

1 AN ACT relating to abortion.

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

3 ➔Section 1. KRS 311.720 is amended to read as follows:

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

6 (1) "Abortion" means the use of any means whatsoever to terminate the pregnancy of a  
7 woman known to be pregnant with intent to cause fetal death;

8 (2) "Accepted medical procedures" means procedures of the type performed in the  
9 manner and in a facility with equipment sufficient to meet the standards of medical  
10 care which physicians engaged in the same or similar lines of work, would  
11 ordinarily exercise and devote to the benefit of their patients;

12 (3) "Cabinet" means the Cabinet for Health and Family Services of the Commonwealth  
13 of Kentucky;

14 (4) "Consent," as used in KRS 311.710 to 311.820 with reference to those who must  
15 give their consent, means an informed consent expressed by a written agreement to  
16 submit to an abortion on a written form of consent to be promulgated by the  
17 secretary for health and family services;

18 (5) **"Ectopic pregnancy" means a fetus or embryo which is developing outside of the**  
19 **uterus;**

20 **(6)** "Family planning services" means educational, medical, and social services and  
21 activities that enable individuals to determine the number and spacing of their  
22 children and to select the means by which this may be achieved;

23 ~~(7)~~ "Fetus" means a human being from fertilization until birth;

24 ~~(8)~~ "Hospital" means those institutions licensed in the Commonwealth of  
25 Kentucky pursuant to the provisions of KRS Chapter 216;

26 ~~(9)~~ "Human being" means any member of the species homo sapiens from  
27 fertilization until death;

1 (10) "Incomplete miscarriage" or "missed miscarriage" means the loss of a  
 2 pregnancy in which the pregnancy tissue or products of conception have not yet  
 3 been expelled from the uterus;

4 (11) "Lethal fetal anomaly" means a fetal condition diagnosed before birth, in  
 5 writing, by a physician within his or her good-faith medical judgment that the  
 6 fetus is incompatible with life outside the womb, and confirmed by the opinion of  
 7 another physician, in writing, following an examination of the patient or a review  
 8 of the relevant medical records;

9 (12)~~(9)~~ "Medical emergency" or "medically necessary" means any condition which,  
 10 on the basis of the physician's good-faith clinical judgment, so complicates the  
 11 medical condition of a pregnant woman~~[female]~~ as to necessitate the immediate  
 12 performance or inducement of an abortion of her pregnancy to avert her death or  
 13 for which a delay will create, either directly or indirectly a serious risk of  
 14 substantial and irreversible;

15 (a) Harm to the physical health of the pregnant woman, or life-threatening  
 16 conditions, including premature rupture of the membranes, hemorrhage,  
 17 preeclampsia, or cardiac complications;

18 (b) Long-term damage to reproductive health or fertility, including  
 19 complications that may render the pregnant woman unable to conceive or  
 20 carry a pregnancy in the future; or

21 (c) Impairment of a major bodily function;

22 (13)~~(10)~~ "Medical necessity" has the same meaning as "medically necessary"~~[means~~  
 23 ~~a medical condition of a pregnant woman that, in the reasonable judgment of the~~  
 24 ~~physician who is attending the woman, so complicates the pregnancy that it~~  
 25 ~~necessitates the immediate performance or inducement of an abortion];~~

26 (14)~~(11)~~ "Partial-birth abortion" means an abortion in which the physician performing  
 27 the abortion partially vaginally delivers a living fetus before killing the fetus and

1 completing the delivery;

2 ~~(15)~~~~(12)~~ "Physician" means any person licensed to practice medicine in the  
3 Commonwealth or osteopathy pursuant to this chapter;

4 ~~(16)~~~~(13)~~ "Probable gestational age of the embryo or fetus" means the gestational age  
5 that, in the judgment of a physician, is, with reasonable probability, the gestational  
6 age of the embryo or fetus at the time that the abortion is planned to be performed;

7 ~~(17)~~~~(14)~~ "Public agency" means the Commonwealth of Kentucky; any agency,  
8 department, entity, or instrumentality thereof; any city, county, agency, department,  
9 entity, or instrumentality thereof; or any other political subdivision of the  
10 Commonwealth, agency, department, entity, or instrumentality thereof;

11 ~~(18)~~~~(15)~~ "Vaginally delivers a living fetus before killing the fetus" means deliberately  
12 and intentionally delivers into the vagina a living fetus, or a substantial portion  
13 thereof, for the purpose of performing a procedure the physician knows will kill the  
14 fetus, and kills the fetus; and

15 ~~(19)~~~~(16)~~ "Viability" means that stage of human development when the life of the  
16 unborn child may be continued by natural or life-supportive systems outside the  
17 womb of the mother.

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

19 (1) No abortion shall be performed except by a physician~~[after either]~~:

20 (a) After the physician~~[He]~~ determines that, in his or her best clinical judgment,  
21 the abortion is:

22 1. Medically necessary;

23 2. Performed to remove a dead unborn fetus, an ectopic pregnancy, or a  
24 missed or incomplete miscarriage; or

25 3. Because of a lethal fetal anomaly;

26 (b) After the physician~~[He]~~ receives what he or she reasonably believes to be a  
27 written statement signed by another physician, hereinafter called the

1 "referring physician," certifying that in the referring physician's best clinical  
 2 judgment the abortion is necessary, and, in addition, he or she receives a copy  
 3 of the report form required by KRS 213.101; or

4 (c) If, in the physician's good-faith medical judgment, the pregnancy is the  
 5 result of rape under KRS 510.040, 510.050, or 510.060, or incest under KRS  
 6 530.020(2)(b) or (c), and the gestational age of the fetus is twenty-two (22)  
 7 weeks or less.

- 8 (2) No abortion shall be performed except in compliance with regulations which the  
 9 cabinet shall issue to ensure that:
- 10 (a) Before the abortion is performed, the pregnant woman shall have a private  
 11 medical consultation either with the physician who is to perform the abortion  
 12 or with the referring physician in a place, at a time, and of a duration  
 13 reasonably sufficient to enable the physician to determine whether, based  
 14 upon the physician's~~his~~ best clinical judgment, the abortion is necessary;
- 15 (b) The physician who is to perform the abortion or the referring physician will  
 16 describe the basis for his or her best clinical judgment that the abortion is  
 17 necessary on a form prescribed by the cabinet as required by KRS 213.101;  
 18 and
- 19 (c) Paragraph (a) of this subsection shall not apply when, in the medical judgment  
 20 of the attending physician based on the particular facts of the case before him  
 21 or her, there exists a medical emergency. In such a case, the physician shall  
 22 describe the basis of his or her medical judgment that an emergency exists on  
 23 a form prescribed by the cabinet as required by KRS 213.101.
- 24 (3) Notwithstanding any statute to the contrary, nothing in this chapter shall be  
 25 construed as prohibiting a physician from prescribing or a woman from using birth  
 26 control methods or devices, including, but not limited to, intrauterine devices, oral  
 27 contraceptives, or any other birth control method or device.

1           ➔Section 3. KRS 311.725 is amended to read as follows:

2       (1) No abortion shall be performed or induced except with the voluntary and informed  
3       written consent of the woman upon whom the abortion is to be performed or  
4       induced. Except in the case of a medical emergency, consent to an abortion is  
5       voluntary and informed if and only if:

6       (a) At least twenty-four (24) hours prior to the abortion, a physician, licensed  
7       nurse, physician assistant, or social worker to whom the responsibility has  
8       been delegated by the physician has verbally informed the woman of all of the  
9       following:

- 10           1. The nature and purpose of the particular abortion procedure or treatment  
11           to be performed and of those medical risks and alternatives to the  
12           procedure or treatment that a reasonable patient would consider material  
13           to the decision of whether or not to undergo the abortion;
- 14           2. The probable gestational age of the embryo or fetus at the time the  
15           abortion is to be performed;
- 16           3. The medical risks associated with the pregnant woman carrying her  
17           pregnancy to term; and
- 18           4. The potential ability of a physician to reverse the effects of prescription  
19           drugs intended to induce abortion, where additional information about  
20           this possibility may be obtained, and contact information for assistance  
21           in locating a physician who may aid in the reversal;

22       (b) At least twenty-four (24) hours prior to the abortion, in an individual, private  
23       setting, a physician, licensed nurse, physician assistant, or social worker to  
24       whom the responsibility has been delegated by the physician has informed the  
25       pregnant woman that:

- 26           1. The cabinet publishes the printed materials described in subsection  
27           (2)(a), (b), and (c) of this section and that she has a right to review the

