

## CHAPTER 1

## ( SB 9 )

AN ACT relating to the protection of born-alive infants and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 7 of this Act:*

- (1) *"Abortion" has the same meaning as in KRS 311.720. However, as used in Sections 1 to 7 of this Act, an abortion shall not include the use of any means to terminate the pregnancy of a woman if done with an intent to:*
  - (a) *Save the life or preserve the health of the unborn child;*
  - (b) *Remove a dead unborn child caused by spontaneous abortion; or*
  - (c) *Remove an ectopic pregnancy;*
- (2) *"Advanced practice registered nurse" has the same meaning as in KRS 314.011;*
- (3) *"Born-alive" or "live birth" means the complete expulsion or extraction of an infant from his or her mother, regardless of the state of gestational development, who, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including but not limited to one (1) or more of the following:*
  - (a) *Breathing;*
  - (b) *A heartbeat;*
  - (c) *Umbilical cord pulsation; or*
  - (d) *Definite movement of voluntary muscles;*
- (4) *"Consent" means the voluntary agreement or acquiescence by a person of age and with the requisite mental capacity who is not under duress or coercion and who has knowledge or understanding of the act or action to which he or she has agreed or acquiesced;*
- (5) *"Healthcare provider" means any individual who may be asked to participate in any way in a healthcare service, including but not limited to a physician; physician assistant; advanced practice registered nurse; nurse; nurse's aide; medical assistant; hospital employee; clinic employee; nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty or employee; or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of healthcare services;*
- (6) *"Infant" means a child of the species homo sapiens who has been completely expelled or extracted from his or her mother, regardless of the stage of gestational development, until the age of thirty (30) days post birth;*
- (7) *"Medical facility" means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location where medical care is provided to any person;*
- (8) *"Nurse" has the same meaning as in KRS 314.011;*
- (9) *"Physician" has the same meaning as in KRS 311.720;*
- (10) *"Physician assistant" has the same meaning as in KRS 311.840; and*
- (11) *"Unborn child" has the same meaning as in KRS 311.781.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly of the Commonwealth of Kentucky hereby finds that:*
  - (a) *The Commonwealth of Kentucky has a paramount interest in protecting all human life;*

- (b) *If an attempted abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of this Commonwealth;*
  - (c) *Irrespective of the status of court challenges to Kentucky statutes protecting unborn children from abortion, it is not an infringement on a woman's asserted right to terminate her pregnancy for this Commonwealth to affirm its interest in protecting an infant whose live birth occurred as the result of an attempted abortion; and*
  - (d) *Without proper legal protection, newly born infants who survive attempted abortions may be denied appropriate life-saving or life-sustaining medical care and treatment and may be left to die.*
- (2) *Based on the findings in subsection (1) of this section, the purposes of Sections 1 to 7 of this Act are to:*
- (a) *Ensure the protection and promotion of the health and well-being of all infants born-alive in this Commonwealth; and*
  - (b) *Mandate that healthcare providers give medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born-alive infants.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall not deny or deprive a born-alive infant of:*
- (a) *Nourishment with the intent to cause or allow the death of the infant for any reason, including but not limited to:*
    - 1. *The infant was born with a disability;*
    - 2. *The infant is not wanted by the parent or guardian; or*
    - 3. *The infant is born-alive by natural or artificial means; or*
  - (b) *Medically appropriate and reasonable medical care, medical treatment, or surgical care.*
- (2) (a) *A physician performing an abortion shall take all medically appropriate and reasonable steps to preserve the life and health of a born-alive infant. If an abortion performed in a:*
- 1. *Hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant, inform the mother of the live birth, and request transfer of the infant to an on-duty resident or emergency care physician who shall provide medically appropriate and reasonable medical care and treatment to the infant; or*
  - 2. *Medical facility other than a hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant and call 911 for an emergency transfer of the infant to a hospital that shall provide medically appropriate and reasonable medical care and treatment to the infant.*
- (b) *If the physician is unable to perform the duties in paragraph (a) of this subsection because he or she is assisting the woman on whom the abortion was performed, then an attending physician assistant, advanced practice registered nurse, nurse, or other healthcare provider shall assume the duties outlined in paragraph (a) of this subsection.*
- (3) *Any born-alive infant, including one born in the course of an abortion procedure, shall be treated as a legal person under the laws of this Commonwealth, with the same rights to medically appropriate and reasonable care and treatment. After birth, a birth certificate shall be issued and, if death occurs after birth, a death certificate shall be issued.*
- (4) *If the parent of a born-alive infant files a petition for voluntary termination of parental rights in accordance with KRS 625.040 because she or he does not wish to keep the infant, the born-alive infant shall become a ward of the Cabinet for Health and Family Services.*
- (5) (a) *The requirements of this section shall not be construed to prevent a born-alive infant's parent or guardian from refusing to give consent to medical care, medical treatment, or surgical care which is not medically appropriate or reasonable, including care or treatment that:*
- 1. *Is not necessary to save the life of the infant;*
  - 2. *Has a potential risk to the infant's life or health that outweighs the potential benefit of the medical care or treatment; or*

