

CHAPTER 191

(SB 50)

AN ACT relating to abortion.

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

➔Section 1. KRS 213.101 is amended to read as follows:

- (1) Each ***abortion as defined in KRS 311.720*** ~~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 ***abortion*** ~~termination~~ occurred. If the ***abortion*** ~~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 ***abortion*** ~~termination~~ occurred. The report shall include all the information the physician is required to certify in writing or determine under KRS 311.782, ~~and~~ 311.783, ***and Section 2 of this Act***, but shall not include information which will identify the physician, woman, or man involved.
- (2) ***Each prescription issued for RU-486, cytotec, pitocin, mifeprex, misoprostol, or any other drug or combination of drugs for which the primary indication is the induction of abortion as defined in KRS 311.720 shall be reported to the Vital Statistics Branch within fifteen (15) days after the end of the month in which the prescription was issued as required by Section 2 of this Act, but the report shall not include information which will identify the woman involved or anyone who may be picking up the prescription on behalf of the woman.***
- (3) 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.
- ~~(4)~~~~(3)~~ By September 30 of each year, the Vital Statistics Branch shall issue a public report that provides statistics ***on all data collected including the type of abortion procedure used*** 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 ***subsections (1) and (2)*** ~~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. ***Each annual report shall be made available on the cabinet's Web site.***
- ~~(5)~~~~(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 ***subsections (1) and (2)*** ~~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 ***subsections (1) and (2)*** ~~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.
- ~~(6)~~~~(5)~~ Intentional falsification of any report required under this section is a Class A misdemeanor.
- ~~(7)~~~~(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 2. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

- (1) ***Each prescription issued for RU-486, cytotec, pitocin, mifeprex, misoprostol, or any other drug or combination of drugs for which the primary indication is the induction of abortion as defined in KRS***

311.720 shall be reported on a report form provided by the cabinet within fifteen (15) days after the end of the month in which the prescription was issued.

- (2) *Information on the potential ability of a physician to reverse the effects of prescription drugs for which the primary indication is the induction of abortion, including where additional information about this possibility may be obtained and contact information for assistance in locating a physician who may aid in the reversal, shall be provided with each prescription issued for RU-486, cytotec, pitocin, mifeprax, misoprostol, or any other drug or combination of drugs for which the primary indication is the induction of abortion as defined in KRS 311.720.*
- (3) *For each abortion reported to the Vital Statistics Branch as required by Section 1 of this Act, the report shall also state whether any abortion complication was known to the provider as a result of the abortion. Abortion complications to be reported shall include only the following physical or psychological conditions arising from the induction or performance of an abortion:*
 - (a) *Uterine laceration;*
 - (b) *Cervical laceration;*
 - (c) *Infection;*
 - (d) *Heavy bleeding that causes symptoms of hypovolemia or the need for a blood transfusion;*
 - (e) *Pulmonary embolism;*
 - (f) *Deep vein thrombosis;*
 - (g) *Failure to terminate the pregnancy;*
 - (h) *Incomplete abortion or retained tissue;*
 - (i) *Pelvic inflammatory disease;*
 - (j) *Missed ectopic pregnancy;*
 - (k) *Cardiac arrest;*
 - (l) *Respiratory arrest;*
 - (m) *Renal failure;*
 - (n) *Shock;*
 - (o) *Amniotic fluid embolism;*
 - (p) *Coma;*
 - (q) *Placenta Previa in subsequent pregnancies;*
 - (r) *Pre-term delivery in subsequent pregnancies;*
 - (s) *Free fluid in the abdomen;*
 - (t) *Hemolytic reaction due to the administration of ABO-incompatible blood or blood products;*
 - (u) *Hypoglycemia occurring while the patient is being treated at the abortion facility;*
 - (v) *Allergic reaction to anesthesia or abortion-inducing drugs;*
 - (w) *Psychological complications including depression, suicidal ideation, anxiety, and sleeping disorders;*
 - (x) *Death; and*
 - (y) *Any other adverse event as defined by criteria provided in the Food and Drug Administration Safety Information and Adverse Event Reporting Program.*

➔Section 3. KRS 311.723 is amended to read as follows:

- (1) No abortion shall be performed except by a physician after either:
 - (a) He determines that, in his best clinical judgment, the abortion is necessary; or
 - (b) He receives what he reasonably believes to be a written statement signed by another physician, hereinafter called the "referring physician," certifying that in the referring physician's best clinical

judgment the abortion is necessary, and, in addition, he receives a copy of the report form required by KRS 213.101~~{213.055}~~.

- (2) No abortion shall be performed except in compliance with regulations which the cabinet shall issue to assure that:
- (a) Before the abortion is performed, the pregnant woman shall have a private medical consultation either with the physician who is to perform the abortion or with the referring physician in a place, at a time and of a duration reasonably sufficient to enable the physician to determine whether, based upon his best clinical judgment, the abortion is necessary;
 - (b) The physician who is to perform the abortion or the referring physician will describe the basis for his best clinical judgment that the abortion is necessary on a form prescribed by the cabinet as required by KRS 213.101~~{213.055}~~; and
 - (c) Paragraph (a) of this subsection shall not apply when, in the medical judgment of the attending physician based on the particular facts of the case before him, there exists a medical emergency. In such a case, the physician shall describe the basis of his medical judgment that an emergency exists on a form prescribed by the cabinet as required by 213.101~~{KRS 213.055}~~.
- (3) Notwithstanding any statute to the contrary, nothing in this chapter shall be construed as prohibiting a physician from prescribing or a woman from using birth control methods or devices, including, but not limited to, intrauterine devices, oral contraceptives, or any other birth control method or device.