- 1 printed materials and that copies will be provided to her by the  
2 physician, licensed nurse, physician assistant, or social worker free of  
3 charge if she chooses to review the printed materials;
- 4 2. Medical assistance benefits may be available for prenatal care,  
5 childbirth, and neonatal care, and that more detailed information on the  
6 availability of such assistance is contained in the printed materials  
7 published by the cabinet;
- 8 3. The father of the fetus is liable to assist in the support of her child, even  
9 in instances where he has offered to pay for the abortion; and
- 10 4. It is illegal in Kentucky to intentionally perform an abortion, in whole or  
11 in part, because of:
- 12 a. The sex of the unborn child;
- 13 b. The race, color, or national origin of the unborn child; or
- 14 c. The diagnosis, or potential diagnosis, of Down syndrome or any  
15 other disability, **except a lethal fetal anomaly**;
- 16 (c) At least twenty-four (24) hours prior to the abortion, a copy of the printed  
17 materials has been provided to the pregnant woman if she chooses to view  
18 these materials;
- 19 (d) The pregnant woman certifies in writing, prior to the performance or  
20 inducement of the abortion:
- 21 1. That she has received the information required to be provided under  
22 paragraphs (a), (b), and (c) of this subsection; and
- 23 2. That she consents to the particular abortion voluntarily and knowingly,  
24 and she is not under the influence of any drug of abuse or alcohol; and
- 25 (e) Prior to the performance or inducement of the abortion, the physician who is  
26 scheduled to perform or induce the abortion or the physician's agent receives a  
27 copy of the pregnant woman's signed statement, on a form which may be

1 provided by the physician, on which she consents to the abortion and that  
2 includes the certification required by paragraph (d) of this subsection.

3 (2) ~~[By January 1, 1999, ]~~The cabinet shall cause to be published in English in a  
4 typeface not less than 12 point type the following~~[materials]:~~

5 (a) Materials that inform the pregnant woman about public and private agencies  
6 and services that are available to assist her through her pregnancy, upon  
7 childbirth, and while her child is dependent, including~~[,]~~ but not limited to~~[,]~~  
8 adoption agencies. The materials shall include a comprehensive list of the  
9 available agencies and a description of the services offered by the agencies  
10 and the telephone numbers and addresses of the agencies, and inform the  
11 pregnant woman about available medical assistance benefits for prenatal care,  
12 childbirth, and neonatal care and about the support obligations of the father of  
13 a child who is born alive. The cabinet shall ensure that the materials are  
14 comprehensive and do not directly or indirectly promote, exclude, or  
15 discourage the use of any agency or service described in this section;

16 (b) Materials that inform the pregnant woman of the probable anatomical and  
17 physiological characteristics of the zygote, blastocyte, embryo, or fetus at two  
18 (2) week gestational increments for the first sixteen (16) weeks of her  
19 pregnancy and at four (4) week gestational increments from the seventeenth  
20 week of her pregnancy to full term, including any relevant information  
21 regarding the time at which the fetus possibly would be viable. The materials  
22 shall use language that is understandable by the average person who is not  
23 medically trained, shall be objective and nonjudgmental, and shall include  
24 only accurate scientific information about the zygote, blastocyte, embryo, or  
25 fetus at the various gestational increments. The materials shall include, for  
26 each of the two (2) ~~or~~~~[of]~~ four (4) week increments specified in this  
27 paragraph, a pictorial or photographic depiction of the zygote, blastocyte,

1 embryo, or fetus. The materials shall also include, in a conspicuous manner, a  
2 scale or other explanation that is understandable by the average person and  
3 that can be used to determine the actual size of the zygote, blastocyte, embryo,  
4 or fetus at a particular gestational increment as contrasted with the depicted  
5 size of the zygote, blastocyte, embryo, or fetus at that gestational increment;  
6 and

7 (c) Materials that inform the pregnant woman of the potential ability of a  
8 physician to reverse the effects of prescription drugs intended to induce  
9 abortion, where additional information about this possibility may be obtained,  
10 and contact information for assistance in locating a physician who may aid in  
11 the reversal.

12 (3) Upon submission of a request to the cabinet by any person, hospital, physician, or  
13 medical facility for one (1) or more copies of the materials published in accordance  
14 with subsection (2) of this section, the cabinet shall make the requested number of  
15 copies of the materials available to the person, hospital, physician, or medical  
16 facility that requested the copies.

17 (4) If a medical emergency or medical necessity compels the performance or  
18 inducement of an abortion, the physician who will perform or induce the abortion,  
19 prior to its performance or inducement if possible, shall inform the pregnant woman  
20 of the medical indications supporting the physician's judgment that an immediate  
21 abortion is necessary. Any physician who performs or induces an abortion without  
22 the prior satisfaction of the conditions specified in subsection (1) of this section  
23 because of a medical emergency or medical necessity shall enter the reasons for the  
24 conclusion that a medical emergency or medical necessity exists in the medical  
25 record of the pregnant woman.

26 (5) If the conditions specified in subsection (1) of this section are satisfied, consent to  
27 an abortion shall be presumed to be valid and effective.



1 (6) The failure of a physician to satisfy the conditions of subsection (1) of this section  
2 prior to performing or inducing an abortion upon a pregnant woman may be the  
3 basis of disciplinary action pursuant to KRS 311.595.

4 (7) The cabinet shall charge a fee for each copy of the materials distributed in  
5 accordance with subsections (1) and (3) of this section. The fee shall be sufficient to  
6 cover the cost of the administration of the materials published in accordance with  
7 subsection (2) of this section, including the cost of preparation and distribution of  
8 materials.

9 ➔Section 4. KRS 311.727 is amended to read as follows:

10 (1) As used in this section:

11 (a) "Auscultate~~[Auscultate]~~" means to examine by listening for sounds made by  
12 internal organs of the fetus, specifically for a fetal heartbeat, utilizing an  
13 ultrasound transducer or a fetal heart rate monitor;

14 (b) "Obstetric ultrasound" or "ultrasound" means the use of ultrasonic waves for  
15 diagnostic or therapeutic purposes, specifically to monitor a developing fetus;  
16 and

17 (c) "Qualified technician" means a medical imaging technologist as defined in  
18 KRS 311B.020 who is certified in obstetrics and gynecology by the American  
19 Registry for Diagnostic Medical Sonography or a nurse midwife or advance  
20 practice nurse practitioner in obstetrics with certification in obstetrical  
21 ultrasonography.

22 (2) Prior to a woman giving informed consent to having any part of an abortion  
23 performed, the physician who is to perform the abortion or a qualified technician to  
24 whom the responsibility has been delegated by the physician shall:

25 (a) Perform an obstetric ultrasound on the pregnant woman;

26 (b) Provide a simultaneous explanation of what the ultrasound is depicting, which  
27 shall include the presence and location of the unborn child within the uterus

- 1           and the number of unborn children depicted and also, if the ultrasound image  
2           indicates that fetal demise has occurred, inform the woman of that fact;
- 3           (c) Display the ultrasound images so that the pregnant woman may view the  
4           images;
- 5           (d) Auscultate~~Auscultate~~ the fetal heartbeat of the unborn child so that the  
6           pregnant woman may hear the heartbeat if the heartbeat is audible;
- 7           (e) Provide a medical description of the ultrasound images, which shall include  
8           the dimensions of the embryo or fetus and the presence of external members  
9           and internal organs, if present and viewable; and
- 10          (f) Retain in the woman's medical record a signed certification from the pregnant  
11          woman that she has been presented with the information required to be  
12          provided under paragraphs (c) and (d) of this subsection and has viewed the  
13          ultrasound images, listened to the heartbeat if the heartbeat is audible, or  
14          declined to do so. The signed certification shall be on a form prescribed by the  
15          cabinet.
- 16          (3) When the ultrasound images and heartbeat sounds are provided to and reviewed  
17          with the pregnant woman, nothing in this section shall be construed to prevent the  
18          pregnant woman from averting her eyes from the ultrasound images or requesting  
19          the volume of the heartbeat be reduced or turned off if the heartbeat is audible.  
20          Neither the physician, the qualified technician, nor the pregnant woman shall be  
21          subject to any penalty if the pregnant woman refuses to look at the displayed  
22          ultrasound images or to listen to the heartbeat if the heartbeat is audible.
- 23          (4) The requirements of this section shall be in addition to any requirement contained  
24          in KRS 311.725 or any other section of KRS 311.710 to 311.820.
- 25          (5) The provisions of this section shall not apply:
- 26                (a) In the case of a medical emergency or medical necessity. If a medical  
27                emergency or medical necessity compels the performance or inducement of an