3. *Will do no more than temporarily prolong the act of dying when death is imminent.*
- (b) *The parent or guardian of a born-alive infant shall not be held criminally or civilly liable for the actions of a physician, physician assistant, advanced practice registered nurse, nurse, or other healthcare provider that are in violation of this section and to which the parent or guardian did not give consent.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*In addition to whatever remedies are available under the laws of this Commonwealth, failure to comply with the requirements of Section 3 of this Act shall:*

- (1) *Provide a basis for a civil action for compensatory and punitive damages. Any conviction under Section 3 of this Act shall be admissible in a civil suit as prima facie evidence of a failure to provide medically appropriate and reasonable medical care and treatment to a born-alive infant. Any civil action may be based on a claim that the death of or injury to the born-alive infant was a result of simple negligence, gross negligence, wantonness, willfulness, intentional conduct, or another violation of the legal standard of care;*
- (2) *Provide a basis for professional disciplinary action for the suspension or revocation of the license of a physician, physician assistant, advanced practice registered nurse, nurse, or pharmacist. A conviction of any physician, physician assistant, advanced practice registered nurse, nurse, or pharmacist for failure to comply with subsection (2) of Section 3 of this Act shall result in the automatic suspension of his or her license for a period of at least one (1) year and the license shall be reinstated after that time only under such conditions as the licensing body shall require to ensure compliance with Section 3 of this Act; and*
- (3) *Provide a basis for recovery for the parent of the infant, or the parent or guardian of the mother if the mother is a minor, for the wrongful death of the infant, whether or not the infant was viable at the time the attempted abortion was performed.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*Nothing in Sections 1 to 7 of this Act shall be construed:*

- (1) *To affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive;*
- (2) *To affect existing federal or state law regarding abortion;*
- (3) *As creating or recognizing a right to abortion; or*
- (4) *To alter generally accepted medical standards.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*Any provision of Sections 1 to 7 of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be deemed severable and shall not affect the remainder or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly, by joint resolution, may appoint one (1) or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.*
- (2) *Nothing in this section shall be construed as a waiver or diminishment of any constitutional, common law, or statutory defenses, privileges, or immunities that may apply to any legislator, legislative staff, legislative agency or entity, or the legislative branch.*

➔Section 8. 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 or an abortion in violation of KRS 311.731;
- (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;
- (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 KRS 311.7704 or 311.7707;
- (24) Failed to comply with the requirements of KRS 311.7705 or 311.7706;~~or~~
- (25) Been convicted of female genital mutilation under KRS 508.125, which shall result in mandatory revocation of a license; *or*
- (26) *As provided in subsection (2) of Section 4 of this Act, been convicted of a violation of subsection (2) of Section 3 of this Act.*

➔Section 9. KRS 311.850 is amended to read as follows:

