

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 4 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, 2019, a tax shall be imposed upon all wholesale opioid**
14 **distributors and all mail-order pharmacies at the rate of one dollar (\$1) per dose**
15 **distributed or dispensed to persons located in this Commonwealth. This tax shall**
16 **not be passed on by a wholesale opioid distributor or a mail-order pharmacy to a**
17 **subsequent purchaser.**

18 **(2) The tax revenues shall be deposited in the permanent pension fund established in**
19 **Section 5 of this Act.**

20 **(3) On or before the twentieth day of the month following the month in which any**
21 **opioids are sold, the wholesale opioid distributor or mail-order pharmacy shall**
22 **file with the department a tax return in such form as the department may require**
23 **and remit the amount of the tax due. A tax return is required for each month**
24 **even though there may be no tax liability.**

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

27 **(1) Beginning January 1, 2019, no person shall distribute or dispense opioids to**

1 persons located in this Commonwealth without a valid and current license as
2 provided in this section.

3 (2) Every wholesale opioid distributor and mail-order pharmacy shall, prior to
4 January 1, 2019, and annually before each January 1 thereafter, file an
5 application for a license in such form as the department may prescribe. Every
6 application shall be accompanied by a licensing fee of five hundred dollars
7 (\$500) and shall be signed by:

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

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

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

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

16 (3) If any wholesale opioid distributor or mail order pharmacy fails to comply with
17 any provisions of Sections 1 to 4 of this Act or any administrative regulation
18 promulgated by the department relating thereto, the department may order the
19 revocation of the license held by the taxpayer.

20 (4) Any person, including any officer of a corporation, who distributes or dispenses
21 opioids to persons located in this Commonwealth without obtaining a license or
22 after a license has been suspended or revoked shall be guilty of a Class A
23 misdemeanor and shall be assessed a fine of no less than five hundred dollars
24 (\$500). The distribution of each dose of any opioid shall be considered a separate
25 violation for the purpose of this penalty. This penalty shall be in addition to the
26 civil penalties provided by Section 4 of this Act.

27 (5) (a) The department may, by administrative regulation promulgated in

- 1 accordance with KRS Chapter 13A, require any person requesting a license
2 or holding a license under this section to supply such information
3 concerning his or her business, sales, or any privilege exercised, as is
4 deemed reasonably necessary for the regulation of the licensees, and to
5 protect the revenues of the state.
- 6 (b) Failure on the part of the applicant or licensee to comply with Sections 1 to
7 4 of this Act or any administrative regulations promulgated thereunder
8 shall be grounds for the denial or revocation of any license issued by the
9 department, after due notice and a hearing by the department.
- 10 (c) The commissioner may assign a time and place for the hearing and may
11 appoint a conferee who shall conduct a hearing, receive evidence, and hear
12 arguments.
- 13 (d) The conferee shall thereupon file a report with the commissioner together
14 with a recommendation as to the denial or revocation of the license.
- 15 (e) From any denial or revocation made by the commissioner on the report, the
16 licensee may appeal to the Kentucky Claims Commission as provided by
17 KRS 49.220.
- 18 (f) Any person whose license has been revoked for the willful violation of any
19 provision of Sections 1 to 4 of this Act or any administrative regulations
20 promulgated thereunder shall not be entitled to any license provided for in
21 this section, or have any interest in any license, either disclosed or
22 undisclosed, either as an individual, partnership, corporation, or otherwise,
23 for a period of two (2) years after the revocation.
- 24 (6) No license issued pursuant to this section shall be transferable or negotiable,
25 except that a license may be transferred between an individual and a corporation,
26 if that individual is the exclusive owner of that corporation, or between a
27 subsidiary corporation and its parent corporation.

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

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

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

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

15 (1) The department shall administer the provisions of Sections 1 to 4 of this Act and
16 shall have all the powers, rights, duties, and authority with respect to
17 promulgation of administrative regulations, assessment, collection, refunding,
18 and administration of the taxes levied by Section 2 of this Act conferred generally
19 on it by the Kentucky Revised Statutes including KRS Chapters 131, 134, and
20 135.

21 (2) (a) As soon as practicable after each return is received, the department shall
22 examine and audit it. If the amount of tax computed by the department is
23 greater than the amount returned by the taxpayer, the excess shall be
24 assessed within four (4) years from the date the return was filed, except:

25 1. As provided in subsection (5) of this section; and

26 2. In the case of a failure to file a return or of a fraudulent return, the
27 excess may be assessed at any time.

