

CHAPTER 20

(SB 9)

AN ACT relating to abortion and declaring an emergency.

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 11 of this Act:

- (1) *"Conception" means fertilization;*
- (2) *"Contraceptive" means a drug, device, or chemical that prevents conception;*
- (3) *"Fertilization" has the same meaning as in KRS 311.781;*
- (4) *"Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac;*
- (5) *"Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development;*
- (6) *"Frivolous conduct" has the same meaning as in KRS 311.784;*
- (7) *"Gestational age" means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman;*
- (8) *"Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy;*
- (9) *"Intrauterine pregnancy" means a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman;*
- (10) *"Medical emergency" has the same meaning as in KRS 311.781;*
- (11) *"Physician" has the same meaning as in KRS 311.720;*
- (12) *"Pregnancy" means the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman;*
- (13) *"Serious risk of the substantial and irreversible impairment of a major bodily function" has the same meaning as in KRS 311.781;*
- (14) *"Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant woman;*
- (15) *"Standard medical practice" means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of Section 4 of this Act, "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the fetus and the condition of the woman and her pregnancy; and*
- (16) *"Unborn child" and "unborn human individual" have the same meaning as "unborn child" has in KRS 311.781.*

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

The General Assembly finds and declares, according to contemporary medical research, all of the following:

- (1) *As many as thirty percent (30%) of natural pregnancies end in spontaneous miscarriage;*
- (2) *Less than five percent (5%) of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity;*

- (3) *Over ninety percent (90%) of intrauterine pregnancies survive the first trimester if cardiac activity is detected in the gestational sac;*
- (4) *Nearly ninety percent (90%) of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac;*
- (5) *Fetal heartbeat, therefore, has become a key medical predictor that an unborn human individual will reach live birth;*
- (6) *Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;*
- (7) *The Commonwealth of Kentucky has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of an unborn human individual who may be born; and*
- (8) *In order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a legitimate interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity.*

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

Sections 4 to 6 of this Act apply only to intrauterine pregnancies.

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

- (1) (a) *A person who intends to perform or induce an abortion on a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat shall be consistent with the person's good-faith understanding of standard medical practice, provided that if administrative regulations have been promulgated under subsection (2) of this section, the method chosen shall be one that is consistent with the regulations.*
- (b) *The person who determines the presence or absence of a fetal heartbeat shall record in the pregnant woman's medical record the estimated gestational age of the unborn human individual, the method used to test for a fetal heartbeat, the date and time of the test, and the results of the test.*
- (c) *The person who performs the examination for the presence of a fetal heartbeat shall give the pregnant woman the option to view or hear the fetal heartbeat.*
- (2) *The secretary of the Cabinet for Health and Family Services may promulgate administrative regulations specifying the appropriate methods of performing an examination for the purpose of determining the presence of a fetal heartbeat of an unborn human individual based on standard medical practice. The regulations shall require only that an examination shall be performed externally.*
- (3) *A person is not in violation of subsection (1) or (2) of this section if:*
 - (a) *The person has performed an examination for the purpose of determining the presence of a fetal heartbeat of an unborn human individual utilizing standard medical practice;*
 - (b) *The examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat; and*
 - (c) *The person notes in the pregnant woman's medical records the procedure utilized to detect the presence of a fetal heartbeat.*

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

- (1) *Except as provided in subsection (2) of this section, no person shall intentionally perform or induce an abortion on a pregnant woman before determining in accordance with subsection (1) of Section 4 of this Act whether the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat.*
- (2) (a) *Subsection (1) of this section shall not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with subsection (1) of this section.*
- (b) *A physician who performs or induces an abortion on a pregnant woman based on the exception in paragraph (a) of this subsection shall make written notations in the pregnant woman's medical records of both of the following:*

1. *The physician's belief that a medical emergency necessitating the abortion existed; and*
2. *The medical condition of the pregnant woman that prevented compliance with subsection (1) of this section.*

The physician shall maintain a copy of the notations in the physician's own records for at least seven (7) years from the date the notations were made.

