

**CHAPTER 142****( HB 454 )**

AN ACT relating to the human rights of unborn children and declaring an emergency.

WHEREAS, moral and philosophical concepts of dignity hold that a human being is entitled to receive ethical and humane treatment and is to be respected and valued in all phases of life; and

WHEREAS, the Declaration of Independence recognizes the fundamental truth that all people have been endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness; and

WHEREAS, the Constitution of this Commonwealth guarantees that all human beings have the right of enjoying and defending their lives and liberty as well as seeking and pursuing their safety and happiness; and

WHEREAS, the Supreme Court of the United States of America has recognized that states have a legitimate interest in protecting the life of the unborn; and

WHEREAS, recognizing the human rights of an unborn child does not contravene prior Supreme Court jurisprudence nor undermine a woman's right to self-determination or bodily autonomy, but instead upholds the state's legitimate interest in protecting the life of the unborn; and

WHEREAS, the Supreme Court has further held that the states, with a rational basis to act and without creating an undue burden on women, may bar certain procedures for the purpose of regulating the medical profession so as to promote respect for life, including the life of the unborn. *Gonzales v. Carhart*, 550 U.S. 124, 158 (2007); and

WHEREAS, giving the life of the unborn equal consideration as that of the mother does not create an undue burden on the mother; and

WHEREAS, the Commonwealth of Kentucky statutorily recognizes an unborn child as a human being from conception onward, without regard to age, health, or condition of dependency; and

WHEREAS, it is an indisputable scientific fact that by the end of ten weeks the unborn child can be seen on an ultrasound to have fingers, hands, arms, toes, feet, legs, eyelids, and ears further confirming the statutory acknowledgment that the unborn child is a human being; and

WHEREAS, certain abortive medical procedures resulting in dismemberment, crushing, or human vivisection are brutal for unborn children in contravention of their unalienable rights that replicates past indiscretions of a disregard for the rights of others; and

WHEREAS, Justice Kennedy has recognized the brutality of these procedures by stating, "The fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb." *Stenberg v. Carhart*, 530 U.S. 914, 958 (2000); and

WHEREAS, Justice Stevens, with whom Justice Ginsburg concurred, reflected on the dichotomy of upholding the ban on partial-birth abortions but not dilation and extraction procedures by writing, "The notion that either of these two equally gruesome procedures performed at this late stage of gestation is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational." *Stenberg v. Carhart*, 530 U.S. 914, 946-947 (2000); and

WHEREAS, past failures to uphold and respect the unalienable rights and dignity of other human beings protected by the laws of the Commonwealth and this great nation resulted in unfair and detrimental practices that still affect the lives of so many Kentuckians and Americans today;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Bodily dismemberment, crushing, or human vivisection" means a procedure in which a person, with the purpose of causing the death of an unborn child, dismembers the living unborn child and extracts portions, pieces, or limbs of the unborn child from the uterus through the use of clamps,*

*grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two (2) rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, any portion, piece, or limb of the unborn child's body to cut or separate the portion, piece, or limb from the body. The term includes a procedure that is used to cause the death of an unborn child and in which suction is subsequently used to extract portions, pieces, or limbs of the unborn child after the unborn child's death;*

- (b) *"Medical emergency" has the same meaning as in KRS 311.720;*
  - (c) *"Probable post-fertilization age" has the same meaning as in KRS 311.781; and*
  - (d) *"Unborn child" has the same meaning as in KRS 311.781.*
- (2) *No person shall intentionally perform or induce or attempt to perform or induce an abortion on a pregnant woman:*
- (a) *That will result in the bodily dismemberment, crushing, or human vivisection of the unborn child; and*
  - (b) *When the probable post-fertilization age of the unborn child is eleven (11) weeks or greater; except in the case of a medical emergency.*
- (3) *A pregnant woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of subsection (2) of this section is not guilty of violating subsection (2) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (2) of this section.*

➔Section 2. 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) ***Except as provided in subsection (3) of Section 1 of this Act, any person who intentionally violates Section 1 of this Act shall be guilty of a Class D felony.***
- (19) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- ~~(20)~~~~(19)~~ Except as provided in KRS 311.782(6), any person who intentionally violates KRS 311.782 shall be guilty of a Class D felony.
- ~~(21)~~~~(20)~~ Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.
- ~~(22)~~~~(21)~~ Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- ~~(23)~~~~(22)~~ 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.
- ~~(24)~~~~(23)~~ 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.
- ~~(25)~~~~(24)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- ~~(26)~~~~(25)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- ~~(27)~~~~(26)~~ (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.

- ~~(28)~~~~(27)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- ~~(29)~~~~(28)~~ 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).
- ~~(30)~~~~(29)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- ~~(31)~~~~(30)~~ 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).
- ~~(32)~~~~(31)~~ 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).
- ~~(33)~~~~(32)~~ (a) Any physician or qualified technician who violates KRS 311.727 shall be fined not more than one hundred thousand dollars (\$100,000) for a first offense and not more than two hundred fifty thousand dollars (\$250,000) for each subsequent offense.
- (b) In addition to the fine, the court shall report the violation of any physician, in writing, to the Kentucky Board of Medical Licensure for such action and discipline as the board deems appropriate.
- ~~(34)~~~~(33)~~ Any person who violates KRS 311.691 shall be guilty of a Class B misdemeanor for the first offense, and a Class A misdemeanor for a second or subsequent offense. In addition to any other penalty imposed for that violation, the board may, through the Attorney General, petition a Circuit Court to enjoin the person who is violating KRS 311.691 from practicing genetic counseling in violation of the requirements of KRS 311.690 to 311.700.

➔Section 3. Whereas the fundamental rights of Kentuckians deserve immediate protection, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor April 10, 2018.**