

1 AN ACT relating to perinatal palliative care.

2 WHEREAS, the right to life is the most fundamental human right, forming the basis  
3 for all other rights, as recognized in the principles of natural law, the Constitution of the  
4 United States, and the Constitution of Kentucky; and

5 WHEREAS, appropriate and comprehensive perinatal care is essential for ensuring  
6 the health and well-being of both the mother and the unborn child, encompassing  
7 prenatal, intrapartum, and postpartum care to optimize health outcomes and address  
8 potential complications; and

9 WHEREAS, elective abortion restrictions under Kentucky law, as enacted, include  
10 medically necessary exceptions and interventions required to preserve the life of the  
11 mother; and

12 WHEREAS, there is a need to clarify the distinction between an elective abortion  
13 and illegal termination of the life of an unborn child protected under Kentucky law and  
14 medically necessary interventions that affirm the fundamental right to life, ensure  
15 compassionate and comprehensive care for mothers and unborn children that constitute  
16 appropriate medical management for serious and life-threatening perinatal medical  
17 complications such as spontaneous miscarriage, or to treat conditions such as ectopic and  
18 molar pregnancies; and

19 WHEREAS, lifesaving miscarriage management, including medical procedures  
20 necessary to address spontaneous abortion, also known as miscarriage, inevitable  
21 abortion, or incomplete abortion, is an essential component of comprehensive medical  
22 care and is distinct from elective abortion; and

23 WHEREAS, medical conditions such as ectopic pregnancy, molar pregnancy,  
24 sepsis, and hemorrhage may necessitate emergency interventions to prevent maternal  
25 death or serious and permanent impairment of a life-sustaining organ; and

26 WHEREAS, in cases where a pregnancy has ended, or is in the unavoidable and  
27 untreatable process of ending, it is necessary to provide appropriate consultation and

1 medical care, including the removal of a deceased unborn child from the uterine cavity  
2 when no fetal cardiac activity is present; and

3 WHEREAS, lifesaving miscarriage management refers to medically necessary  
4 interventions performed by healthcare professionals to protect the life of a pregnant  
5 woman experiencing a spontaneous pregnancy loss or a life-threatening pregnancy  
6 complication, distinguishing these interventions from elective abortion as these  
7 interventions are intended solely to address natural pregnancy complications where the  
8 unborn child has already died, the pregnancy is no longer viable, or to prevent the death  
9 or substantial risk of death to the pregnant woman due to a physical condition, or to  
10 prevent the serious, permanent impairment of a life-sustaining organ of a pregnant  
11 woman; and

12 WHEREAS, stillbirth, early fetal demise, and the death of an unborn child have  
13 many causes, including perinatal and intrapartum complications, hypertension, diabetes,  
14 infection, congenital and genetic abnormalities, placental dysfunction, and pregnancy  
15 continuing beyond 40 weeks and are catastrophic events with lasting consequences on the  
16 expectant mother, family, and all of society; and

17 WHEREAS, initiatives such as Kentucky Perinatal Quality Collaborative (KyPQC),  
18 formed in 2019 as a statewide network working in collaboration with healthcare  
19 providers, delivery hospitals, insurers, advocacy groups, and state and national  
20 stakeholders, demonstrate an ongoing commitment to improve the quality of care during  
21 pregnancy, delivery, and throughout the first year of a child's life in the Commonwealth;  
22 and

23 WHEREAS, perinatal palliative care programs provide essential support and  
24 resources to pregnant women and families facing complex and life-limiting prenatal  
25 diagnoses, ensuring compassionate care, informed decision-making, and emotional,  
26 spiritual, and medical guidance; and

27 WHEREAS, hospitals, birthing centers, maternal-fetal specialists, and midwives

1 have a shared responsibility to offer or refer patients to perinatal palliative care programs  
2 and support services when a prenatal diagnosis indicates that a baby may die before or  
3 after birth, or when a newborn is diagnosed with a life-limiting condition; and

4 WHEREAS, the Cabinet for Health and Family Services should maintain a list of  
5 perinatal palliative care programs and providers to ensure accessibility and awareness  
6 among healthcare professionals and expectant families; and

