

311.7709 Civil action for wrongful death of unborn child -- Damages, costs, fees -- Defense.

- (1) A woman on whom an abortion was performed or induced in violation of KRS 311.7705(1) or 311.7706(1) 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 KRS 311.7705(1) or 311.7706(1) 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 KRS 311.7705(1) or 311.7706(1) 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.

Effective: March 15, 2019

History: Created 2019 Ky. Acts ch. 20, sec. 9, effective March 15, 2019.