1           abortion, the physician who will perform or induce the abortion, prior to its  
 2           performance or inducement if possible, shall inform the pregnant woman of  
 3           the medical indications supporting the physician's judgment that an immediate  
 4           abortion is necessary. Any physician who performs or induces an abortion  
 5           without the prior satisfaction of the requirements of this section because of a  
 6           medical emergency or medical necessity shall enter the reasons for the  
 7           conclusion that a medical emergency or medical necessity exists in the  
 8           medical record of the pregnant woman; or

9           **(b) If the fetus the pregnant woman is carrying has a lethal fetal anomaly.**

10          ➔Section 5. KRS 311.732 is amended to read as follows:

11          (1) For purposes of this section the following definitions shall apply:

12           (a) "Minor" means any person under the age of eighteen (18);

13           (b) "Emancipated minor" means any minor who is or has been married or has by  
 14           court order or otherwise been freed from the care, custody, and control of her  
 15           parents; and

16           (c) "Abortion" means the use of any instrument, medicine, drug, or any other  
 17           substance or device with intent to terminate the pregnancy of a woman known  
 18           to be pregnant~~[with intent]~~ other than to increase the probability of a live  
 19           birth, to preserve the life or health of the child after live birth,~~[or]~~ to remove a  
 20           dead fetus, **or as provided in subsection (4) of this section.**

21          (2) No person shall perform an abortion upon a minor unless:

22           (a) The attending physician has secured the informed written consent of the  
 23           minor and one (1) parent or legal guardian with joint or physical custody and  
 24           the consenting parent or legal guardian of the minor has made a reasonable  
 25           attempt to notify any other parent with joint or physical custody at least forty-  
 26           eight (48) hours prior to providing the informed written consent.

27           1. Notice shall not be required to be provided to any parent who has:

- 1 a. Previously been enjoined by a domestic violence order or  
2 interpersonal protective order, regardless of whether or not the  
3 person to be protected by the order was the minor; or
- 4 b. Been convicted of, or entered into a diversion program for, a  
5 criminal offense against a victim who is a minor as defined in  
6 KRS 17.500 or for a violent or sexual criminal offense under KRS  
7 Chapter 506, 507, 507A, 508, 509, 510, 529, 530, or 531.
- 8 2. The informed written consent shall include:
- 9 a. A copy of the minor's government-issued identification, a copy of  
10 the consenting parent's or legal guardian's government-issued  
11 identification, and written documentation including but not limited  
12 to a birth certificate, court-ordered custodial paperwork, or tax  
13 return, establishing that he or she is the lawful parent or legal  
14 guardian; and
- 15 b. The parent's or legal guardian's certification that he or she consents  
16 to the abortion. The certification shall be in a signed, dated, and  
17 notarized document that has been initialed on each page and that  
18 contains the following statement, which shall precede the signature  
19 of the parent or legal guardian: "I, (insert name of parent or legal  
20 guardian), am the (select "parent" or "legal guardian") of (insert  
21 name of minor) and give consent for (insert name of attending  
22 physician) to perform an abortion on her. Under penalties of  
23 perjury, I declare that I have read the foregoing statement and that  
24 the facts stated in it are true."
- 25 3. The attending physician shall keep a copy of the informed written  
26 consent in the medical file of the minor for five (5) years after the minor  
27 reaches eighteen (18) years of age or for seven (7) years, whichever is

1 longer.

2 4. The attending physician securing the informed written consent from a  
3 parent or legal guardian under this subsection shall execute for inclusion  
4 in the medical record of the minor an affidavit stating: "I, (insert name  
5 of attending physician), certify that, according to my best information  
6 and belief, a reasonable person under similar circumstances would rely  
7 on the information presented by both the minor and her parent or legal  
8 guardian as sufficient evidence of identity.";

9 (b) The minor is emancipated and the attending physician has received the  
10 informed written consent of the minor; or

11 (c) The minor elects to petition any Circuit or District Court of the  
12 Commonwealth pursuant to subsection (3) of this section and obtain an order  
13 pursuant to subsection (4) of this section granting consent to the abortion and  
14 the attending physician has received the informed written consent of the  
15 minor.

16 (3) Every minor shall have the right to petition any Circuit or District Court of the  
17 Commonwealth for an order granting the right to self-consent to an abortion  
18 pursuant to the following procedures:

19 (a) The minor or her next friend may prepare and file a petition setting forth the  
20 request of the minor for an order of consent to an abortion;

21 (b) The court shall ensure that the minor prepares or her next friend is given  
22 assistance in preparing and filing the petition and shall ensure that the minor's  
23 identity is kept anonymous;

24 (c) The minor may participate in proceedings in the court on her own behalf or  
25 through her next friend and the court shall appoint a guardian ad litem for her.  
26 The court shall advise her that she has a right to court-appointed counsel and  
27 shall provide her with such counsel upon her request;

1 (d) All proceedings under this section shall be anonymous and shall be given  
2 preference over other matters to ensure that the court may reach a decision  
3 promptly, but in no case shall the court fail to rule within seventy-two (72)  
4 hours of the time of application, provided that the seventy-two (72) hour  
5 limitation may be extended at the request of the minor; and

6 (e) The court shall hold a hearing on the merits of the petition before reaching a  
7 decision. The court shall hear evidence at the hearing relating to:

8 1. The minor's:

9 a. Age;

10 b. Emotional development and stability;

11 c. Maturity;

12 d. Intellect;

13 e. Credibility and demeanor as a witness;

14 f. Ability to accept responsibility;

15 g. Ability to assess both the current and future life-impacting  
16 consequences of, and alternatives to, the abortion; and

17 h. Ability to understand and explain the medical risks of the abortion  
18 and to apply that understanding to her decision; and

19 2. Whether there may be any undue influence by another on the minor's  
20 decision to have an abortion.

21 (4) (a) If the court finds by:

22 1. Clear and convincing evidence that the minor is sufficiently mature to  
23 decide whether to have an abortion;

24 2. Clear and convincing evidence that the requirements of this section are  
25 not in the best interest of the minor; or

26 3. A preponderance of the evidence that the minor is:

27 a. The victim of child abuse or sexual abuse inflicted by one (1) or

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both of her parents or her legal guardian;

- b. Pregnant with a fetus that has a lethal fetal anomaly;**
- c. Seeking the abortion to remove a dead fetus, ectopic pregnancy, missed miscarriage, or incomplete miscarriage; or**
- d. Pregnant as a result of rape under KRS 510.040, 510.050, or 510.060, or incest under KRS 530.020(2)(b) or (c), and the gestational age of the fetus is twenty-two (22) weeks or less;**

the court shall enter a written order, making specific factual findings and legal conclusions supporting its decision to grant the petition for an abortion.

(b) If the court does not make any of the findings specified in paragraph (a) of this subsection, the court shall deny the petition.

(c) As used in this subsection, "best interest of the minor" shall not include financial best interest, financial considerations, or the potential financial impact on the minor or the minor's family if the minor does not have an abortion.

(5) Any minor shall have the right of anonymous and expedited appeal to the Court of Appeals, and that court shall give precedence over other pending matters.

(6) All hearings under this section, including appeals, shall remain confidential and closed to the public. The hearings shall be held in chambers or in a similarly private and informal setting within the courthouse.

(7) No fees shall be required of any minor who declares she has no sufficient funds to pursue the procedures provided by this section.

(8) (a) The Supreme Court is respectfully requested to promulgate any rules ~~and regulations~~ it feels are necessary to ensure that proceedings under this section are handled in an expeditious and anonymous manner.

(b) The Supreme Court, through the Administrative Office of the Courts, shall report by February 1 of each year to the Legislative Research Commission

1 and the cabinet on the number of petitions filed under subsection (3) of this  
2 section for the preceding year, and the timing and manner of disposal of the  
3 petition by each court. For each approved petition granting an abortion filed  
4 under subsection (3) of this section, the specific court finding in subsection  
5 (4) of this section shall be included in the report.

6 (9) (a) The requirements of subsections (2), (3), and (4) of this section shall not apply  
7 when, in the best medical judgment of the physician based on the facts of the  
8 case before him or her, a medical emergency exists that so complicates the  
9 pregnancy as to require an immediate abortion.

