

1 AN ACT relating to abortion.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 311.781 TO 311.786 IS CREATED  
4 TO READ AS FOLLOWS:

5 *The General Assembly finds and declares, according to contemporary medical*  
6 *research, all of the following:*

7 *(1) Medical and other authorities now know more about human prenatal*  
8 *development than ever before, including:*

9 *(a) Between five (5) and six (6) weeks' gestation, an unborn child's heart begins*  
10 *beating;*

11 *(b) At approximately eight (8) weeks' gestation, an unborn child begins to move*  
12 *about in the womb;*

13 *(c) At nine (9) weeks' gestation, all basic physiological functions are present,*  
14 *including teeth, eyes, and external genitalia;*

15 *(d) At ten (10) weeks' gestation, an unborn child's vital organs begin to*  
16 *function, and hair, fingernails, and toenails begin to form;*

17 *(e) At eleven (11) weeks' gestation, an unborn child's diaphragm is developing,*  
18 *he or she may even hiccup, and he or she is beginning to move about freely*  
19 *in the womb; and*

20 *(f) At twelve (12) weeks' gestation, an unborn child can open and close his or*  
21 *her fingers, starts to make sucking motions, senses stimulation from the*  
22 *world outside the womb, and has taken on "the human form" in all*  
23 *relevant aspects under Gonzales v. Carhart, 550 U.S. 124, 160 (2007);*

24 *(2) The United States Supreme Court has long recognized that the state has an*  
25 *"important and legitimate interest in protecting the potentiality of human life,"*  
26 *Roe v. Wade, 410 U.S. 113, 162 (1973), and specifically that "the state has an*  
27 *interest in protecting the life of the unborn". Planned Parenthood of*

- 1        *Southeastern Pennsylvania v. Casey, 505 U.S. 833, 873 (1992);*  
2        *(3) The majority of abortion procedures performed after fifteen (15) weeks' gestation*  
3        *are dilation and evacuation procedures which involve the use of surgical*  
4        *instruments to crush and tear the unborn child apart before removing the pieces*  
5        *of the dead child from the womb, procedures prohibited under Section 6 of this*  
6        *Act, and the General Assembly finds that the intentional commitment of such*  
7        *acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for*  
8        *the maternal patient, and demeaning to the medical profession;*  
9        *(4) Abortion carries significant physical and psychological risks to the maternal*  
10       *patient, and these physical and psychological risks increase with gestational age;*  
11       *(5) As the second trimester progresses, in the vast majority of uncomplicated*  
12       *pregnancies, the maternal health risks of undergoing an abortion are greater*  
13       *than the risks of carrying a pregnancy to term;*  
14       *(6) Seventy-five percent (75%) of all the nations in the world do not permit abortion*  
15       *after twelve (12) weeks' gestation except, in most instances, to save the life and*  
16       *preserve the physical health of the mother; and*  
17       *(7) The Commonwealth of Kentucky has legitimate interests from the outset of the*  
18       *pregnancy in protecting both the health of the woman and the life of an unborn*  
19       *human individual who may be born.*

20       ➔Section 2. KRS 311.781 is amended to read as follows:

21       As used in KRS 311.781 to 311.786:

- 22       (1) "Fertilization" means the fusion of a human spermatozoon with a human ovum;  
23       (2) *"Gestational age" has the same meaning as in KRS 311.7701;*  
24       (3) "Medical emergency" means a condition that in the physician's reasonable medical  
25       judgment, based upon the facts known to the physician at that time, so complicates  
26       the woman's pregnancy as to necessitate the immediate performance or inducement  
27       of an abortion in order to prevent the death of the pregnant woman or to avoid a

1 serious risk of the substantial and irreversible impairment of a major bodily function  
 2 of the pregnant woman that delay in the performance or inducement of the abortion  
 3 would create;

4 ~~(4)~~~~(3)~~ "Pain-capable unborn child" means an unborn child of a probable  
 5 ~~gestational~~~~[post fertilization]~~ age of fifteen (15)~~[twenty (20)]~~ weeks or more;

6 ~~(5)~~~~(4)~~ "Physician" has the same meaning as in KRS 311.720;

7 **(6) "Probable gestational age" has the same meaning as in KRS 311.720;**

8 ~~[(5) "Post fertilization age" means the age of the unborn child as calculated from the  
 9 fusion of a human spermatozoon with a human ovum;~~

10 ~~(6) "Probable post fertilization age" means, in reasonable medical judgment and with  
 11 reasonable probability, the age of the unborn child, as calculated from fertilization,  
 12 at the time the abortion is performed or induced or attempted to be performed or  
 13 induced;]~~

14 (7) "Reasonable medical judgment" means a medical judgment that would be made by  
 15 a reasonably prudent physician, knowledgeable about the case and the treatment  
 16 possibilities with respect to the medical conditions involved;

17 (8) "Serious risk of the substantial and irreversible impairment of a major bodily  
 18 function" means any medically diagnosed condition that so complicates the  
 19 pregnancy of the woman as to directly or indirectly cause the substantial and  
 20 irreversible impairment of a major bodily function. A medically diagnosed  
 21 condition that constitutes a "serious risk of the substantial and irreversible  
 22 impairment of a major bodily function" includes pre-eclampsia, inevitable abortion,  
 23 and premature rupture of the membranes, but does not include a condition related to  
 24 the woman's mental health; and

25 (9) "Unborn child" means an individual organism of the species homo sapiens from  
 26 fertilization until live birth.