- 1 **(b) A notice of such an assessment shall be mailed to the taxpayer.**
- 2 **(c) The time for filing a return may be extended by agreement between the**
- 3 **taxpayer and the department.**
- 4 **(3) For the purpose of subsections (2) and (5) of this section, a return filed before the**
- 5 **last day prescribed by law for filing the return shall be considered as filed on the**
- 6 **last day.**
- 7 **(4) Any final ruling, order, or determination of the department with regard to the**
- 8 **administration of this chapter may be reviewed only in the manner provided in**
- 9 **KRS 49.200 to 49.250 and 131.110.**
- 10 **(5) In the case of a return where the taxpayer underpays the tax due by twenty-five**
- 11 **percent (25%) or more, the remainder shall be assessed by the department within**
- 12 **six (6) years from the date the return was filed.**
- 13 **(6) Any person who violates any of the provisions of Sections 1 to 4 of this Act shall**
- 14 **be subject to the uniform civil penalties imposed pursuant to KRS 131.180.**
- 15 **(7) Any tax not paid on or before the due date shall bear interest at the tax interest**
- 16 **rate as defined in KRS 131.183 from the date due until paid.**
- 17 **(8) (a) Notwithstanding any other provisions of this chapter to the contrary, the**
- 18 **president, vice president, secretary, treasurer, or any other person holding**
- 19 **any equivalent corporate office of any corporation subject to the provisions**
- 20 **of this chapter shall be personally and individually liable, both jointly and**
- 21 **severally, for the taxes imposed under Section 2 of this Act.**
- 22 **(b) Neither the corporate dissolution nor withdrawal of the corporation from**
- 23 **the state nor the cessation of holding any corporate office shall discharge**
- 24 **the foregoing liability of any person.**
- 25 **(c) The personal and individual liability shall apply to each and every person**
- 26 **holding the corporate office at the time the taxes become or became due. No**
- 27 **person will be personally and individually liable pursuant to this section**

1 who had no authority in the management of the business or financial
2 affairs of the corporation at the time that the taxes imposed by this chapter
3 become or became due.

4 (9) (a) Notwithstanding any other provisions of this chapter, KRS 275.150, 362.1-
5 306(3) or predecessor law, or 362.2-404(3) to the contrary, the managers of
6 a limited liability company, the partners of a limited liability partnership,
7 and the general partners of a limited liability limited partnership or any
8 other person holding any equivalent office of a limited liability company,
9 limited liability partnership, or limited liability limited partnership subject to
10 the provisions of this chapter shall be personally and individually liable,
11 both jointly and severally, for the taxes imposed under this chapter.

12 (b) Dissolution or withdrawal of the limited liability company, limited liability
13 partnership, or limited liability limited partnership from the state, or the
14 cessation of holding any office, shall not discharge the liability of any
15 person.

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

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

27 (11) "Taxes," as used in this section, shall include interest accrued at the rate

1 *provided by subsection (7) of this section, all applicable penalties imposed under*
2 *Sections 1 to 4 of this Act, and all applicable penalties and fees imposed under*
3 *KRS 131.180, 131.410 to 131.445, and 131.990.*

4 ➔Section 5. KRS 42.205 is amended to read as follows:

5 (1) There is hereby established within the Finance and Administration Cabinet the
6 Kentucky permanent pension fund for the purpose of addressing the
7 Commonwealth's unfunded pension liabilities. The proceeds contained in this fund
8 shall be used only for contributions to the Commonwealth's pension funds.

9 (2) The fund may receive:

10 (a) State appropriations;

11 (b) The net proceeds from the sale of real property owned by the Commonwealth
12 or any agency thereof;~~and~~

13 (c) Any settlements or judgments resulting from litigation in which the
14 Commonwealth or any of its agencies is a party, after costs of litigation and
15 mandatory deductions or restitution to consumers have been deducted;and

16 *(d) Revenues from the opioid tax imposed by Section 2 of this Act.*

17 (3) Any unallotted or unencumbered balances in the fund shall be invested pursuant to
18 KRS 42.500.

19 (4) Income earned from the investments shall be credited to and become part of the
20 fund.

21 (5) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall
22 not lapse but shall be carried forward to the next fiscal year.~~All amounts in the~~
23 ~~fund shall remain in the fund and shall not be expended or appropriated without the~~
24 ~~express authority in an enacted biennial budget bill.]~~

25 *(6) Amounts deposited in the fund shall be transferred on the first day of each*
26 *calendar month to each public pension plan that is underfunded, in equal*
27 *proportion.*

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