10 (b) If a medical emergency exists, the physician shall make reasonable attempts,  
11 whenever possible, and without endangering the minor, to contact the parent  
12 or legal guardian of the minor, and may proceed, but must document reasons  
13 for the medical necessity in the minor's medical records.

14 (c) The physician shall inform the parent or legal guardian, in person or by  
15 telephone, within twenty-four (24) hours of the abortion, including details of  
16 the medical emergency that necessitated the abortion without the parent's or  
17 legal guardian's consent. The physician shall also provide this information in  
18 writing to the parent or legal guardian at his or her last known address by  
19 first-class mail or by certified mail, return receipt requested, with delivery  
20 restricted to the parent or legal guardian.

21 (10) A report indicating the basis for any medical judgment that warrants failure to  
22 obtain consent pursuant to this section shall be filed with the Cabinet for Health and  
23 Family Services on a form supplied by the cabinet. This report shall be confidential.

24 (11) Failure to obtain consent pursuant to the requirements of this section is prima facie  
25 evidence of failure to obtain informed consent and of interference with family  
26 relations in appropriate civil actions. The law of this state shall not be construed to  
27 preclude the award of exemplary damages in any appropriate civil action relevant to



1 violations of this section. Nothing in this section shall be construed to limit the  
2 common-law rights of parents.

3 (12) A minor upon whom an abortion is performed is not guilty of violating this section.

4 ➔Section 6. KRS 311.7701 is amended to read as follows:

5 As used in KRS 311.7701 to 311.7711:

6 (1) "Conception" means fertilization;

7 (2) "Contraceptive" means a drug, device, or chemical that prevents conception;

8 (3) **"Ectopic pregnancy" has the same meaning as in Section 1 of this Act;**

9 **(4)** "Fertilization" has the same meaning as in KRS 311.781;

10 **(5)**~~(4)~~ "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic  
11 contraction of the fetal heart within the gestational sac;

12 **(6)**~~(5)~~ "Fetus" means the human offspring developing during pregnancy from the  
13 moment of conception and includes the embryonic stage of development;

14 **(7)**~~(6)~~ "Frivolous conduct" has the same meaning as in KRS 311.784;

15 **(8)**~~(7)~~ "Gestational age" means the age of an unborn human individual as calculated  
16 from the first day of the last menstrual period of a pregnant woman;

17 **(9)**~~(8)~~ "Gestational sac" means the structure that comprises the extraembryonic  
18 membranes that envelop the fetus and that is typically visible by ultrasound after  
19 the fourth week of pregnancy;

20 **(10)**~~(9)~~ "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to  
21 the placenta within the uterus of the pregnant woman;

22 **(11)**~~(10)~~ **"Lethal fetal anomaly" has the same meaning as in Section 1 of this Act;**

23 **(12)** "Medical emergency" **or "medically necessary"** has the same meaning as in KRS  
24 311.781;

25 **(13)**~~(11)~~ "Physician" has the same meaning as in KRS 311.720;

26 **(14)**~~(12)~~ "Pregnancy" means the human female reproductive condition that begins with  
27 fertilization, when the woman is carrying the developing human offspring, and that

1 is calculated from the first day of the last menstrual period of the woman;

2 ~~(15)~~~~(13)~~ "Serious risk of the substantial and irreversible impairment of a major bodily  
3 function" has the same meaning as in KRS 311.781;

4 ~~(16)~~~~(14)~~ "Spontaneous miscarriage" means the natural or accidental termination of a  
5 pregnancy and the expulsion of the fetus, typically caused by genetic defects in the  
6 fetus or physical abnormalities in the pregnant woman;

7 ~~(17)~~~~(15)~~ "Standard medical practice" means the degree of skill, care, and diligence that  
8 a physician of the same medical specialty would employ in like circumstances. As  
9 applied to the method used to determine the presence of a fetal heartbeat for  
10 purposes of KRS 311.7704, "standard medical practice" includes employing the  
11 appropriate means of detection depending on the estimated gestational age of the  
12 fetus and the condition of the woman and her pregnancy; and

13 ~~(18)~~~~(16)~~ "Unborn child" and "unborn human individual" have the same meaning as  
14 "unborn child" has in KRS 311.781.

15 ➔Section 7. KRS 311.7706 is amended to read as follows:

16 (1) Except as provided in subsection (2) of this section, no person shall intentionally  
17 perform or induce an abortion on a pregnant woman with the specific intent of  
18 causing or abetting the termination of the life of the unborn human individual the  
19 pregnant woman is carrying and whose fetal heartbeat has been detected in  
20 accordance with KRS 311.7704(1).

21 (2) (a) Subsection (1) of this section shall not apply to a physician who performs a  
22 medical procedure that, in the physician's reasonable medical judgment:~~;~~

23 1. Is designed or intended to prevent the death of the pregnant woman or to  
24 prevent a serious risk of the substantial and irreversible impairment of a  
25 major bodily function of the pregnant woman as defined in Section 10  
26 of this Act;

27 2. Is necessary because of a lethal fetal anomaly, ectopic pregnancy,

1                    *missed miscarriage, or incomplete miscarriage; or*  
2                    *3. Is performed because, in the good-faith medical judgment of the*  
3                    *physician, the pregnancy is the result of rape under KRS 510.040,*  
4                    *510.050, 510.060, or incest under KRS 530.020(2)(b) or (c), and the*  
5                    *gestational age of the fetus is twenty-two (22) weeks or less.*

6                    (b) A physician who performs a medical procedure as described in paragraph (a)  
7                    1. of this subsection shall, in writing:

8                    1. Declare that the medical procedure is necessary, to the best of the  
9                    physician's reasonable medical judgment, to prevent the death of the  
10                    pregnant woman or to prevent a serious risk of the substantial and  
11                    irreversible impairment of a major bodily function of the pregnant  
12                    woman; and

13                    2. Specify the pregnant woman's medical condition that the medical  
14                    procedure is asserted to address and the medical rationale for the  
15                    physician's conclusion that the medical procedure is necessary to  
16                    prevent the death of the pregnant woman or to prevent a serious risk of  
17                    the substantial and irreversible impairment of a major bodily function of  
18                    the pregnant woman.

19                    (c) *A physician who performs a medical procedure as described in paragraph*  
20                    *(a)3. of this subsection shall, in writing, specify the basis for the*  
21                    *determination that the gestational age of the fetus is twenty-two (22) weeks*  
22                    *or less.*

23                    (d) The physician shall place the written document required by paragraph (a), (b),  
24                    or (c) of this subsection in the pregnant woman's medical records. The  
25                    physician shall maintain a copy of the document in the physician's own  
26                    records for at least seven (7) years from the date the document is created.

27                    (3) A person is not in violation of subsection (1) of this section if the person acts in

1 accordance with KRS 311.7704(1) and the method used to determine the presence  
2 of a fetal heartbeat does not reveal a fetal heartbeat.

3 (4) A pregnant woman on whom an abortion is intentionally performed or induced in  
4 violation of subsection (1) of this section is not guilty of violating subsection (1) of  
5 this section or of attempting to commit, conspiring to commit, or complicity in  
6 committing a violation of subsection (1) of this section. In addition, the pregnant  
7 woman is not subject to a civil penalty based on the abortion being performed or  
8 induced in violation of subsection (1) of this section.

9 (5) Subsection (1) of this section shall not repeal or limit any other provision of the  
10 Kentucky Revised Statutes that restricts or regulates the performance or inducement  
11 of an abortion by a particular method or during a particular stage of a pregnancy.

12 ➔Section 8. KRS 311.772 is amended to read as follows:

13 (1) As used in this section:

14 (a) "Fertilization" means that point in time when a male human sperm penetrates  
15 the zona pellucida of a female human ovum;

16 (b) "Medical emergency" or "medically necessary" has the same meaning as  
17 in Section 1 of this Act;

18 (c) "Pregnant" means the human female reproductive condition of having a living  
19 unborn human being within her body throughout the entire embryonic and  
20 fetal stages of the unborn child from fertilization to full gestation and  
21 childbirth; and

22 ~~(d)(e)}~~ "Unborn human being" means an individual living member of the  
23 species homo sapiens throughout the entire embryonic and fetal stages of the  
24 unborn child from fertilization to full gestation and childbirth.

25 (2) The provisions of this section shall become effective immediately upon, and to the  
26 extent permitted, by the occurrence of any of the following circumstances:

27 (a) Any decision of the United States Supreme Court which reverses, in whole or

1 in part, *Roe v. Wade*, 410 U.S. 113 (1973), thereby restoring to the  
2 Commonwealth of Kentucky the authority to prohibit abortion; or

3 (b) Adoption of an amendment to the United States Constitution which, in whole  
4 or in part, restores to the Commonwealth of Kentucky the authority to prohibit  
5 abortion.

