

AN ACT relating to the human rights of unborn children and declaring an emergency.

WHEREAS, the Declaration of Independence recognizes the fundamental truth that all people have been endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness; and

WHEREAS, the Constitution of this Commonwealth guarantees that all people have the right of seeking and pursuing their safety and happiness; and

WHEREAS, in the pursuit of life, liberty, safety, and happiness, every person has the right to be free from pain; and

WHEREAS, the Commonwealth of Kentucky statutorily recognizes an unborn child as a human being from conception onward, without regard to age, health, or condition of dependency; and

WHEREAS, this statutory acknowledgement of the unborn child's humanity compels a recognition of the imperative to treat the final disposition of an aborted child's remains in a dignified and respectful manner; and

WHEREAS, the Supreme Court of the United States of America has recognized that states have a legitimate interest in protecting the life of the unborn; and

WHEREAS, recognizing the human rights of an unborn child does not contravene prior Supreme Court jurisprudence nor undermine a woman's right to self-determination or bodily autonomy, but instead upholds the state's compelling interest in protecting the life of the unborn and in the humane and dignified treatment of human remains; and

WHEREAS, moral and philosophical concepts of dignity hold that a human being is entitled to receive ethical and humane treatment and is to be respected and valued in all phases of life and even after death; and

WHEREAS, certain abortive medical procedures resulting in dismemberment, crushing, or human vivisection are brutal and extremely agonizing for unborn children in contravention of their unalienable rights;

NOW, THEREFORE,

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

➔Section 1. KRS 311.770 is amended to read as follows:

(1) After the first trimester no person shall perform the form of abortion known as the saline method of abortion.

(2) *At no point in a pregnancy shall a method of abortion be performed which, if properly executed, will result in the bodily dismemberment, crushing, or human vivisection of the unborn child.*

➔Section 2. KRS 311.780 is amended to read as follows:

(1) *Except as provided in subsection (3) of this section, prior to performing or inducing an abortion, the physician shall make a determination of the probable post-fertilization age of the unborn child using the same standards, tests, and examinations as a reasonably prudent physician would consider necessary in making a determination of post-fertilization age.*

(2) No abortion shall be performed or prescribed knowingly after the unborn child has reached the twentieth week of development following fertilization, except as provided in subsection (3) of this section~~[may reasonably be expected to have reached viability, except when necessary to preserve the life or health of the woman].~~

(3) *If a medical emergency compels the performance or inducement of an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section or after the unborn child has reached the twentieth week of development following fertilization, 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 and shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.*

(4) In those instances where an abortion is performed under this section, the person performing the abortion shall take all reasonable steps in keeping with reasonable medical practices to preserve the life and health of the child, including but not limited to KRS 311.760(2).

➔SECTION 3. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

The remains of an aborted child or deceased infant, regardless of duration of the pregnancy or gestational age, are human remains and shall not be considered or classified as medical, biological, pathological, infectious, or hazardous waste.

➔Section 4. KRS 525.120 is amended to read as follows:

(1) A person is guilty of abuse of a corpse when:

(a) Except as authorized by law, he intentionally treats a corpse in a way that would outrage ordinary family sensibilities;~~[-]~~

(b) A~~[-]~~ person shall also be guilty of abuse of a corpse if that person enters into a contract and accepts remuneration for the preparation of a corpse for burial or the burial or cremation of a corpse and then deliberately fails to prepare, bury, or cremate that corpse in accordance with that contract;**or**

(c) **A person knowingly places the remains of an aborted child or a deceased infant in any landfill within the Commonwealth of Kentucky.**

(2) Abuse of a corpse is a Class A misdemeanor, unless the act attempted or committed involved sexual intercourse or deviate sexual intercourse with the corpse or the deliberate failure to prepare, bury, or cremate a corpse after the acceptance of remuneration in accordance with any contract negotiated, in which case it is a Class D felony.

➔Section 5. KRS 216B.0431 is amended to read as follows:

(1) **(a)** The cabinet shall, no later than September 1, ~~1998~~ **2016**, and subject to the provisions of KRS Chapter 13A, promulgate administrative regulations

providing licensure standards and procedures for abortion facilities that shall include the requirements of paragraph (b) of this subsection.

(b) The abortion facility shall:

1. Treat the remains of an aborted child in a dignified manner, arrange for the individual cremation of the remains, and include a notice of this requirement in the information the mother receives under KRS 311.725;
2. Enter into an agreement with a church or cemetery to arrange for a final, dignified disposition of the cremated remains; and
3. Include in its monthly report a count of the number of times each dispositional option authorized in this subsection is utilized.

(c) The cabinet shall begin enforcing the administrative regulations on March 1, 1999.

- (2) Any person operating an abortion facility for which a license is required under this chapter may apply for the license prior to March 1, 1999.
- (3) Each abortion facility shall report monthly to the cabinet the information required by the cabinet by administrative regulation for each abortion performed in the facility.
- (4) Licensed acute-care hospitals shall be exempt from the provisions of this section, except for any reporting requirements issued by the cabinet.

➔Section 6. 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 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 or 311.780 shall be guilty of a Class ~~C~~^D felony.
- (18) ~~[A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.]~~
- ~~(19)~~ Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- ~~(19)~~⁽²⁰⁾ 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.
- ~~(20)~~⁽²¹⁾ 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.
- ~~(21)~~⁽²²⁾ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- ~~(22)~~⁽²³⁾ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- ~~(23)~~⁽²⁴⁾ (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.

~~(24)~~~~(25)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.

~~(25)~~~~(26)~~ 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).

~~(26)~~~~(27)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.

~~(27)~~~~(28)~~ 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).

~~(28)~~~~(29)~~ 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).

➔Section 7. Whereas the fundamental rights of Kentuckians deserve immediate protection, 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.