

CHAPTER 5**(SB 5)**

AN ACT relating to abortion and declaring an emergency.

WHEREAS, pain receptors or nociceptors are present in an unborn child's entire body no later than 16 weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks; and

WHEREAS, by eight weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling; and

WHEREAS, in the unborn child, application of painful stimuli is associated with significant increases in stress hormones known as the stress response; and

WHEREAS, subjection to painful stimuli is associated with long-term harmful neuro-developmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life; and

WHEREAS, for the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without the anesthesia; and

WHEREAS, the position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization, which point in the pregnancy is generally consistent with 22 weeks following the woman's last menstrual cycle, predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain; and

WHEREAS, substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain; and

WHEREAS, in adults, stimulation or ablation of the cerebral cortex does not alter pain perception while stimulation or ablation of the thalamus does; and

WHEREAS, substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing; and

WHEREAS, consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain 20 weeks after fertilization; and

WHEREAS, it is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act:

- (1) *"Fertilization" means the fusion of a human spermatozoon with a human ovum;*
- (2) *"Medical emergency" means a condition that in the physician's reasonable medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create;*
- (3) *"Pain-capable unborn child" means an unborn child of a probable post-fertilization age of twenty (20) weeks or more;*
- (4) *"Physician" has the same meaning as in KRS 311.720;*

- (5) *"Post-fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum;*
- (6) *"Probable post-fertilization age" means, in reasonable medical judgment and with reasonable probability, the age of the unborn child, as calculated from fertilization, at the time the abortion is performed or induced or attempted to be performed or induced;*
- (7) *"Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;*
- (8) *"Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. A medically diagnosed condition that constitutes a "serious risk of the substantial and irreversible impairment of a major bodily function" includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes, but does not include a condition related to the woman's mental health; and*
- (9) *"Unborn child" means an individual organism of the species homo sapiens from fertilization until live birth.*

➔SECTION 2. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall intentionally perform or induce or intentionally attempt to perform or induce an abortion on a pregnant woman when the probable post-fertilization age of the unborn child is twenty (20) weeks or greater.*
- (2) *It shall be an affirmative defense to a charge under subsection (1) of this section that the abortion was intentionally performed or induced or intentionally attempted to be performed or induced by a physician and that the physician determined, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, that either of the following applied:*
 - (a) *The probable post-fertilization age of the unborn child was less than twenty (20) weeks; or*
 - (b) *The abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. No abortion shall be necessary if it is based on a claim or diagnosis that the pregnant woman will engage in conduct that would result in her death or in substantial and irreversible impairment of a major bodily function or if it is based on any reason related to her mental health.*
- (3) (a) *Except when a medical emergency exists that prevents compliance with Section 3 of this Act, the affirmative defense set forth in subsection (2)(a) of this section does not apply unless the physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion makes a determination of the probable post-fertilization age of the unborn child as required by subsection (1) of Section 3 of this Act or relied upon such a determination made by another physician and certifies in writing, based on the results of the tests performed, that in the physician's reasonable medical judgment the unborn child's probable post-fertilization age is less than twenty (20) weeks.*
- (b) *Except when a medical emergency exists that prevents compliance with one or more of the following conditions, the affirmative defense set forth in subsection (2)(b) of this section does not apply unless the physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion complies with all of the following conditions:*
 - 1. *The physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion certifies in writing that, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, the abortion is necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;*
 - 2. *A different physician not professionally related to the physician described in subparagraph 1. of this paragraph certifies in writing that, in that different physician's reasonable medical judgment, based on the facts known to that different physician at that time, the abortion is necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;*

3. *The physician intentionally performs or induces or intentionally attempts to perform or induce the abortion in a hospital or other health care facility that has appropriate neonatal services for premature infants;*
 4. *The physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, that the termination of the pregnancy in that manner poses a greater risk of death of the pregnant woman or a greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion;*
 5. *The physician certifies in writing the available method or techniques considered and the reasons for choosing the method or technique employed; and*
 6. *The physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced or attempted to be performed or induced at least one (1) other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.*
- (4) *The state board of medical licensure shall revoke a physician's license to practice medicine in this state if the physician violates or fails to comply with this section.*
- (5) *Any physician who intentionally performs or induces or intentionally attempts to perform or induce an abortion on a pregnant woman with actual knowledge that neither of the affirmative defenses set forth in subsection (2) of this section applies, or with a heedless indifference as to whether either affirmative defense applies, is liable in a civil action for compensatory and punitive damages and reasonable attorney's fees to any person, or the representative of the estate of any person including but not limited to an unborn child, who sustains injury, death, or loss to person or property as the result of the performance or inducement or the attempted performance or inducement of the abortion. In any action under this subsection, the court also may award any injunctive or other equitable relief that the court considers appropriate.*
- (6) *A pregnant woman on whom an abortion is intentionally performed or induced or intentionally attempted to be performed or induced in violation of subsection (1) of this section is not guilty of violating subsection (1) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (1) of this section.*