6 (3) **Except as otherwise provided in Sections 2, 3, 4, 5, 7, 8, and 9 of this Act, and**  
7 **subsections (4) and (6) of this section,** ~~[(a)]~~no person may knowingly:

8 ~~(a)[1.]~~ Administer to, prescribe for, procure for, or sell to any pregnant woman  
9 any medicine, drug, or other substance with the specific intent of causing or  
10 abetting the termination of the life of an unborn human being; or

11 ~~(b)[2.]~~ Use or employ any instrument or procedure upon a pregnant woman  
12 with the specific intent of causing or abetting the termination of the life of an  
13 unborn human being.

14 ~~[(b) Any person who violates paragraph (a) of this subsection shall be guilty of a~~  
15 ~~Class D felony.]~~

16 (4) The following shall not be a violation of subsection (3) of this section:

17 (a) For a licensed physician to perform a medical procedure necessary in **the**  
18 reasonable medical judgment **of the physician** to prevent the death or  
19 substantial risk of death due to a physical condition, or to prevent the serious,  
20 permanent impairment of a life-sustaining organ of a pregnant woman **as**  
21 **defined in Section 10 of this Act.** However, **except in circumstances under**  
22 **paragraph (b) of this subsection,** the physician shall make reasonable  
23 medical efforts under the circumstances to preserve both the life of the mother  
24 and the life of the unborn human being in a manner consistent with reasonable  
25 medical practice;~~[ or ]~~

26 (b) **For a licensed physician to perform an abortion because of a lethal fetal**  
27 **anomaly;**

1        (c) For a licensed physician to perform an abortion if in the good-faith medical  
2        judgment of the physician the pregnancy is the result of rape under KRS  
3        510.040, 510.050, or 510.060, or incest under KRS 530.020(2)(b) or (c), and  
4        the gestational age of the fetus is twenty-two (22) weeks or less; or

5        (d) Medical treatment provided to the mother by a licensed physician which  
6        results in the accidental or unintentional injury or death to the unborn human  
7        being.

8        (5) Except as provided in this subsection, and notwithstanding any provision of law  
9        to the contrary, a physician who complies with the requirement of KRS 311.710 to  
10       KRS 311.830 shall be immune:

11       (a) From criminal liability and penalty for any harm or damages alleged to  
12       arise from an act or omission in the treatment of a woman related to the  
13       termination of a pregnancy or a lost pregnancy, except nothing in this  
14       paragraph limits any liability for gross negligence or wanton, willful,  
15       malicious, or intentional conduct; and

16       (b) From civil liability for any personal injury or damages alleged to arise from  
17       the treatment of a pregnant woman, except nothing in this paragraph limits  
18       any civil liability for injury or damage arising from a deviation of the  
19       accepted medical standard of care, gross negligence, or willful, malicious,  
20       or intentional conduct.

21       Nothing in this subsection shall be construed to amend, repeal, or alter any other  
22       immunity, defense, limitation of liability, or procedure available or required  
23       under any other law or contract.

24       (6) Nothing in this section may be construed to subject the pregnant mother upon  
25       whom any abortion is performed or attempted to any criminal conviction and  
26       penalty.

27       ~~(7)~~ Nothing in this section may be construed to prohibit the sale, use,

1 prescription, or administration of a contraceptive measure, drug, or chemical, if it is  
 2 administered prior to the time when a pregnancy could be determined through  
 3 conventional medical testing and if the contraceptive measure is sold, used,  
 4 prescribed, or administered in accordance with manufacturer instructions.

5 ~~(8)~~~~(7)~~ The provisions of this section shall be effective relative to the appropriation of  
 6 Medicaid funds, to the extent consistent with any executive order by the President  
 7 of the United States, federal statute, appropriation rider, or federal regulation that  
 8 sets forth the limited circumstances in which states must fund abortion to remain  
 9 eligible to receive federal Medicaid funds pursuant to 42 U.S.C. secs. 1396 et seq.

10 ➔Section 9. KRS 311.780 is amended to read as follows:

11 (1) No abortion shall be performed or prescribed knowingly after the unborn child may  
 12 reasonably be expected to have reached viability, except when:

13 (a) *Medically* necessary to preserve the life or health of the woman; or

14 (b) *There is a fetal anomaly.*

15 (2) In those instances where an abortion is performed under this section, the person  
 16 performing the abortion shall take all reasonable steps in keeping with reasonable  
 17 medical practices to preserve the life and health of the child, including but not  
 18 limited to KRS 311.760(2), except when the abortion is performed under  
 19 subsection (1)(b) of this section.

20 ➔Section 10. 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" or "medically necessary" has the same meaning as in  
 25 Section 1 of this Act~~means a condition that in the physician's reasonable medical~~

26 ~~judgment, based upon the facts known to the physician at that time, so complicates~~  
 27 ~~the woman's pregnancy as to necessitate the immediate performance or inducement~~

1 of an abortion in order to prevent the death of the pregnant woman or to avoid a  
 2 serious risk of the substantial and irreversible impairment of a major bodily  
 3 function of the pregnant woman that delay in the performance or inducement of the  
 4 abortion would create];

5 (4) **"Lethal fetal anomaly" has the same meaning as in Section 1 of this Act;**

6 (5) "Pain-capable unborn child" means an unborn child of a probable gestational age of  
 7 fifteen (15) weeks or more;

8 (6)~~(5)~~ "Physician" has the same meaning as in KRS 311.720;

9 (7)~~(6)~~ "Probable gestational age" has the same meaning as in KRS 311.720;

10 (8)~~(7)~~ "Reasonable medical judgment" means a medical judgment that would be  
 11 made by a reasonably prudent physician, knowledgeable about the case and the  
 12 treatment possibilities with respect to the medical conditions involved;

13 (9)~~(8)~~ "Serious risk of the substantial and irreversible impairment of a major bodily  
 14 function" means any medically diagnosed condition that so complicates the  
 15 pregnancy of the woman as to directly or indirectly **pose a substantial risk of**~~cause~~  
 16 ~~the substantial and irreversible;~~

17 (a) **Harm to the physical health of the pregnant woman, or life-threatening**  
 18 **conditions, including premature rupture of the membranes, hemorrhage,**  
 19 **preeclampsia, or cardiac complications;**

20 (b) **Long-term damage to reproductive health or fertility, including**  
 21 **complications that may render the pregnant woman unable to conceive or**  
 22 **carry a pregnancy in the future; or**

23 (c) Impairment of a major bodily function~~. A medically diagnosed condition that~~  
 24 ~~constitutes a "serious risk of the substantial and irreversible impairment of a~~  
 25 ~~major bodily function" includes pre eclampsia, inevitable abortion, and~~  
 26 ~~premature rupture of the membranes, but does not include a condition related~~  
 27 ~~to the woman's mental health]; and~~



1 ~~(10)~~<sup>(9)</sup> "Unborn child" means an individual organism of the species homo sapiens  
2 from fertilization until live birth.

3 ➔Section 11. KRS 311.782 is amended to read as follows:

4 (1) No person shall intentionally perform or induce or intentionally attempt to perform  
5 or induce an abortion on a pregnant woman when the probable gestational age of  
6 the unborn child is fifteen (15) weeks or greater, **except as provided in Sections 2,**  
7 **3, 4, 5, 7, 8, and 9 of this Act, and subsection (2) of this section.**

8 (2) It shall be an affirmative defense to a charge under subsection (1) of this section  
9 that the abortion was intentionally performed or induced or intentionally attempted  
10 to be performed or induced by a physician and that the physician determined, in the  
11 physician's reasonable medical judgment, based on the facts known to the physician  
12 at that time, that ~~any~~<sup>either</sup> of the following applied:

13 (a) The probable gestational age of the unborn child was less than fifteen (15)  
14 weeks; ~~or~~

15 (b) The abortion was **medically** necessary to prevent the death of the pregnant  
16 woman or to avoid a serious risk of the substantial and irreversible  
17 impairment of a major bodily function of the pregnant woman; ~~or~~. ~~No~~  
18 ~~abortion shall be necessary if it is based on a claim or diagnosis that the~~  
19 ~~pregnant woman will engage in conduct that would result in her death or in~~  
20 ~~substantial and irreversible impairment of a major bodily function or if it is~~  
21 ~~based on any reason related to her mental health]~~

22 **(c) The abortion was necessary because of a lethal fetal anomaly.**

23 (3) (a) Except when a medical emergency exists that prevents compliance with KRS  
24 311.783, the affirmative defense set forth in subsection (2)(a) of this section  
25 **shall**~~does~~ not apply unless the physician who intentionally performs or  
26 induces or intentionally attempts to perform or induce the abortion makes a  
27 determination of the probable gestational age of the unborn child as required

1 by KRS 311.783(1) or relied upon such a determination made by another  
2 physician and certifies in writing, based on the results of the tests performed,  
3 that in the physician's reasonable medical judgment the unborn child's  
4 probable gestational age is less than fifteen (15) weeks.