7 WHEREAS, the 2024 committee opinion of the American College of Obstetricians  
8 and Gynecologists' Committee on Obstetric Practice and Ethics expresses support for  
9 perinatal palliative care as a coordinated care strategy that comprises options for obstetric  
10 and newborn care that include a focus on maximizing quality of life and comfort for  
11 newborns with a variety of conditions considered to be life-limiting in early infancy and a  
12 dual focus on ameliorating suffering and honoring patient values, perinatal palliative care  
13 provided concurrently with life-prolonging treatment; and

14 WHEREAS, the 2024 committee opinion of the American College of Obstetricians  
15 and Gynecologists' Committee on Obstetric Practice and Ethics states that the birth plan  
16 is an individualized proposal for delivery and neonatal care and a critical prenatal  
17 component of perinatal palliative comfort care; and

18 WHEREAS, the American Academy of Pediatrics and the Society for Maternal-  
19 Fetal Medicine endorsed the 2024 committee opinion on perinatal palliative care of the  
20 American College of Obstetricians and Gynecologists' committees;

21 NOW, THEREFORE,

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

23 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO  
24 READ AS FOLLOWS:

25 **(1) As used in this section:**

26 **(a) "Baby" includes both an unborn child as defined in KRS 311.781 and an**  
27 **infant as defined in KRS 311.821;**

1        (b) "Perinatal" means occurring in, concerned with, or being in the period  
2                around the time of birth; and

3        (c) "Pregnant" has the same meaning as in Section 4 of this Act.

4        (2) All hospitals and freestanding birthing centers offering obstetric services and  
5                maternal-fetal medicine, and the pregnant woman's attending physician or  
6                midwife, shall offer to provide or make referrals to a perinatal palliative care  
7                program or perinatal palliative care support services for pregnant women, birth  
8                fathers, and family members when there is a:

9                (a) Prenatal diagnosis indicating that a baby may die before or after birth;

10              (b) Diagnosis of fetal anomalies where the likelihood of long-term survival is  
11              uncertain or minimal; or

12              (c) Newborn who is diagnosed with a potentially life-limiting illness.

13        (3) Perinatal palliative care programs and support services shall include but not be  
14                limited to:

15              (a) Coordination of care between medical, obstetric, neonatal, and perinatal  
16              palliative care providers, hospital staff, and the pregnant woman, birth  
17              father, and family members;

18              (b) Care and specialized support through the remainder of a pregnancy, the  
19              birth, the newborn period, and the death;

20              (c) Providing anticipatory guidance, education, and support for pregnant  
21              women, birth fathers, and family members before, during, and after  
22              delivery;

23              (d) Providing resources and referrals as needed;

24              (e) Assistance with making medical decisions;

25              (f) Counseling;

26              (g) Education, including specific information about the baby's diagnosis;

27              (h) Emotional support;

- 1        (i) Guidance on what to expect throughout the grieving process;  
 2        (j) Assistance with the creation of memories and keepsakes;  
 3        (k) Preparation for meeting the baby and understanding the limitations that  
 4            may be present at birth;  
 5        (l) Pastoral, emotional, and spiritual support for pregnant women, birth  
 6            fathers, and family members; and  
 7        (m) Preparing a plan of care for the baby, which may include medical  
 8            interventions as needed in the home, hospital, or neonatal hospice.  
 9        (4) The Cabinet for Health and Family Services shall create and maintain a list of  
 10            perinatal palliative care programs and service providers on its website.  
 11        (5) Nothing in this section shall be interpreted as permitting any violation of Section  
 12            3 or 4 of this Act.

13        ➔Section 2. KRS 311.720 is amended to read as follows:

14        As used in KRS 311.710 to 311.820, and laws of the Commonwealth unless the context  
 15        otherwise requires:

- 16        (1) (a) "Abortion" means the performance of any act with the intent~~[use of any~~  
 17            ~~means whatsoever]~~ to terminate the clinically diagnosable pregnancy of a  
 18            woman known to be pregnant with knowledge that the termination by those  
 19            means will, with reasonable likelihood, cause the death of the unborn child  
 20            by one (1) or more of the following means:  
 21            1. Administering, prescribing, or providing any abortion-inducing drug  
 22                    as defined in KRS 311.7731, potion, medicine, or any other substance  
 23                    or device to a pregnant female; or  
 24            2. Using an instrument or external force on a pregnant female.  
 25        (b) "Abortion" does not mean those actions that require separating the  
 26            pregnant woman from her unborn child when performed by a licensed  
 27            physician as provided in Section 3 of this Act~~[intent to cause fetal death];~~