➔SECTION 3. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

- (1) *Except in a medical emergency that prevents compliance with this section, no physician shall intentionally perform or induce or intentionally attempt to perform or induce an abortion on a pregnant woman unless, prior to the performance or inducement of the abortion or the attempt to perform or induce the abortion, the physician determines, in the physician's reasonable medical judgment, the unborn child's probable post-fertilization age. The physician shall make that determination after making inquiries of the pregnant woman and performing any medical examinations or tests of the pregnant woman the physician considers necessary as a reasonably prudent physician, knowledgeable about the case and medical conditions involved, would consider necessary to determine the unborn child's probable post-fertilization age.*
- (2) *Except in a medical emergency that prevents compliance with this section, no physician shall intentionally perform or induce or intentionally attempt to perform or induce an abortion on a pregnant woman after the unborn child reaches the probable post-fertilization age of twenty (20) weeks without first entering the determination made in subsection (1) of this section and the associated findings of the medical examination and tests in the medical record of the pregnant woman.*
- (3) *The state board of medical licensure shall suspend a physician's license to practice medicine in this state for a period of not less than six (6) months if the physician violates this section.*

➔SECTION 4. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*

(a) *"Conduct" means the:*

1. *Filing of a civil action;*
2. *Assertion of a claim, defense, or other position in connection with a civil action;*
3. *Filing of a pleading, motion, or other document in a civil action, including but not limited to a motion filed for discovery purposes; or*
4. *Taking of any other action in connection with a civil action; and*

(b) *"F frivolous conduct" means the conduct of a party to a civil action or a party's counsel of record in a civil action that:*

1. *Obviously serves merely to harass or maliciously injure another party to the civil action or is for another improper purpose, including but not limited to causing unnecessary delay or a needless increase in the cost of litigation;*
2. *Is not warranted under existing law, cannot be supported by a good-faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good-faith argument for the establishment of new law;*
3. *Consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; or*
4. *Consists of denials or other factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.*

(2) *Any woman upon whom an abortion has been performed in violation of Section 2 of this Act, or the father of the unborn child who was the subject of such an abortion, may commence a civil action against the person who intentionally violated Section 2 of this Act for actual and punitive damages, court costs, and reasonable attorney's fees.*

(3) *If a judgment is rendered in favor of the defendant in a civil action commenced pursuant to subsection (2) of this section and the court finds that the civil action constitutes frivolous conduct and that the defendant was adversely affected by the frivolous conduct, the court shall award reasonable attorney's fees to the defendant.*

➔SECTION 5. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

(1) *The Kentucky pain-capable unborn child protection litigation fund is created as a trust fund. The trust fund shall consist of appropriations, donations, gifts, or grants made to the fund and shall be used by the state to pay for any costs or expenses incurred by the state in relation to actions surrounding the defense of Sections 1 to 6, 7, 8, 9, and 10 of this Act. Funds shall be distributed as directed by the Finance and Administration Cabinet.*

(2) *Notwithstanding KRS 45.229, any moneys remaining in the trust fund at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.*

(3) *Any interest earned on the trust fund shall be credited to the trust fund.*

(4) *Moneys in the trust fund are hereby appropriated for the purposes set forth in subsection (1) of this section.*

➔SECTION 6. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 6, 7, 8, 9, and 10 of this Act shall not be construed to repeal, by implication or otherwise, any law regulating or restricting abortion. An abortion that complies with Sections 1 to 6, 7, 8, 9, and 10 of this Act but violates any otherwise applicable provision of state law shall be deemed unlawful as provided in such provision. An abortion that complies with the provisions of state law regulating or restricting abortion but violates the provisions of Sections 1 to 6, 7, 8, 9, and 10 of this Act shall be deemed unlawful as provided in those sections. If some or all of the provisions of Sections 1 to 6, 7, 8, 9, and 10 of this Act are temporarily or permanently restrained or enjoined by judicial order, all other provisions of state law regulating or restricting abortion shall be enforced as though such restrained or enjoined provisions had not been adopted. But, whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

➔Section 7. KRS 311.595 is amended to read as follows:

If the power has not been transferred by statute to some other board, commission, or agency of this state, the board may deny an application or reregistration for a license; place a licensee on probation for a period not to exceed five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license heretofore or hereafter issued by the board, upon proof that the licensee has:

- (1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;
- (2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;
- (3) Committed, procured, or aided in the procurement of an unlawful abortion, including a partial-birth abortion;
- (4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under the laws;
- (5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the physician;
- (6) Become addicted to a controlled substance;
- (7) Become a chronic or persistent alcoholic;
- (8) Been unable or is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of medicine;
- (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof;
- (10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession;
- (11) Employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art;
- (12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including but not limited to the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board;
- (13) Violated any agreed order, letter of agreement, final order, or emergency order issued by the board;
- (14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar, or different name;
- (15) Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured;
- (16) Willfully violated a confidential communication;
- (17) Had his license to practice medicine or osteopathy in any other state, territory, or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof. This subsection shall not require relitigation of the disciplinary action;
- (18) Failed or refused, without legal justification, to practice medicine in a rural area of this state in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund;
- (19) Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring, or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered; provided, however, that nothing contained in this subsection shall prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in

partnership or association or in a professional service corporation authorized by KRS Chapter 274, as now or hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation, or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each;

- (20) Been removed, suspended, expelled, or disciplined by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action;~~{-or}~~
- (21) Been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action; **or**
- (22) ***Failed to comply with the requirements of Sections 2, 3, or 9 of this Act or failed to submit to the Vital Statistics Branch in accordance with a court order a complete report as described in Section 9 of this Act.***

➔Section 8. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
- (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health and Family Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.
- (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
- (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS 311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the

partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.