5 (b) Except when a medical emergency exists that prevents compliance with one  
6 (1) or more of the following conditions, the affirmative defense set forth in  
7 subsection (2)(b) of this section ~~shall~~<sup>does</sup> not apply unless the physician  
8 who intentionally performs or induces or intentionally attempts to perform or  
9 induce the abortion complies with all of the following conditions:

- 10 1. The physician who intentionally performs or induces or intentionally  
11 attempts to perform or induce the abortion certifies in writing that, in the  
12 physician's reasonable medical judgment, based on the facts known to  
13 the physician at that time, the abortion is ***medically*** necessary to prevent  
14 the death of the pregnant woman or to avoid a serious risk of the  
15 substantial and irreversible impairment of a major bodily function of the  
16 pregnant woman;
- 17 2. A different physician not professionally related to the physician  
18 described in subparagraph 1. of this paragraph certifies in writing that,  
19 in that different physician's reasonable medical judgment, based on the  
20 facts known to that different physician at that time, the abortion is  
21 ***medically*** necessary to prevent the death of the pregnant woman or to  
22 avoid a serious risk of the substantial and irreversible impairment of a  
23 major bodily function of the pregnant woman;
- 24 3. The physician intentionally performs or induces or intentionally  
25 attempts to perform or induce the abortion in a hospital or other health  
26 care facility that has appropriate neonatal services for premature infants  
27 **unless the abortion is performed under subsection (2)(c) of this**

1                    section;

2                    4. The physician who intentionally performs or induces or intentionally  
3                    attempts to perform or induce the abortion terminates or attempts to  
4                    terminate the pregnancy in the manner that provides the best opportunity  
5                    for the unborn child to survive, unless that physician determines, in the  
6                    physician's reasonable medical judgment, based on the facts known to  
7                    the physician at that time, that the termination of the pregnancy in that  
8                    manner poses a greater risk of death of the pregnant woman or a greater  
9                    risk of the substantial and irreversible impairment of a major bodily  
10                    function of the pregnant woman than would other available methods of  
11                    abortion, or the termination of the pregnancy is performed under  
12                    subsection (2)(c) of this section;

13                    5. The physician certifies in writing the available method or techniques  
14                    considered and the reasons for choosing the method or technique  
15                    employed; and

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

24                    (4) The state Board of Medical Licensure ~~may~~<sup>shall</sup> revoke a physician's license to  
25                    practice medicine in this state if the physician violates or fails to comply with this  
26                    section.

27                    (5) Any physician who intentionally performs or induces or intentionally attempts to

1 perform or induce an abortion on a pregnant woman with actual knowledge that  
 2 ~~none~~~~neither~~ of the affirmative defenses set forth in subsection (2) of this section  
 3 ~~apply~~~~applies~~, or with a heedless indifference as to whether either affirmative  
 4 defense applies, is liable in a civil action for compensatory and punitive damages  
 5 and reasonable attorney's fees to any person, or the representative of the estate of  
 6 any person including but not limited to an unborn child, who sustains injury, death,  
 7 or loss to person or property as the result of the performance or inducement or the  
 8 attempted performance or inducement of the abortion. In any action under this  
 9 subsection, the court also may award any injunctive or other equitable relief that the  
 10 court considers appropriate.

- 11 (6) A pregnant woman on whom an abortion is intentionally performed or induced or  
 12 intentionally attempted to be performed or induced in violation of subsection (1) of  
 13 this section is not guilty of violating subsection (1) of this section or of attempting  
 14 to commit, conspiring to commit, or complicity in committing a violation of  
 15 subsection (1) of this section.

16 ➔Section 12. KRS 311.800 is amended to read as follows:

- 17 (1) No publicly owned hospital or other publicly owned health care facility shall  
 18 perform or permit the performance of abortions, except:

19 (a) To save the life of the pregnant woman *or to avoid a serious risk of the*  
 20 *substantial and irreversible impairment of a major bodily function of the*  
 21 *pregnant woman as defined in Section 10 of this Act;*

22 (b) *To remove a dead fetus, ectopic pregnancy, missed miscarriage, or*  
 23 *incomplete miscarriage;*

24 (c) *Because of a lethal fetal anomaly; or*

25 (d) *If in the physician's good-faith medical judgment the pregnancy is the*  
 26 *result of rape under KRS 510.040, 510.050, or 510.060, or incest under KRS*  
 27 *530.020(2)(b) or (c), and the gestational age of the fetus is twenty-two (22)*

1                   weeks or less.

2       (2) In the event that a publicly owned hospital or publicly owned health facility is  
3 performing or about to perform an abortion in violation of subsection (1) of this  
4 section, and law enforcement authorities in the county have failed or refused to take  
5 action to stop such a practice, any resident of the county in which the hospital or  
6 health facility is located, may apply to the Circuit Court of that county for an  
7 injunction or other court process to require compliance with subsection (1) of this  
8 section.

9       (3) No private hospital or private health care facility shall be required to, or held liable  
10 for refusal to, perform or permit the performance of abortion contrary to its stated  
11 ethical policy.

12       (4) No physician, nurse staff member, or employee of a public or private hospital or  
13 employee of a public or private health care facility, who shall state in writing to  
14 such hospital or health care facility his or her objection to performing, participating  
15 in, or cooperating in, abortion on moral, religious, or professional grounds, be  
16 required to, or held liable for refusal to, perform, participate in, or cooperate in such  
17 abortion.

18       (5) It shall be an unlawful discriminatory practice for the following:

19           (a) Any person to impose penalties or take disciplinary action against, or to deny  
20 or limit public funds, licenses, certifications, degrees, or other approvals or  
21 documents of qualification to, any hospital or other health care facility due to  
22 the refusal of such hospital or health care facility to perform or permit to be  
23 performed, participate in, or cooperate in, abortion by reason of objection  
24 thereto on moral, religious or professional grounds, or because of any  
25 statement or other manifestation of attitude by such hospital or health care  
26 facility with respect to abortion; ~~[or,]~~

27           (b) Any person to impose penalties or take disciplinary action against, or to deny

1 or limit public funds, licenses, certifications, degrees, or other approvals or  
2 documents of qualification to any physician, nurse or staff member or  
3 employee of any hospital or health care facility, due to the willingness or  
4 refusal of such physician, nurse, or staff member or employee to perform or  
5 participate in abortion by reason of objection thereto on moral, religious, or  
6 professional grounds, or because of any statement or other manifestation of  
7 attitude by such physician, nurse or staff member or employee with respect to  
8 abortion; or ~~or~~

- 9 (c) Any public or private agency, institution or person, including a medical,  
10 nursing or other school, to deny admission to, impose any burdens in terms of  
11 conditions of employment upon, or otherwise discriminate against any  
12 applicant for admission thereto or any physician, nurse, staff member, student,  
13 or employee thereof, ***based upon*** ~~on account of~~ the willingness or refusal of  
14 such applicant, physician, nurse, staff member, student, or employee to  
15 perform or participate in abortion or sterilization by reason of objection  
16 thereto on moral, religious, or professional grounds, or because of any  
17 statement or other manifestation of attitude by such person with respect to  
18 abortion or sterilization if that health care facility is not operated exclusively  
19 for the purposes of performing abortions or sterilizations.