- (1) The board may revoke, suspend, deny, decline to renew, limit, or restrict the license of a physician assistant, or may fine, reprimand or place a physician assistant on probation for no more than five (5) years upon proof that a physician assistant has:
  - (a) Knowingly made or presented or caused to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other document relating to an application for licensure;
  - (b) Practiced, aided, or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy relating to an examination for licensure;
  - (c) Been convicted of a crime as defined in KRS 335B.010, if in accordance with KRS Chapter 335B;
  - (d) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient or a felony offense under KRS Chapter 510, KRS 530.064, or 531.310, or has been found by the board to have had sexual contact, as defined in KRS 510.010, with a patient while the patient was under the care of the physician assistant or the physician assistant's supervising physician;
  - (e) Become addicted to a controlled substance, as defined in KRS 311.550(26);
  - (f) Become a chronic or persistent alcoholic, as defined in KRS 311.550(25);
  - (g) 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;
  - (h) 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 medicine or osteopathy;
  - (i) Performed any act or service as a physician assistant without a designated supervising physician;
  - (j) Exceeded the scope of medical services described by the supervising physician in the applications required under KRS 311.854;
  - (k) Exceeded the scope of practice for which the physician assistant was credentialed by the governing board of a hospital or licensed health care facility under KRS 311.856 and 311.858;
  - (l) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any healing art, including the unlawful practice of physician assistants;
  - (m) Willfully violated a confidential communication;

- (n) Performed the services of a physician assistant in an unprofessional, incompetent, or grossly or chronically negligent manner;
  - (o) Been removed, suspended, expelled, or placed on probation by any health care facility or professional society for unprofessional conduct, incompetence, negligence, or violation of any provision of this section or KRS 311.858 or 311.862;
  - (p) Violated any applicable provision of administrative regulations relating to physician assistant practice;
  - (q) Violated any term of probation or other discipline imposed by the board;
  - (r) Failed to complete the required number of hours of approved continuing education;~~for~~
  - (s) Engaged in dishonorable, unethical, or unprofessional conduct of character likely to deceive, defraud, or harm the public or any member thereof, as described in KRS 311.597; *or*
  - (t) *As provided in subsection (2) of Section 4 of this Act, been convicted of a violation of subsection (2) of Section 3 of this Act.*
- (2) All disciplinary proceedings against a physician assistant shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593, 311.599, and KRS Chapter 13B and related administrative regulations promulgated under KRS Chapter 311.
- ➔Section 10. 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 KRS 311.375(1) 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 KRS 311.375(2) 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 KRS 311.7705(1) is guilty of a Class D felony.
- (23) Any person who violates KRS 311.7706(1) is guilty of a Class D felony.
- (24) Except as provided in KRS 311.731(7), any person who violates KRS 311.731(2) shall be guilty of a Class D felony.
- (25) *Any physician, physician assistant, advanced practice registered nurse, nurse, or other healthcare provider who intentionally violates subsection (2) of Section 3 of this Act shall be guilty of a Class D felony. As used in this subsection, "healthcare provider" has the same meaning as in Section 1 of this Act.***
- ~~(26)(25)~~ Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- ~~(27)(26)~~ 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.
- ~~(28)(27)~~ 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.
- ~~(29)(28)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- ~~(30)(29)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.

- ~~(31)~~~~(30)~~ (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.
- ~~(32)~~~~(31)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- ~~(33)~~~~(32)~~ 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).
- ~~(34)~~~~(33)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- ~~(35)~~~~(34)~~ 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).
- ~~(36)~~~~(35)~~ 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).
- ~~(37)~~~~(36)~~ (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.
- ~~(38)~~~~(37)~~ 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.
- ~~(39)~~~~(38)~~ Any person convicted of violating KRS 311.728 shall be guilty of a Class D felony.