27 ➔Section 3. KRS 311.782 is amended to read as follows:

- 1 (1) No person shall intentionally perform or induce or intentionally attempt to perform  
2 or induce an abortion on a pregnant woman when the probable gestational~~[post-~~  
3 ~~fertilization]~~ age of the unborn child is fifteen (15)~~[twenty (20)]~~ weeks or greater.
- 4 (2) It shall be an affirmative defense to a charge under subsection (1) of this section that  
5 the abortion was intentionally performed or induced or intentionally attempted to be  
6 performed or induced by a physician and that the physician determined, in the  
7 physician's reasonable medical judgment, based on the facts known to the physician  
8 at that time, that either of the following applied:
- 9 (a) The probable gestational~~[post-fertilization]~~ age of the unborn child was less  
10 than fifteen (15)~~[twenty (20)]~~ weeks; or
- 11 (b) The abortion was necessary to prevent the death of the pregnant woman or to  
12 avoid a serious risk of the substantial and irreversible impairment of a major  
13 bodily function of the pregnant woman. No abortion shall be necessary if it is  
14 based on a claim or diagnosis that the pregnant woman will engage in conduct  
15 that would result in her death or in substantial and irreversible impairment of a  
16 major bodily function or if it is based on any reason related to her mental  
17 health.
- 18 (3) (a) Except when a medical emergency exists that prevents compliance with KRS  
19 311.783, the affirmative defense set forth in subsection (2)(a) of this section  
20 does not apply unless the physician who intentionally performs or induces or  
21 intentionally attempts to perform or induce the abortion makes a  
22 determination of the probable gestational~~[post-fertilization]~~ age of the unborn  
23 child as required by KRS 311.783(1) or relied upon such a determination  
24 made by another physician and certifies in writing, based on the results of the  
25 tests performed, that in the physician's reasonable medical judgment the  
26 unborn child's probable gestational~~[post-fertilization]~~ age is less than fifteen  
27 (15)~~[twenty (20)]~~ weeks.

- 1 (b) Except when a medical emergency exists that prevents compliance with one  
2 (1) or more of the following conditions, the affirmative defense set forth in  
3 subsection (2)(b) of this section does not apply unless the physician who  
4 intentionally performs or induces or intentionally attempts to perform or  
5 induce the abortion complies with all of the following conditions:
- 6 1. The physician who intentionally performs or induces or intentionally  
7 attempts to perform or induce the abortion certifies in writing that, in the  
8 physician's reasonable medical judgment, based on the facts known to  
9 the physician at that time, the abortion is necessary to prevent the death  
10 of the pregnant woman or to avoid a serious risk of the substantial and  
11 irreversible impairment of a major bodily function of the pregnant  
12 woman;
  - 13 2. A different physician not professionally related to the physician  
14 described in subparagraph 1. of this paragraph certifies in writing that, in  
15 that different physician's reasonable medical judgment, based on the  
16 facts known to that different physician at that time, the abortion is  
17 necessary to prevent the death of the pregnant woman or to avoid a  
18 serious risk of the substantial and irreversible impairment of a major  
19 bodily function of the pregnant woman;
  - 20 3. The physician intentionally performs or induces or intentionally attempts  
21 to perform or induce the abortion in a hospital or other health care  
22 facility that has appropriate neonatal services for premature infants;
  - 23 4. The physician who intentionally performs or induces or intentionally  
24 attempts to perform or induce the abortion terminates or attempts to  
25 terminate the pregnancy in the manner that provides the best opportunity  
26 for the unborn child to survive, unless that physician determines, in the  
27 physician's reasonable medical judgment, based on the facts known to

1           the physician at that time, that the termination of the pregnancy in that  
2           manner poses a greater risk of death of the pregnant woman or a greater  
3           risk of the substantial and irreversible impairment of a major bodily  
4           function of the pregnant woman than would other available methods of  
5           abortion;

6           5. The physician certifies in writing the available method or techniques  
7           considered and the reasons for choosing the method or technique  
8           employed; and

9           6. The physician who intentionally performs or induces or intentionally  
10          attempts to perform or induce the abortion has arranged for the  
11          attendance in the same room in which the abortion is to be performed or  
12          induced or attempted to be performed or induced at least one (1) other  
13          physician who is to take control of, provide immediate medical care for,  
14          and take all reasonable steps necessary to preserve the life and health of  
15          the unborn child immediately upon the child's complete expulsion or  
16          extraction from the pregnant woman.

17       (4) The state Board of Medical Licensure shall revoke a physician's license to practice  
18       medicine in this state if the physician violates or fails to comply with this section.