20 ➔Section 13. KRS 213.101 is amended to read as follows:

- 21 (1) Each abortion as defined in KRS 213.011 which occurs in the Commonwealth,  
22 regardless of the length of gestation, shall be reported to the Vital Statistics Branch  
23 by the person in charge of the institution within three (3) days after the end of the  
24 month in which the abortion occurred. If the abortion was performed outside an  
25 institution, the attending physician shall prepare and file the report within three (3)  
26 days after the end of the month in which the abortion occurred.
- 27 (2) The report shall include all the information the physician is required to certify in

- 1 writing or determine under KRS 311.731, 311.732, 311.7704, 311.7705, 311.7706,  
2 311.7707, 311.7735, 311.7736, 311.774, 311.782, and 311.783, and at a minimum:
- 3 (a) The full name and address of the physician who performed the abortion or  
4 provided the abortion-inducing drug as defined in KRS 311.7731;
  - 5 (b) The address at which the abortion was performed or the address at which the  
6 abortion-inducing drug was provided by a qualified physician, or the method  
7 of obtaining the abortion-inducing drug if not provided by a qualified  
8 physician, including mail order, internet order, or by a telehealth provider in  
9 which case identifying information for the pharmacy, website~~[Web site]~~  
10 address, or the telemedicine provider shall be included;
  - 11 (c) The names, serial numbers, National Drug Codes, lot numbers, and expiration  
12 dates of the specific abortion-inducing drugs that were provided to the  
13 pregnant patient and the dates each were provided;
  - 14 (d) The full name and address of the referring physician, agency, or service, if  
15 any;
  - 16 (e) The pregnant patient's city or town, county, state, country of residence, and  
17 zip code;
  - 18 (f) The pregnant patient's age, race, and ethnicity;
  - 19 (g) The age or approximate age of the father, if known;
  - 20 (h) The total number and dates of each previous pregnancy, live birth, and  
21 abortion of the pregnant patient;
  - 22 (i) The probable gestational and post-fertilization ages of the unborn child, the  
23 methods used to confirm the gestational and post-fertilization ages, and the  
24 date determined;
  - 25 (j) A list of any pre-existing medical conditions of the pregnant patient that may  
26 complicate her pregnancy, if any, including hemorrhage, infection, uterine  
27 perforation, cervical laceration, retained products, or any other condition;

- 1 (k) Whether the fetus was delivered alive and the length of time the fetus  
2 survived;
- 3 (l) Whether the fetus was viable and, if viable, the medical reason for  
4 termination;
- 5 (m) Whether a pathological examination of the fetus was performed;
- 6 (n) Whether the pregnant patient returned for a follow-up examination, the date  
7 and results of any such follow-up examination, and what reasonable efforts  
8 were made by the qualified physician to encourage the patient to reschedule a  
9 follow-up examination if the appointment was missed;
- 10 (o) Whether the woman suffered any complications or adverse events as defined  
11 in KRS 311.7731 and what specific complications or adverse events occurred,  
12 and any follow-up treatment provided as required by KRS 311.774;
- 13 (p) Whether the pregnant patient was Rh negative and, if so, was provided with  
14 an Rh negative information fact sheet and treated with the prevailing medical  
15 standard of care to prevent harmful fetal or child outcomes or Rh  
16 incompatibility in future pregnancies;
- 17 (q) The amount billed to cover the treatment for specific complications or adverse  
18 events, including whether the treatment was billed to Medicaid, private  
19 insurance, private pay, or other method. This should include ICD-10 codes  
20 reported and charges for any physician, hospital, emergency room,  
21 prescription or other drugs, laboratory tests, and any other costs for treatment  
22 rendered;
- 23 (r) The reason for the abortion, if known, including abuse, coercion, harassment,  
24 ~~or~~ trafficking, **rape, or incest**; and
- 25 (s) Whether the pregnant patient was tested for sexually transmitted diseases  
26 when providing the informed consent required in KRS 311.725 and 311.7735  
27 twenty-four (24) hours before the abortion procedure or tested at the time of



1           the abortion procedure, and if the pregnant patient tested positive, was treated  
2           or referred for treatment and follow-up care.

3   (3)   The report shall not contain:

4       (a)   The name of the pregnant patient;

5       (b)   Common identifiers such as a Social Security number and motor vehicle  
6           operator's license number; and

7       (c)   Any other information or identifiers that would make it possible to ascertain  
8           the patient's identity.

9   (4)   If a person other than the physician described in this subsection makes or maintains  
10       a record required by KRS 311.732, 311.7704, 311.7705, 311.7706, or 311.7707 on  
11       the physician's behalf or at the physician's direction, that person shall comply with  
12       the reporting requirement described in this subsection as if the person were the  
13       physician.

14   (5)   Each prescription issued for an abortion-inducing drug as defined in KRS 311.7731  
15       for which the primary indication is the induction of abortion as defined in KRS  
16       213.011 shall be reported to the Vital Statistics Branch within three (3) days after  
17       the end of the month in which the prescription was issued as required by KRS  
18       311.774, but the report shall not include information which will identify the woman  
19       involved or anyone who may be picking up the prescription on behalf of the  
20       woman.

21   (6)   The name of the person completing the report and the reporting institution shall not  
22       be subject to disclosure under KRS 61.870 to 61.884.

23   (7)   By September 30 of each year, the Vital Statistics Branch shall issue a public report  
24       that provides statistics on all data collected, including the type of abortion  
25       procedure used, for the previous calendar year compiled from all of the reports  
26       covering that calendar year submitted to the cabinet in accordance with this section  
27       for each of the items listed in this section. Each annual report shall also provide

1 statistics for all previous calendar years in which this section was in effect, adjusted  
2 to reflect any additional information from late or corrected reports. The Vital  
3 Statistics Branch shall ensure that none of the information included in the report  
4 could reasonably lead to the identification of any pregnant woman upon whom an  
5 abortion was performed or attempted. Each annual report shall be made available  
6 on the cabinet's website~~[Web site]~~.

7 (8) (a) Any person or institution who fails to submit a report by the end of thirty (30)  
8 days following the due date set in this section shall be subject to a late fee of  
9 five hundred dollars (\$500) for each additional thirty (30) day period or  
10 portion of a thirty (30) day period the report is overdue.

11 (b) Any person or institution who fails to submit a report, or who has submitted  
12 only an incomplete report, more than one (1) year following the due date set  
13 in this section, may in a civil action brought by the Vital Statistics Branch be  
14 directed by a court of competent jurisdiction to submit a complete report  
15 within a time period stated by court order or be subject to contempt of court.

16 (c) Failure by any physician to comply with the requirements of this section,  
17 other than filing a late report, or to submit a complete report in accordance  
18 with a court order shall subject the physician to KRS 311.595.

19 (9) Intentional falsification of any report required under this section is a Class A  
20 misdemeanor.

21 (10) The Vital Statistics Branch shall promulgate administrative regulations in  
22 accordance with KRS Chapter 13A to assist in compliance with this section.

23 (11) (a) The Office of the Inspector General, Cabinet for Health and Family Services,  
24 shall annually audit the required reporting of abortion-related information to  
25 the Vital Statistics Branch in this section and KRS 213.172, and in so doing,  
26 shall function as a health oversight agency of the Commonwealth for this  
27 specific purpose.

- 1 (b) The Office of the Inspector General shall ensure that none of the information  
2 included in the audit report could reasonably lead to the identification of any  
3 pregnant woman upon whom an abortion was performed or attempted.
- 4 (c) If any personally identifiable information is viewed or recorded by the Office  
5 of the Inspector General in conducting an audit authorized by this subsection,  
6 the information held by the Inspector General shall not be subject to the  
7 Kentucky Open Records Act, shall be confidential, and shall only be released  
8 upon court order.
- 9 (d) The Inspector General shall submit a written report to the General Assembly  
10 and the Attorney General by October 1 of each year. The reports shall include  
11 findings from:
- 12 1. The audit required in this subsection, including any identified reporting  
13 deficiencies; and
  - 14 2. All abortion facility inspections, including any violations of KRS  
15 216B.0431 and 216B.0435.
- 16 ➔Section 14. KRS 311.990 is amended to read as follows:
- 17 (1) Any person who violates KRS 311.250 shall be guilty of a violation.
  - 18 (2) Any college or professor thereof violating the provisions of KRS 311.300 to  
19 311.350 shall be civilly liable on his or her bond for a sum not less than one  
20 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each  
21 violation, which may be recovered by an action in the name of the Commonwealth.
  - 22 (3) Any person who presents to the county clerk for the purpose of registration any  
23 license which has been fraudulently obtained, or obtains any license under KRS  
24 311.380 to 311.510 by false or fraudulent statement or representation, or practices  
25 podiatry under a false or assumed name or falsely impersonates another practitioner  
26 or former practitioner of a like or different name, or aids and abets any person in the  
27 practice of podiatry within the state without conforming to the requirements of KRS