➔Section 11. KRS 314.091 is amended to read as follows:

- (1) The board shall have power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board or applied for in accordance with this chapter or the privilege to practice as a nurse recognized by the board in accordance with this chapter, or to otherwise discipline a licensee, credential holder, privilege holder, or applicant, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:
- (a) Is guilty of fraud or deceit in procuring or attempting to procure a license, credential, or privilege to practice nursing;
- (b) Has been convicted of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States, if in accordance with KRS Chapter 335B. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;
- (c) Has 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 has 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 nurse;
- (d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;
- (e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;
- (f) Abuses controlled substances, prescription medications, illegal substances, or alcohol;



- (g) Has misused or misappropriated any drugs placed in the custody of the nurse for administration, or for use of others;
  - (h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;
  - (i) Has a license, privilege, or credential to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or privilege to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth, including action by another jurisdiction for failure to repay a student loan;
  - (j) Has violated any of the provisions of this chapter;
  - (k) Has violated any lawful order or directive previously entered by the board;
  - (l) Has violated any administrative regulation promulgated by the board;
  - (m) Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property;
  - (n) Has violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law;
  - (o) Used or possessed a Schedule I controlled substance;
  - (p) Has used or been impaired as a consequence of the use of alcohol or drugs while practicing as a nurse;
  - (q) Has violated KRS 304.39-215;~~[-or]~~
  - (r) Has engaged in conduct that is subject to the penalties under KRS 304.99-060(4) or (5); *or*
  - (s) *As provided in subsection (2) of Section 4 of this Act, has been convicted of a violation of subsection (2) of Section 3 of this Act.*
- (2) All hearings shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license, privilege, or credential may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.
  - (3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.
  - (4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.
  - (5) A final order of the board shall be by majority vote thereof.
  - (6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.
  - (7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license, privilege, or credential may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.
  - (8) The board may, by administrative regulation, provide for the recovery of the costs of an administrative hearing.
- ➔Section 12. KRS 315.121 is amended to read as follows:
- (1) The board may refuse to issue or renew a license, permit, or certificate to, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensee, permit holder, or certificate holder for the following reasons:
    - (a) Unprofessional or unethical conduct;

- (b) Mental or physical incapacity that prevents the licensee, permit holder, or certificate holder from engaging or assisting in the practice of pharmacy or the wholesale distribution or manufacturing of drugs with reasonable skill, competence, and safety to the public;
  - (c) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following, if in accordance with KRS Chapter 335B:
    1. A crime as defined in KRS 335B.010; or
    2. A violation of the pharmacy or drug laws, rules, or administrative regulations of this state, any other state, or the federal government;
  - (d) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician is incapable of engaging or assisting in the practice of pharmacy with reasonable skill, competence, and safety to the public and failing to report any relevant information to the board;
  - (e) Knowingly making or causing to be made any false, fraudulent, or forged statement or misrepresentation of a material fact in securing issuance or renewal of a license, permit, or certificate;
  - (f) Engaging in fraud in connection with the practice of pharmacy or the wholesale distribution or manufacturing of drugs;
  - (g) Engaging in or aiding and abetting an individual to engage or assist in the practice of pharmacy without a license or falsely using the title of "pharmacist," "pharmacist intern," "pharmacy technician," or other term which might imply that the individual is a pharmacist, pharmacist intern, or pharmacy technician;
  - (h) Being found by the board to be in violation of any provision of this chapter, KRS Chapter 217, KRS Chapter 218A, or the administrative regulations promulgated pursuant to these chapters;
  - (i) Violation of any order issued by the board to comply with any applicable law or administrative regulation;
  - (j) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician has engaged in or aided and abetted the unlawful distribution of legend medications, and failing to report any relevant information to the board;~~{or}~~
  - (k) Failure to notify the board within fourteen (14) days of a change in one's home address; *or*
  - (l) *As provided in subsection (2) of Section 4 of this Act, being convicted of a violation of subsection (2) of Section 3 of this Act.*
- (2) Unprofessional or unethical conduct includes but is not limited to the following acts of a pharmacist, pharmacist intern, or pharmacy technician:
- (a) Publication or circulation of false, misleading, or deceptive statements concerning the practice of pharmacy;
  - (b) Divulging or revealing to unauthorized persons patient information or the nature of professional services rendered without the patient's express consent or without order or direction of a court. In addition to members, inspectors, or agents of the board, the following are considered authorized persons:
    1. The patient, patient's agent, or another pharmacist acting on behalf of the patient;
    2. Certified or licensed health-care personnel who are responsible for care of the patient;
    3. Designated agents of the Cabinet for Health and Family Services for the purposes of enforcing the provisions of KRS Chapter 218A;
    4. Any federal, state, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person; or
    5. An agency of government charged with the responsibility of providing medical care for the patient, upon written request by an authorized representative of the agency requesting such information;