- (3) *A person is not in violation of subsection (1) of this section if the person acts in accordance with subsection (1) of Section 4 of this Act and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.*
- (4) *A pregnant woman on whom an abortion is intentionally 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. In addition, the pregnant woman is not subject to a civil penalty based on the abortion being performed or induced in violation of subsection (1) of this section.*

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

- (1) *Except as provided in subsection (2) of this section, no person shall intentionally perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with subsection (1) of Section 4 of this Act.*
- (2) (a) *Subsection (1) of this section shall not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.*
- (b) *A physician who performs a medical procedure as described in paragraph (a) of this subsection shall, in writing:*
 1. *Declare that the medical procedure is necessary, to the best of the physician's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman; and*
 2. *Specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.*
- (c) *The physician shall place the written document required by paragraph (b) of this subsection in the pregnant woman's medical records. The physician shall maintain a copy of the document in the physician's own records for at least seven (7) years from the date the document is created.*
- (3) *A person is not in violation of subsection (1) of this section if the person acts in accordance with subsection (1) of Section 4 of this Act and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.*
- (4) *A pregnant woman on whom an abortion is intentionally 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. In addition, the pregnant woman is not subject to a civil penalty based on the abortion being performed or induced in violation of subsection (1) of this section.*
- (5) *Subsection (1) of this section shall not repeal or limit any other provision of the Kentucky Revised Statutes that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular stage of a pregnancy.*

➔SECTION 7. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of this section are independent of the requirements of Sections 4 to 6 of this Act.*
- (2) *A person who performs or induces an abortion on a pregnant woman shall:*

- (a) *If the reason for the abortion purported is to preserve the health of the pregnant woman, specify in a written document the medical condition that the abortion is asserted to address and the medical rationale for the person's conclusion that the abortion is necessary to address that condition; or*
 - (b) *If the reason for the abortion is other than to preserve the health of the pregnant woman, specify in a written document that maternal health is not the purpose of the abortion.*
- (3) *The person who specifies the information in the document described in subsection (2) of this section shall place the document in the pregnant woman's medical records. The person who specifies the information shall maintain a copy of the document in the person's own records for at least seven (7) years from the date the document is created.*

➔SECTION 8. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

Nothing in Sections 1 to 11 of this Act prohibits the sale, use, prescription, or administration of a drug, device, or chemical that is designed for contraceptive purposes.

➔SECTION 9. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

- (1) *A woman on whom an abortion was performed or induced in violation of subsection (1) of Section 5 of this Act or subsection (1) of Section 6 of this Act may file a civil action for the wrongful death of her unborn child.*
- (2) *A woman who prevails in an action filed under subsection (1) of this section shall receive from the person who performed or induced the abortion:*
 - (a) *Damages in an amount equal to ten thousand dollars (\$10,000) or an amount determined by the trier of fact after consideration of the evidence at the mother's election at any time prior to final judgment subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive; and*
 - (b) *Court costs and reasonable attorney's fees.*
- (3) *A determination that subsection (1) of Section 5 of this Act or subsection (1) of Section 6 of this Act is unconstitutional shall be a defense to an action filed under subsection (1) of this section alleging that the defendant violated the subsection that was determined to be unconstitutional.*
- (4) *If the defendant in an action filed under subsection (1) of this section prevails and:*
 - (a) *The court finds that the commencement of the action constitutes frivolous conduct;*
 - (b) *The court's finding in paragraph (a) of this subsection is not based on that court or another court determining that subsection (1) of Section 5 of this Act or subsection (1) of Section 6 of this Act is unconstitutional; and*
 - (c) *The court finds that the defendant was adversely affected by the frivolous conduct;*
the court shall award reasonable attorney's fees to the defendant.

➔SECTION 10. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Health and Family Services shall inspect the medical records from any facility that performs abortions to ensure that the physicians or other persons who perform abortions at that facility are in compliance with the reporting requirements under Section 15 of this Act. The facility shall make the medical records available for inspection to the Cabinet for Health and Family Services but shall not release any personal medical information in the medical records that is prohibited by law.

➔SECTION 11. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED TO READ AS FOLLOWS:

- (1) *It is the intent of the General Assembly that a court judgment or order suspending enforcement of any provision of Sections 1 to 11 of this Act is not to be regarded as tantamount to repeal of that provision.*
- (2) (a) *After the issuance of a decision by the Supreme Court of the United States overruling *Roe v. Wade*, 410 U.S. 113 (1973), the issuance of any other court order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or the effective date of an amendment to the Constitution of the United States restoring, expanding, or clarifying the*

authority of states to prohibit or regulate abortion entirely or in part, the Attorney General may apply to the pertinent state or federal court for either or both of the following:

1. *A declaration that any one (1) or more sections specified in subsection (1) of this section are constitutional; or*
 2. *A judgment or order lifting an injunction against the enforcement of any one (1) or more sections specified in subsection (1) of this section.*
- (b) *If the Attorney General fails to apply for the relief described in paragraph (a) of this subsection within thirty (30) days of an event described in paragraph (a) of this subsection, any Commonwealth or county attorney may apply to the appropriate state or federal court for such relief.*
- (3) *If any provision of Sections 1 to 11 of this Act are held invalid, or if the application of such provision to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provisions or applications of Sections 1 to 11 of this Act that can be given effect without the invalid provision or application, and to this end the provisions of Sections 1 to 11 of this Act are severable as provided in KRS 446.090. In particular, it is the intent of the General Assembly that:*
- (a) *Any invalidity or potential invalidity of a provision of Sections 1 to 11 of this Act is not to impair the immediate and continuing enforceability of the remaining provisions; and*
 - (b) *The provisions of Sections 1 to 11 of this Act are not to have the effect of repealing or limiting any other laws of this state, except as specified by Sections 1 to 11 of this Act.*

➔Section 12. 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 a crime as defined in KRS 335B.010, if in accordance with KRS Chapter 335B;
- (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;
- (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 KRS 213.101, 311.782, or 311.783 or failed to submit to the Vital Statistics Branch in accordance with a court order a complete report as described in KRS 213.101;
- (23) *Failed to comply with any of the requirements regarding making or maintaining medical records or documents described in Section 4 or 7 of this Act; or*
- (24) *Failed to comply with the requirements of Section 5 or 6 of this Act.*

➔Section 13. KRS 311.990 (Effective until July 1, 2019) 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 shall be guilty of a Class D felony.

- (18) Except as provided in KRS 311.787(3), any person who intentionally violates KRS 311.787 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) 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) Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.
- (22) *Any person who violates subsection (1) of Section 5 of this Act is guilty of a Class D felony.*
- (23) *Any person who violates subsection (1) of Section 6 of this Act is guilty of a Class D felony.*
- (24) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- ~~(25)(23)~~ 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.
- ~~(26)(24)~~ 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.
- ~~(27)(25)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- ~~(28)(26)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- ~~(29)(27)~~ (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.
- ~~(30)(28)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- ~~(31)(29)~~ 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).
- ~~(32)(30)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- ~~(33)(31)~~ 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).
- ~~(34)(32)~~ 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).
- ~~(35)(33)~~ (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.
- ~~(36)(34)~~ 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 14. KRS 311.990 (Effective July 1, 2019) 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 shall be guilty of a Class D felony.
- (18) Except as provided in KRS 311.787(3), any person who intentionally violates KRS 311.787 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) 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) Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.
- (22) *Any person who violates subsection (1) of Section 5 of this Act is guilty of a Class D felony.*
- (23) *Any person who violates subsection (1) of Section 6 of this Act is guilty of a Class D felony.*
- (24) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- ~~(25)(23)~~ 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.
- ~~(26)(24)~~ 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.
- ~~(27)(25)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- ~~(28)(26)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- ~~(29)(27)~~ (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.
- ~~(30)(28)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- ~~(31)(29)~~ 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).
- ~~(32)(30)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- ~~(33)(31)~~ 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).
- ~~(34)(32)~~ 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).
- ~~(35)(33)~~ (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.
- ~~(36)(34)~~ 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.

~~(37)(35)~~ Any person convicted of violating KRS 311.728 shall be guilty of a Class D felony.

➔Section 15. KRS 213.101 is amended to read as follows:

- (1) (a) 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.
- (b) The report shall include all the information the physician is required to certify *or provide* in writing or determine under KRS 311.782, ~~and~~ 311.783, *Sections 4, 5, 6, and 7 of this Act*, but shall not include information which will identify the physician, woman, or man involved.
- (c) *If a person other than the physician described in this subsection makes or maintains a record required by Section 4, 5, 6, or 7 of this Act on the physician's behalf or at the physician's direction, that person shall comply with the reporting requirement described in this subsection as if the person were the physician.*
- (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 Branch 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 KRS 311.595.
- (5) Intentional falsification of any report required under this section is a Class A misdemeanor.
- (6) ~~Within ninety (90) days of January 9, 2017,~~ The Vital Statistics Branch shall promulgate administrative regulations in accordance with KRS Chapter 13A to assist in compliance with this section.

➔Section 16. The restrictions of KRS 6.945(1) shall not apply to Sections 1 to 15 of this Act.

➔Section 17. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

➔Section 18. Whereas the Commonwealth of Kentucky has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of an unborn human individual who may be born, 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 March 15, 2019.