- 1 (2) "Accepted medical procedures" means procedures of the type performed in the  
2 manner and in a facility with equipment sufficient to meet the standards of medical  
3 care which physicians engaged in the same or similar lines of work, would  
4 ordinarily exercise and devote to the benefit of their patients;
- 5 (3) "Cabinet" means the Cabinet for Health and Family Services of the Commonwealth  
6 of Kentucky;
- 7 (4) "Consent," as used in KRS 311.710 to 311.820 with reference to those who must  
8 give their consent, means an informed consent expressed by a written agreement to  
9 submit to an abortion on a written form of consent to be promulgated by the  
10 secretary for health and family services;
- 11 (5) "Family planning services" means educational, medical, and social services and  
12 activities that enable individuals to determine the number and spacing of their  
13 children and to select the means by which this may be achieved;
- 14 (6) "Fetus" means a human being from fertilization until birth;
- 15 (7) "Hospital" means those institutions licensed in the Commonwealth of Kentucky  
16 pursuant to the provisions of KRS Chapter 216;
- 17 (8) "Human being" means any member of the species homo sapiens from fertilization  
18 until death;
- 19 (9) "Medical emergency" means any condition which, on the basis of the physician's  
20 reasonable medical~~[good faith clinical]~~ judgment, so complicates the medical  
21 condition of a pregnant female as to necessitate the immediate abortion of her  
22 pregnancy to avert her death or for which a delay will create serious risk of  
23 substantial and irreversible impairment of a major bodily function;
- 24 (10) "Medical necessity" means a medical condition of a pregnant woman that, in the  
25 reasonable medical judgment of the physician who is attending the woman, so  
26 complicates the pregnancy that it necessitates the immediate performance or  
27 inducement of an abortion;

- 1 (11) "Partial-birth abortion" means an abortion in which the physician performing the  
2 abortion partially vaginally delivers a living fetus before killing the fetus and  
3 completing the delivery;
- 4 (12) **"Perinatal care" means the health care provided to both the mother and child,**  
5 **including prenatal, intrapartum, and postpartum care, with a focus on optimizing**  
6 **outcomes and addressing potential complications;**
- 7 **(13)** "Physician" means any person licensed to practice medicine in the Commonwealth  
8 or osteopathy pursuant to this chapter;
- 9 **(14)**~~(13)~~ "Probable gestational age of the embryo or fetus" means the gestational age  
10 that, in the judgment of a physician, is, with reasonable probability, the gestational  
11 age of the embryo or fetus at the time that the abortion is planned to be performed;
- 12 **(15)**~~(14)~~ "Public agency" means the Commonwealth of Kentucky; any agency,  
13 department, entity, or instrumentality thereof; any city, county, agency, department,  
14 entity, or instrumentality thereof; or any other political subdivision of the  
15 Commonwealth, agency, department, entity, or instrumentality thereof;
- 16 **(16) "Reasonable medical judgment" means the range of conclusions or**  
17 **recommendations that licensed medical practitioners with similarly sufficient**  
18 **training and experience may communicate to a patient based upon current**  
19 **available medical evidence;**
- 20 **(17) "Unborn child" has the same meaning as "unborn human being" in Section 4 of**  
21 **this Act;**
- 22 **(18)**~~(15)~~ "Vaginally delivers a living fetus before killing the fetus" means deliberately  
23 and intentionally delivers into the vagina a living fetus, or a substantial portion  
24 thereof, for the purpose of performing a procedure the physician knows will kill the  
25 fetus, and kills the fetus; and
- 26 **(19)**~~(16)~~ "Viability" means that stage of human development when the life of the  
27 unborn child may be continued by natural or life-supportive systems outside the

1 womb of the mother.

