

311.782 Prohibition against performing or inducing abortion when probable post-fertilization age of unborn child is twenty weeks or more -- Affirmative defenses -- Penalties for violation.

- (1) No person shall intentionally perform or induce or intentionally attempt to perform or induce an abortion on a pregnant woman when the probable post-fertilization age of the unborn child is twenty (20) weeks or greater.
- (2) It shall be an affirmative defense to a charge under subsection (1) of this section that the abortion was intentionally performed or induced or intentionally attempted to be performed or induced by a physician and that the physician determined, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, that either of the following applied:
 - (a) The probable post-fertilization age of the unborn child was less than twenty (20) weeks; or
 - (b) The abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. No abortion shall be necessary if it is based on a claim or diagnosis that the pregnant woman will engage in conduct that would result in her death or in substantial and irreversible impairment of a major bodily function or if it is based on any reason related to her mental health.
- (3)
 - (a) Except when a medical emergency exists that prevents compliance with KRS 311.783, the affirmative defense set forth in subsection (2)(a) of this section does not apply unless the physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion makes a determination of the probable post-fertilization age of the unborn child as required by KRS 311.783(1) or relied upon such a determination made by another physician and certifies in writing, based on the results of the tests performed, that in the physician's reasonable medical judgment the unborn child's probable post-fertilization age is less than twenty (20) weeks.
 - (b) Except when a medical emergency exists that prevents compliance with one (1) or more of the following conditions, the affirmative defense set forth in subsection (2)(b) of this section does not apply unless the physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion complies with all of the following conditions:
 1. The physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion certifies in writing that, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, the abortion is necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;
 2. A different physician not professionally related to the physician described in subparagraph 1. of this paragraph certifies in writing that, in

that different physician's reasonable medical judgment, based on the facts known to that different physician at that time, the abortion is necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

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

this section is not guilty of violating subsection (1) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (1) of this section.

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