability partnership, or limited liability limited partnership subject to
15 the provisions of this chapter shall be personally and individually liable,
16 both jointly and severally, for the taxes imposed under this chapter.

17 (b) Dissolution or withdrawal of the limited liability company, limited liability
18 partnership, or limited liability limited partnership from the state, or the
19 cessation of holding any office shall not discharge the liability of any
20 person.

21 (c) The personal and individual liability shall apply to each and every manager
22 of a limited liability company, partner of a limited liability partnership, and
23 the general partners of a limited liability limited partnership at the time the
24 taxes become or became due. No person shall be personally and individually
25 liable under this subsection who had no authority to collect, truthfully
26 account for, or pay over any tax imposed by this chapter at the time that the
27 taxes imposed by this chapter become or became due.

1 (10) Any taxpayer who fails to file required returns or remit the tax due under
2 Sections 1, 2, 3, and 4 of this Act or who falsifies or alters a certificate or other
3 form required under Section 3 of this Act shall be guilty of a Class A
4 misdeemeanor. This penalty shall be in addition to the civil penalties provided by
5 this section.

6 (11) "Taxes," as used in this section, shall include interest accrued at the rate
7 provided by subsection (7) of this section, all applicable penalties imposed under
8 Sections 1, 2, 3, and 4 of this Act, and all applicable penalties and fees imposed
9 under KRS 131.180, 131.410 to 131.445, and 131.990.

10 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO
11 READ AS FOLLOWS:

12 (1) There is hereby established in the State Treasury the addiction and neonatal
13 addiction care fund. The fund shall consist of moneys received from the tax
14 imposed by Section 2 of this Act, state appropriations, gifts, grants, and federal
15 funds.

16 (2) The fund shall be administered by the Justice and Public Safety Cabinet.

17 (3) Amounts deposited in the fund shall be used only for the following purposes:

18 (a) For KY-ASAP programs operating under KRS Chapter 15A that employ
19 evidence-based behavioral health treatment or medically assisted treatment
20 for inmates with opioid addiction or other substance abuse disorders;

21 (b) To KY-ASAP to provide supplemental grant funding to community mental
22 health centers that employ evidence-based behavioral health treatment or
23 medically assisted treatment for the purpose of offering additional
24 substance abuse treatment resources through programs; and

25 (c) To KY-ASAP to address neonatal abstinence syndrome by providing
26 supplemental grant funding to community substance abuse treatment
27 providers that employ evidence-based behavioral health treatment or

1 medically assisted treatment to offer treatment services to pregnant women
 2 or children with neonatal abstinence syndrome.

3 (4) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal
 4 year shall not lapse but shall be carried forward into the next fiscal year.

5 (5) Any interest earnings of the fund shall become a part of the fund and shall not
 6 lapse.

7 (6) Moneys deposited in the fund are hereby appropriated for the purposes set forth
 8 in this section and shall not be appropriated or transferred by the General
 9 Assembly for any other purposes.

10 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO
 11 READ AS FOLLOWS:

12 (1) There is hereby established in the State Treasury the opioid drug task force fund.
 13 The fund shall consist of moneys received from the tax imposed by Section 2 of
 14 this Act, state appropriations, gifts, grants, and federal funds.

15 (2) The fund shall be administered by the Justice and Public Safety Cabinet.

16 (3) Amounts deposited in the fund shall be used only for the purpose of assisting the
 17 Kentucky State Police and Kentucky local law enforcement agencies in creating
 18 and maintaining drug task forces to combat opioid abuse and other related
 19 resources.

20 (4) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal
 21 year shall not lapse but shall be carried forward into the next fiscal year.

22 (5) Any interest earnings of the fund shall become a part of the fund and shall not
 23 lapse.

24 (6) Moneys deposited in the fund are hereby appropriated for the purposes set forth
 25 in this section and shall not be appropriated or transferred by the General
 26 Assembly for any other purposes.

27 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) There is hereby established in the State Treasury the drug courts fund. The fund
3 shall consist of moneys received from the tax imposed by Section 2 of this Act,
4 state appropriations, gifts, grants, and federal funds.

5 (2) The fund shall be administered by the Administrative Office of the Courts.

6 (3) Amounts deposited in the fund shall be used only for the purpose of establishing
7 and maintaining eligible drug court programs. Eligible drug court programs
8 shall:

9 (a) Integrate alcohol and other drug treatment services with justice system case
10 processing;

11 (b) Use a non-adversarial approach to promote public safety while protecting
12 participants' due process rights;

13 (c) Provide a continuum of alcohol, drug, and other treatment and
14 rehabilitative services;

15 (d) Monitor abstinence by frequent alcohol and other drug testing;

16 (e) Respond to participants' compliance by means of a strategy coordinated by
17 prosecutors, defense attorneys, and judges;

18 (f) Provide ongoing judicial interaction with each drug court participant.

19 (4) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal
20 year shall not lapse but shall be carried forward into the next fiscal year.

21 (5) Any interest earnings of the fund shall become a part of the fund and shall not
22 lapse.

23 (6) Moneys deposited in the fund are hereby appropriated for the purposes set forth
24 in this section and shall not be appropriated or transferred by the General
25 Assembly for any other purposes.

26 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO

27 READ AS FOLLOWS:

- 1 (1) There is hereby established in the State Treasury the opioid education fund. The
2 fund shall consist of moneys received from the tax imposed by Section 2 of this
3 Act, state appropriations, gifts, grants, and federal funds.
- 4 (2) The fund shall be administered by the Cabinet for Health and Family Services.
- 5 (3) Amounts deposited in the fund shall be used only for the purpose of providing
6 drug-related education and programming through public local health
7 departments.
- 8 (4) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal
9 year shall not lapse but shall be carried forward into the next fiscal year.
- 10 (5) Any interest earnings of the fund shall become a part of the fund and shall not
11 lapse.
- 12 (6) Moneys deposited in the fund are hereby appropriated for the purposes set forth
13 in this section and shall not be appropriated or transferred by the General
14 Assembly for any other purposes.