2 ➔Section 3. KRS 311.723 is amended to read as follows:

- 3 (1) No action that requires separating a pregnant woman from her unborn  
4 child~~[abortion]~~ shall be performed, except the following when performed by a  
5 physician based upon his or her reasonable medical judgment~~[after either]:~~
- 6 (a) A medical procedure performed with the intent to save the life or preserve  
7 the health of an unborn child~~[He determines that, in his best clinical~~  
8 ~~judgment, the abortion is necessary];~~~~[or]~~
- 9 (b) Lifesaving miscarriage management, which includes medically necessary  
10 interventions when the pregnancy has ended or is in the unavoidable and  
11 untreatable process of ending due to spontaneous or incomplete  
12 miscarriage;
- 13 (c) Sepsis and hemorrhage emergency medical interventions required when a  
14 miscarriage or impending miscarriage results in a life-threatening infection  
15 or excessive bleeding;
- 16 (d) A medically necessary intervention, inducement, or delivery for the removal  
17 of a dead child from the uterine cavity, when documented in the woman's  
18 medical record along with the results of an obstetric ultrasound test,  
19 confirming that fetal cardiac activity is not present at a gestational age  
20 when it should be present;
- 21 (e) The removal of an ectopic pregnancy or a pregnancy that is not implanted  
22 normally within the endometrial cavity;
- 23 (f) The use of methotrexate or similar medications to treat an ectopic  
24 pregnancy;
- 25 (g) The removal of a molar pregnancy;
- 26 (h) A medical procedure necessary based on reasonable medical judgment to  
27 prevent the death or substantial risk of death of the pregnant woman due to



1 a physical condition, or to prevent serious, permanent impairment of a life-  
 2 sustaining organ of a pregnant woman. However, the physician shall make  
 3 reasonable medical efforts under the circumstances to preserve both the life  
 4 of the mother and the life of the unborn child in a manner consistent with  
 5 reasonable medical practice; or

6 (i) Medical treatment provided to the mother by a licensed physician, which  
 7 results in the accidental or unintentional injury or death of the unborn  
 8 human being [He receives what he reasonably believes to be a written  
 9 statement signed by another physician, hereinafter called the "referring  
 10 physician," certifying that in the referring physician's best clinical judgment  
 11 the abortion is necessary, and, in addition, he receives a copy of the report  
 12 form required by KRS 213.101].

13 (2) No treatment or procedure authorized under subsection (1) of this  
 14 section [abortion] shall be performed except in compliance with regulations which  
 15 the cabinet shall promulgate [issue] to ensure that:

16 (a) 1. Before the treatment or procedure [abortion] is performed, the pregnant  
 17 woman shall have a private medical consultation either with the  
 18 physician who is to provide the treatment or perform the  
 19 procedure [abortion] or with the referring physician in a place, at a time  
 20 and of a duration reasonably sufficient to enable the physician to  
 21 determine whether, based upon his or her reasonable medical [best  
 22 clinical] judgment, the action [abortion] is necessary; and

23 2. The physician shall document in the pregnant woman's medical  
 24 record the pregnant woman's informed consent to the treatment or  
 25 procedure following a discussion, acknowledged in writing by the  
 26 woman, of the risks, benefits, and alternatives to the treatment or  
 27 procedure, sufficient in scope for a reasonable person to make an

1 *informed decision;*

2 (b) The physician who is to *provide the treatment or* perform the  
 3 *procedure*~~[abortion]~~ or the referring physician will describe the basis for his  
 4 *or her reasonable medical*~~[best-clinical]~~ judgment that the *action*~~[abortion]~~ is  
 5 necessary on a form prescribed by the cabinet as required by KRS 213.101;  
 6 and

7 (c) *1.* Paragraph (a) of this subsection shall not apply when, in the *reasonable*  
 8 medical judgment of the attending physician based on the particular  
 9 facts of the case before him *or her*, there exists a medical emergency. In  
 10 *the*~~[such a]~~ case *of a medical emergency*, the physician shall describe  
 11 the basis of his *or her reasonable* medical judgment that an emergency  
 12 exists on a form prescribed by the cabinet as required by KRS 213.101;  
 13 *and*

14 *2. If an emergency exists which limits the time available for*  
 15 *documentation or the scope of the informed consent discussion, the*  
 16 *physician shall endeavor to complete the requirements of this*  
 17 *subsection to the extent possible without undue risk to the woman's*  
 18 *life or health and shall promptly complete any required documentation*  
 19 *when the emergency no longer exists.*

20 (3) Notwithstanding any statute to the contrary, nothing in this chapter shall be  
 21 construed as prohibiting a physician from prescribing or a woman from using birth  
 22 control methods or devices, including, but not limited to, intrauterine devices, oral  
 23 contraceptives, or any other birth control method or device.