19       (5) Any physician who intentionally performs or induces or intentionally attempts to  
20       perform or induce an abortion on a pregnant woman with actual knowledge that  
21       neither of the affirmative defenses set forth in subsection (2) of this section applies,  
22       or with a heedless indifference as to whether either affirmative defense applies, is  
23       liable in a civil action for compensatory and punitive damages and reasonable  
24       attorney's fees to any person, or the representative of the estate of any person  
25       including but not limited to an unborn child, who sustains injury, death, or loss to  
26       person or property as the result of the performance or inducement or the attempted  
27       performance or inducement of the abortion. In any action under this subsection, the

1 court also may award any injunctive or other equitable relief that the court considers  
2 appropriate.

3 (6) A pregnant woman on whom an abortion is intentionally performed or induced or  
4 intentionally attempted to be performed or induced in violation of subsection (1) of  
5 this section is not guilty of violating subsection (1) of this section or of attempting  
6 to commit, conspiring to commit, or complicity in committing a violation of  
7 subsection (1) of this section.

8 ➔Section 4. KRS 311.783 is amended to read as follows:

9 (1) Except in a medical emergency that prevents compliance with this section, no  
10 physician shall intentionally perform or induce or intentionally attempt to perform  
11 or induce an abortion on a pregnant woman unless, prior to the performance or  
12 inducement of the abortion or the attempt to perform or induce the abortion, the  
13 physician determines, in the physician's reasonable medical judgment, the unborn  
14 child's probable gestational~~[post-fertilization]~~ age. The physician shall make that  
15 determination after making inquiries of the pregnant woman and performing any  
16 medical examinations or tests of the pregnant woman the physician considers  
17 necessary as a reasonably prudent physician, knowledgeable about the case and  
18 medical conditions involved, would consider necessary to determine the unborn  
19 child's probable gestational~~[post-fertilization]~~ age.

20 (2) Except in a medical emergency that prevents compliance with this section, no  
21 physician shall intentionally perform or induce or intentionally attempt to perform  
22 or induce an abortion on a pregnant woman after the unborn child reaches the  
23 probable gestational~~[post-fertilization]~~ age of fifteen (15)~~[twenty (20)]~~ weeks  
24 without first entering the determination made in subsection (1) of this section and  
25 the associated findings of the medical examination and tests in the medical record  
26 of the pregnant woman.

27 (3) The state Board of Medical Licensure shall suspend a physician's license to practice

1 medicine in this state for a period of not less than six (6) months if the physician  
2 violates this section.

3 ➔SECTION 5. A NEW SECTION OF KRS 311.781 TO 311.786 IS CREATED  
4 TO READ AS FOLLOWS:

5 **The Attorney General shall have authority to bring an action in law or equity to**  
6 **enforce any provisions of KRS 311.781 to 311.786 on behalf of the Commonwealth of**  
7 **Kentucky. The state Board of Medical Licensure shall also have authority to bring an**  
8 **action on its own behalf.**

9 ➔Section 6. KRS 311.787 is amended to read as follows:

10 (1) As used in this section:

11 (a) "Bodily dismemberment, crushing, or human vivisection" means a procedure  
12 in which a person, with the purpose of causing the death of an unborn child,  
13 dismembers the living unborn child and extracts portions, pieces, or limbs of  
14 the unborn child from the uterus through the use of clamps, grasping forceps,  
15 tongs, scissors, or a similar instrument that, through the convergence of two  
16 (2) rigid levers, slices, crushes, or grasps, or performs any combination of  
17 those actions on, any portion, piece, or limb of the unborn child's body to cut  
18 or separate the portion, piece, or limb from the body. The term includes a  
19 procedure that is used to cause the death of an unborn child and in which  
20 suction is subsequently used to extract portions, pieces, or limbs of the unborn  
21 child after the unborn child's death;

22 (b) "Medical emergency" has the same meaning as in KRS 311.720;

23 (c) "Probable ~~gestational~~~~[post-fertilization]~~ age" has the same meaning as in KRS  
24 **311.720**~~[311.781]~~; and

25 (d) "Unborn child" has the same meaning as in KRS 311.781.

26 (2) No person shall intentionally perform or induce or attempt to perform or induce an  
27 abortion on a pregnant woman:

1 (a) That will result in the bodily dismemberment, crushing, or human vivisection  
2 of the unborn child; and

3 (b) When the probable gestational~~[post-fertilization]~~ age of the unborn child is  
4 eleven (11) weeks or greater;  
5 except in the case of a medical emergency.

6 (3) A pregnant woman on whom an abortion is performed or induced or attempted to be  
7 performed or induced in violation of subsection (2) of this section is not guilty of  
8 violating subsection (2) of this section or of attempting to commit, conspiring to  
9 commit, or complicity in committing a violation of subsection (2) of this section.

10 ➔Section 7. (1) If any provision of this Act or the application thereof to any  
11 person or circumstance is held invalid, the invalidity shall not affect the other provisions  
12 or applications of this Act that can be given effect without the invalid provision or  
13 application, and to this end the provisions of this Act are severable.

14 (2) Nothing in Sections 1 to 6 of this Act shall be construed as creating or  
15 recognizing a right to abortion or as altering generally accepted medical standards.