- (c) Selling, transferring, or otherwise disposing of accessories, chemicals, drugs, or devices found in illegal traffic when the pharmacist, pharmacy intern, or pharmacy technician knows or should have known of their intended use in illegal activities;
  - (d) Engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from accepted standards of pharmacy practice ordinarily exercised by a pharmacist or pharmacy intern, with or without established proof of actual injury;
  - (e) Engaging in grossly negligent professional conduct, with or without established proof of actual injury;
  - (f) Except as provided in KRS 315.500, selling, transferring, dispensing, ingesting, or administering a drug for which a prescription drug order is required, without having first received a prescription drug order for the drug;
  - (g) Willfully or knowingly failing to maintain complete and accurate records of all drugs received, dispensed, or disposed of in compliance with federal and state laws, rules, or administrative regulations;
  - (h) Obtaining any remuneration by fraud, misrepresentation, or deception;
  - (i) Accessing or attempting to access confidential patient information for persons other than those with whom a pharmacist has a current pharmacist-patient relationship and where such information is necessary to the pharmacist to provide pharmacy care;
  - (j) Failing to exercise appropriate professional judgment in determining whether a prescription drug order is lawful;
  - (k) Violating KRS 304.39-215; or
  - (l) Engaging in conduct that is subject to the penalties under KRS 304.99-060(4) or (5).
- (3) Any licensee, permit holder, or certificate holder entering an "Alford" plea, pleading nolo contendere, or who is found guilty of a violation prescribed in subsection (1)(c) of this section shall within thirty (30) days notify the board of that plea or conviction. Failure to do so shall be grounds for suspension or revocation of the license, certificate, or permit.
- (4) Any person whose license, permit, or certificate has been revoked in accordance with the provisions of this section, may petition the board for reinstatement. The petition shall be made in writing and in a form prescribed by the board. The board shall investigate all reinstatement petitions, and the board may reinstate a license, permit, or certificate upon showing that the former holder has been rehabilitated and is again able to engage in the practice of pharmacy with reasonable skill, competency, and safety to the public. Reinstatement may be on the terms and conditions that the board, based on competent evidence, reasonably believes necessary to protect the health and welfare of the citizens of the Commonwealth.
- (5) Upon exercising the power of revocation provided for in subsection (1) of this section, the board may reasonably prohibit any petition for reinstatement for a period up to and including five (5) years.
- (6) Any licensee, permit holder, or certificate holder who is disciplined under this section for a minor violation may request in writing that the board expunge the minor violation from the licensee's, permit holder's, or certificate holder's permanent record.
- (a) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee, permit holder, or certificate holder has completed disciplinary sanctions imposed and if the licensee, permit holder, or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.
  - (b) No person may have his or her record expunged under this section more than once.

The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this subsection. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; assist in the practice of pharmacy; provide home medical equipment and services; adversely affect the public health, safety, or welfare; or result in economic or physical harm to a person; or create a significant threat of such harm.

➔Section 13. This Act may be cited as the Born-Alive Infant Protection Act and as the Avacyn Act.

➔Section 14. Whereas the Commonwealth of Kentucky has a paramount interest in protecting all human life, 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.

**Became law without Governor's signature January 29, 2021.**