- 1           311.380 to 311.510, or otherwise violates or neglects to comply with any of the  
2           provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor.  
3           Each case of practicing podiatry in violation of the provisions of KRS 311.380 to  
4           311.510 shall be considered a separate offense.
- 5       (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- 6       (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under  
7           this subsection of a holder of a license or permit shall result automatically in  
8           permanent revocation of such license or permit.
- 9       (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or  
10           interfering with the board or any of its members, or of any officer, agent, inspector,  
11           or investigator of the board or the Cabinet for Health and Family Services, in the  
12           administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class  
13           A misdemeanor.
- 14       (7) Each violation of KRS 311.375(1) shall, for the first offense, be a Class B  
15           misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- 16       (8) Each violation of KRS 311.375(2) shall, for the first offense, be a violation, and, for  
17           each subsequent offense, be a Class B misdemeanor.
- 18       (9) Each day of violation of either subsection of KRS 311.375 shall constitute a  
19           separate offense.
- 20       (10) (a) Any person who intentionally or knowingly performs an abortion contrary to  
21           the requirements of KRS 311.723(1) shall be guilty of a Class D felony.
- 22           (b) Any person who intentionally, knowingly, or recklessly violates the  
23           requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- 24       (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS  
25           311.765 shall be guilty of a Class D felony. However, a physician shall  
26           not be guilty of the criminal offense if the partial-birth abortion was  
27           necessary to save the life of the mother whose life was endangered by a

- 1 physical disorder, illness, or injury.
- 2 2. A physician may seek a hearing before the State Board of Medical  
3 Licensure on whether the physician's conduct was necessary to save the  
4 life of the mother whose life was endangered by a physical disorder,  
5 illness, or injury. The board's findings, decided by majority vote of a  
6 quorum, shall be admissible at the trial of the physician. The board shall  
7 promulgate administrative regulations to carry out the provisions of this  
8 subparagraph.
- 9 3. Upon a motion of the physician, the court shall delay the beginning of  
10 the trial for not more than thirty (30) days to permit the hearing, referred  
11 to in subparagraph 2. of this paragraph, to occur.
- 12 (b) Any person other than a physician who performs a partial-birth abortion shall  
13 not be prosecuted under this subsection but shall be prosecuted under  
14 provisions of law which prohibit any person other than a physician from  
15 performing any abortion.
- 16 (c) No penalty shall be assessed against the woman upon whom the partial-birth  
17 abortion is performed or attempted to be performed.
- 18 (12) (a) Except as provided in KRS 311.732(12), any person who intentionally,  
19 knowingly, or recklessly performs an abortion upon a minor without obtaining  
20 the required consent pursuant to KRS 311.732 shall be guilty of a Class D  
21 felony.
- 22 (b) Except as provided in paragraph (a) of this subsection, any person who  
23 intentionally or knowingly fails to conform to any requirement of KRS  
24 311.732 is guilty of a Class A misdemeanor.
- 25 (c) Any person who negligently releases information or documents which are  
26 confidential under KRS 311.732 is guilty of a Class B misdemeanor.
- 27 (13) ~~Any person who performs an abortion upon a married woman either with~~

1 ~~knowledge or in reckless disregard of whether KRS 311.735 applies to her and who~~  
2 ~~intentionally, knowingly, or recklessly fails to conform to the requirements of KRS~~  
3 ~~311.735 shall be guilty of a Class D felony.~~

4 ~~(14)~~ Any person convicted of violating KRS 311.750 shall be guilty of a Class B  
5 felony.

6 ~~(14)~~~~(15)~~ Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.

7 ~~(15)~~~~(16)~~ Any person who violates KRS 311.770 shall be guilty of a Class D felony.

8 ~~(16)~~~~(17)~~ Except as provided in KRS 311.787(3), any person who intentionally violates  
9 KRS 311.787 shall be guilty of a Class D felony.

10 ~~(17)~~~~(18)~~ A person convicted of violating KRS 311.780 shall be guilty of a Class C  
11 felony.

12 ~~(18)~~~~(19)~~ Except as provided in KRS 311.782(6), any person who intentionally violates  
13 KRS 311.782 shall be guilty of a Class D felony.

14 ~~(19)~~~~(20)~~ Any person who violates KRS 311.783(1) shall be guilty of a Class B  
15 misdemeanor.

16 ~~(20)~~~~(21)~~ Any person who violates KRS 311.7705(1) is guilty of a Class D felony.

17 ~~(21)~~~~(22)~~ Any person who violates KRS 311.7706(1) is guilty of a Class D felony.

18 ~~(22)~~~~(23)~~ Except as provided in KRS 311.731(7), any person who violates KRS  
19 311.731(2) shall be guilty of a Class D felony.

20 ~~(23)~~~~(24)~~ Any physician, physician assistant, advanced practice registered nurse, nurse,  
21 or other healthcare provider who intentionally violates KRS 311.823(2) shall be  
22 guilty of a Class D felony. As used in this subsection, "healthcare provider" has the  
23 same meaning as in KRS 311.821.

24 ~~(24)~~~~(25)~~ Any person who violates KRS 311.810 shall be guilty of a Class A  
25 misdemeanor.

26 ~~(25)~~~~(26)~~ Any professional medical association or society, licensed physician, or  
27 hospital or hospital medical staff who shall have violated the provisions of KRS

1 311.606 shall be guilty of a Class B misdemeanor.

2 ~~(26)~~~~(27)~~ Any administrator, officer, or employee of a publicly owned hospital or  
3 publicly owned health care facility who performs or permits the performance of  
4 abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.

5 ~~(27)~~~~(28)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.

6 ~~(28)~~~~(29)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a  
7 Class A misdemeanor.

8 ~~(29)~~~~(30)~~ Any person who fails to test organs, skin, or other human tissue which is to be  
9 transplanted, or violates the confidentiality provisions required by KRS 311.281,  
10 shall be guilty of a Class A misdemeanor.

11 ~~(30)~~~~(31)~~ Any person who sells or makes a charge for any transplantable organ shall be  
12 guilty of a Class D felony.

13 ~~(31)~~~~(32)~~ Any person who offers remuneration for any transplantable organ for use in  
14 transplantation into himself or herself shall be fined not less than five thousand  
15 dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

16 ~~(32)~~~~(33)~~ Any person brokering the sale or transfer of any transplantable organ shall be  
17 guilty of a Class C felony.

18 ~~(33)~~~~(34)~~ Any person charging a fee associated with the transplantation of a  
19 transplantable organ in excess of the direct and indirect costs of procuring,  
20 distributing, or transplanting the transplantable organ shall be fined not less than  
21 fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars  
22 (\$500,000).

23 ~~(34)~~~~(35)~~ Any hospital performing transplantable organ transplants which knowingly  
24 fails to report the possible sale, purchase, or brokering of a transplantable organ  
25 shall be fined not less than ten thousand dollars (\$10,000) or more than fifty  
26 thousand dollars (\$50,000).

27 ~~(35)~~~~(36)~~ (a) Any physician or qualified technician who violates KRS 311.727 shall

1 be fined not more than one hundred thousand dollars (\$100,000) for a first  
2 offense and not more than two hundred fifty thousand dollars (\$250,000) for  
3 each subsequent offense.

4 (b) In addition to the fine, the court shall report the violation of any physician, in  
5 writing, to the Kentucky Board of Medical Licensure for such action and  
6 discipline as the board deems appropriate.

7 ~~(36)~~~~(37)~~ Any person who violates KRS 311.691 shall be guilty of a Class B  
8 misdemeanor for the first offense, and a Class A misdemeanor for a second or  
9 subsequent offense. In addition to any other penalty imposed for that violation, the  
10 board may, through the Attorney General, petition a Circuit Court to enjoin the  
11 person who is violating KRS 311.691 from practicing genetic counseling in  
12 violation of the requirements of KRS 311.690 to 311.700.

13 ~~(37)~~~~(38)~~ Any person convicted of violating KRS 311.728 shall be guilty of a Class D  
14 felony.

15 ~~(38)~~~~(39)~~ (a) A person who intentionally, knowingly, or recklessly violates KRS  
16 311.7731 to 311.7739 is guilty of a Class D felony.

17 (b) No criminal penalty may be assessed against a pregnant patient upon whom a  
18 drug-induced abortion is attempted, induced, or performed.

19 ➔Section 15. The following KRS section is repealed:

20 311.735 Notice to spouse -- Exceptions -- Civil remedies.

21 ➔Section 16. This Act may be cited as the Compassionate Care Act.