2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.
 3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.
 - (b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.
 - (c) No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.
- (12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
 - (13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.
 - (14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.
 - (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
 - (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
 - (17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.
 - (18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
 - (19) ***Except as provided in subsection (6) of Section 2 of this Act, any person who intentionally violates Section 2 of this Act shall be guilty of a Class D felony.***
 - (20) ***Any person who violates subsection (1) of Section 3 of this Act shall be guilty of a Class B misdemeanor.***
 - (21) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
 - ~~(22)(20)~~ Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
 - ~~(23)(21)~~ Any administrator, officer, or employee of a publicly owned hospital or publicly owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
 - ~~(24)(22)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
 - ~~(25)(23)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
 - ~~(26)(24)~~
 - (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;
 - (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
 - ~~(27)(25)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.

- ~~(28)(26)~~ Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).
- ~~(29)(27)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- ~~(30)(28)~~ Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).
- ~~(31)(29)~~ Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

➔Section 9. KRS 213.101 is amended to read as follows:

- (1) Each induced termination of pregnancy which occurs in the Commonwealth, regardless of the length of gestation, shall be reported to the Vital Statistics Branch by the person in charge of the institution within fifteen (15) days after the end of the month in which the termination occurred. If the induced termination of pregnancy was performed outside an institution, the attending physician shall prepare and file the report within fifteen (15) days after the end of the month in which the termination occurred. ***The report shall include all the information the physician is required to certify in writing or determine under Sections 2 and 3 of this Act, but shall not include***~~The report shall collect no~~ information which will identify the physician, woman, or man involved.
- (2) The name of the person completing the report and the reporting institution shall not be subject to disclosure under KRS 61.870 to 61.884.
- (3) ***By September 30 of each year, the Vital Statistics Branch shall issue a public report that provides statistics for the previous calendar year compiled from all of the reports covering that calendar year submitted to the cabinet in accordance with this section for each of the items listed in subsection (1) of this section. Each annual report shall also provide statistics for all previous calendar years in which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The Vital Statistics Branch shall ensure that none of the information included in the report could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed or attempted.***
- (4) (a) ***Any person or institution who fails to submit a report by the end of thirty (30) days following the due date set in subsection (1) of this section shall be subject to a late fee of five hundred dollars (\$500) for each additional thirty (30) day period or portion of a thirty (30) day period the report is overdue.***
- (b) ***Any person or institution who fails to submit a report, or who has submitted only an incomplete report, more than one (1) year following the due date set in subsection (1) of this section, may in a civil action brought by the Vital Statistics Bureau be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to contempt of court.***
- (c) ***Failure by any physician to comply with the requirements of this section, other than filing a late report, or to submit a complete report in accordance with a court order shall subject the physician to Section 7 of this Act.***
- (5) ***Intentional falsification of any report required under this section is a Class A misdemeanor.***
- (6) ***Within ninety (90) days of the effective date of this Act, the Vital Statistics Branch shall promulgate administrative regulations in accordance with KRS Chapter 13A to assist in compliance with this section.***

➔Section 10. KRS 413.140 is amended to read as follows:

- (1) The following actions shall be commenced within one (1) year after the cause of action accrued:
- (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant;
- (b) An action for injuries to persons, cattle, or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216;
- (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation, or breach of promise of marriage;
- (d) An action for libel or slander;

- (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice;
- (f) A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A;
- (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;
- (h) An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either;
- (i) An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession;
- (j) An action for the recovery of damages or the value of stolen property, against the thief or any accessory;
- (k) An action arising out of a detention facility disciplinary proceeding, whether based upon state or federal law;~~and~~
- (l) An action for damages arising out of a deficiency, defect, omission, error, or miscalculation in any survey or plat, whether brought in tort or contract, against a licensed professional land surveyor holding a license under KRS Chapter 322; **and**

(m) An action for violating Section 2 of this Act.

- (2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.
- (3) In respect to the action referred to in paragraph (f) or (l) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.
- (4) In respect to the action referred to in paragraph (h) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.
- (5) In respect to the action referred to in paragraph (i) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.
- (6) In respect to the action referred to in paragraph (j) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.
- (7) In respect to the action referred to in paragraph (k) of subsection (1) of this section, the cause of action shall be deemed to accrue on the date an appeal of the disciplinary proceeding is decided by the institutional warden.
- (8) ***In respect to the action referred to in paragraph (m) of subsection (1) of this section, the cause of action shall be deemed to accrue after the performance or inducement or attempt to perform or induce the abortion.***

➔Section 11. Whereas it is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor January 9, 2017.