24 *(4) Nothing in this section shall be interpreted as permitting any violation of Section*  
 25 *4 of this Act.*

26 ➔Section 4. KRS 311.772 is amended to read as follows:

27 (1) As used in this section:

- 1 (a) "Fertilization" means that point in time when a male human sperm penetrates  
2 the zona pellucida of a female human ovum;
- 3 (b) "Pregnant" means the human female reproductive condition of having a living  
4 unborn human being within her body throughout the entire embryonic and  
5 fetal stages of the unborn child from fertilization to full gestation and  
6 childbirth; and
- 7 (c) "Unborn human being" means an individual living member of the species  
8 homo sapiens throughout the entire embryonic and fetal stages of the unborn  
9 child from fertilization to full gestation and childbirth.
- 10 (2) The provisions of this section shall become effective immediately upon, and to the  
11 extent permitted, by the occurrence of any of the following circumstances:
- 12 (a) Any decision of the United States Supreme Court which reverses, in whole or  
13 in part, *Roe v. Wade*, 410 U.S. 113 (1973), thereby restoring to the  
14 Commonwealth of Kentucky the authority to prohibit abortion; or
- 15 (b) Adoption of an amendment to the United States Constitution which, in whole  
16 or in part, restores to the Commonwealth of Kentucky the authority to prohibit  
17 abortion.
- 18 (3) (a) **Except as provided in Section 3 of this Act,** no person may knowingly:
- 19 1. Administer to, prescribe for, procure for, or sell to any pregnant woman  
20 any medicine, drug, or other substance with the specific intent of  
21 causing or abetting the termination of the life of an unborn human being;  
22 or
- 23 2. Use or employ any instrument or procedure upon a pregnant woman  
24 with the specific intent of causing or abetting the termination of the life  
25 of an unborn human being.
- 26 (b) Any person who violates paragraph (a) of this subsection shall be guilty of a  
27 Class D felony.

- 1 (4) The following shall not be a violation of subsection (3) of this section:
- 2 (a) For a licensed physician to perform a medical procedure necessary in
- 3 reasonable medical judgment to prevent the death or substantial risk of death
- 4 due to a physical condition, or to prevent the serious, permanent impairment
- 5 of a life-sustaining organ of a pregnant woman. However, the physician shall
- 6 make reasonable medical efforts under the circumstances to preserve both the
- 7 life of the mother and the life of the unborn human being in a manner
- 8 consistent with reasonable medical practice; or
- 9 (b) Medical treatment provided to the mother by a licensed physician which
- 10 results in the accidental or unintentional injury or death to the unborn human
- 11 being.
- 12 (5) Nothing in this section may be construed to subject the pregnant mother upon
- 13 whom any abortion is performed or attempted to any criminal conviction and
- 14 penalty.
- 15 (6) Nothing in this section may be construed to prohibit the sale, use, prescription, or
- 16 administration of a contraceptive measure, drug, or chemical, if it is administered
- 17 prior to the time when a pregnancy could be determined through conventional
- 18 medical testing and if the contraceptive measure is sold, used, prescribed, or
- 19 administered in accordance with manufacturer instructions.
- 20 (7) The provisions of this section shall be effective relative to the appropriation of
- 21 Medicaid funds, to the extent consistent with any executive order by the President
- 22 of the United States, federal statute, appropriation rider, or federal regulation that
- 23 sets forth the limited circumstances in which states must fund abortion to remain
- 24 eligible to receive federal Medicaid funds pursuant to 42 U.S.C. ~~sec.~~<sup>secs.</sup> 1396 et
- 25 seq.
- 26 ➔Section 5. This Act may be cited as the Love Them Both Act of 2025.
- 27 ➔Section 6. Whereas it is critical to ensure the health and well-being of a woman

1 experiencing a crisis pregnancy, an emergency is declared to exist, and this Act takes  
2 effect upon its passage and approval by the Governor or upon its otherwise becoming a  
3 law.