➔Section 4. KRS 311.735 is amended to read as follows:

- (1) Prior to performing an abortion, the physician who is to perform the abortion or his agent shall notify, if reasonably possible, the spouse of the woman upon whom the abortion is to be performed. If it is not reasonably possible to notify the spouse prior to the abortion, the physician or his agent shall do so, if reasonably possible, within thirty (30) days of the abortion.
- (2)
 - (a) The requirements of this section shall not apply if, before the abortion is performed, either party to a marriage has filed a petition for dissolution of marriage which has been served on the respondent;
 - (b) The requirements of this section shall not apply when, in the medical judgment of the attending physician based on the particular facts of the case before him, there exists a medical emergency. In such a case, the physician shall describe the basis of his medical judgment that such an emergency exists on a form prescribed by the cabinet as required by KRS 213.101~~{213.055}~~, and the physician or his agent shall notify, if reasonably possible, the spouse of the woman upon whom the abortion was performed, within thirty (30) days of the abortion.
- (3) Failure to notify a spouse as required by this section is prima facie evidence of interference with family relations in appropriate civil actions. The law of this Commonwealth shall not be construed to preclude the award of punitive damages or damages for emotional distress, even if unaccompanied by physical complications in any civil action brought pursuant to violations of this section. Nothing in this section shall be construed to limit the common law rights of a husband.

➔Section 5. KRS 311.725 is amended to read as follows:

- (1) No abortion shall be performed or induced except with the voluntary and informed written consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:
 - (a) At least twenty-four (24) hours prior to the abortion, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has verbally informed the woman of all of the following:
 1. The nature and purpose of the particular abortion procedure or treatment to be performed and of those medical risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
 2. The probable gestational age of the embryo or fetus at the time the abortion is to be performed;~~{ and }~~
 3. The medical risks associated with the pregnant woman carrying her pregnancy to term; *and*

- 4. *The potential ability of a physician to reverse the effects of prescription drugs intended to induce abortion, where additional information about this possibility may be obtained, and contact information for assistance in locating a physician who may aide in the reversal;***
- (b) At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has informed the pregnant woman that:
1. The cabinet publishes the printed materials described in paragraphs (a), **(b), and (c)** ~~and (b)~~ of subsection (2) of this section and that she has a right to review the printed materials and that copies will be provided to her by the physician, licensed nurse, physician assistant, or social worker free of charge if she chooses to review the printed materials;
 2. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the cabinet; and
 3. The father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion;
- (c) At least twenty-four (24) hours prior to the abortion, a copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials;
- (d) The pregnant woman certifies in writing, prior to the performance or inducement of the abortion:
1. That she has received the information required to be provided under paragraphs (a), (b), and (c) of this subsection; and
 2. That she consents to the particular abortion voluntarily and knowingly, and she is not under the influence of any drug of abuse or alcohol; and
- (e) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed statement, on a form which may be provided by the physician, on which she consents to the abortion and that includes the certification required by paragraph (d) of this subsection.
- (2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface not less than 12 point type the following materials:
- (a) Materials that inform the pregnant woman about public and private agencies and services that are available to assist her through her pregnancy, upon childbirth, and while her child is dependent, including, but not limited to, adoption agencies. The materials shall include a comprehensive list of the available agencies and a description of the services offered by the agencies and the telephone numbers and addresses of the agencies, and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The cabinet shall ensure that the materials are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this section; ~~and~~
 - (b) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two (2) week gestational increments for the first sixteen (16) weeks of her pregnancy and at four (4) week gestational increments from the seventeenth week of her pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall include, for each of the two (2) of four (4) week increments specified in this paragraph, a pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus. The materials shall also include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment; **and**
 - (c) ***Materials that inform the pregnant woman of the potential ability of a physician to reverse the effects of prescription drugs intended to induce abortion, where additional information about this possibility***

may be obtained, and contact information for assistance in locating a physician who may aide in the reversal.

- (3) Upon submission of a request to the cabinet by any person, hospital, physician, or medical facility for one (1) or more copies of the materials published in accordance with subsection (2) of this section, the cabinet shall make the requested number of copies of the materials available to the person, hospital, physician, or medical facility that requested the copies.
- (4) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.
- (5) If the conditions specified in subsection (1) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.
- (6) The failure of a physician to satisfy the conditions of subsection (1) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of disciplinary action pursuant to KRS 311.595.
- (7) The cabinet shall charge a fee for each copy of the materials distributed in accordance with subsections (1) and (3) of this section. The fee shall be sufficient to cover the cost of the administration of the materials published in accordance with subsection (2) of this section, including the cost of preparation and distribution of materials.

Signed by Governor March 26, 2019.