

AN ACT relating to abortion and declaring an emergency.

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

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

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

- (1) "Abortion" shall mean the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death, including the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of a child after a live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;
- (2) "Hospital" shall mean those institutions licensed in the Commonwealth of Kentucky pursuant to the provisions of KRS Chapter 216;
- (3) "Consent" as used in KRS 311.710 to 311.820 with reference to those who must give their consent shall mean an informed consent expressed by a written agreement to submit to an abortion on a written form of consent to be promulgated by the secretary for health and family services;
- (4) "Cabinet" shall mean the Cabinet for Health and Family Services of the Commonwealth of Kentucky;
- (5) "Fetus" shall mean a human being from fertilization until birth;
- (6) "Human being" shall mean any member of the species homo sapiens from fertilization until death;
- (7) "Partial-birth abortion" shall mean an abortion in which the ~~person~~<sup>physician</sup> performing the abortion:
  - (a) Deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of

the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(b) Performs the overt act, other than completion of delivery, that kills the partially delivered living fetus~~[partially vaginally delivers a living fetus before killing the fetus and completing the delivery;~~

~~(8) "Vaginally delivers a living fetus before killing the fetus" shall mean deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus];~~

~~(8)~~~~(9)~~ "Physician" shall mean any person licensed to practice medicine in the Commonwealth or osteopathy pursuant to the provisions of this chapter;

~~(9)~~~~(10)~~ "Viability" shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother;

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

~~(11)~~~~(12)~~ "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

~~(12)~~~~(13)~~ "Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an

abortion;~~and~~

~~(13)~~~~(14)~~ "Probable gestational age of the embryo or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the embryo or fetus at the time that the abortion is planned to be performed;

(14) "Reasonable judgment" as used in subsection (12) of this section shall mean a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(15) "Unborn child" shall have the same meaning as "fetus"; and

(16) "Woman" shall mean a female human being whether or not she has reached the age of majority.

Section 2. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

(1) Any abortion provider who knowingly, as defined in KRS 501.020, performs an abortion shall comply with the provisions of Sections 1, 2, and 3 of this Act.

(2) Prior to a woman giving informed consent to having any part of an abortion performed, the physician who is to perform the abortion or a certified technician working in conjunction with the physician shall:

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

(b) Provide an explanation of the results of the ultrasound; and

(c) Provide the ultrasound images to the pregnant woman and review them with her.

(3) Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her. Neither the physician, technician, nor the pregnant woman shall be subject to any penalty if she refuses to look at the presented ultrasound images.

(4) The requirements of this section shall be in addition to any requirement contained

in KRS 311.725 or any other section of KRS 311.710 to 311.820.

(5) The provisions of this section shall not apply in the case of a medical emergency.

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

(1) Upon a determination by an abortion provider that a medical emergency exists with respect to a pregnant woman, such provider shall certify the specific medical conditions that constitute the emergency.

(2) An abortion provider who knowingly, as defined in KRS 501.020, falsifies a certification under subsection (1) of this section shall be subject to the penalties specified in Section 6 of this Act for failure to comply with Sections 1, 2, and 3 of this Act.

Section 4. KRS 311.725 is amended to read as follows:

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

(a) At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has orally, in person, and not by way of a prerecorded message~~[verbally]~~ informed the woman of all of the following:

1. The nature and purpose of the particular abortion procedure or treatment to be performed and of those medical risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
2. The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and
3. The medical risks associated with the pregnant woman carrying her

pregnancy to term;

- (b) At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has orally, in person, and not by way of a prerecorded message informed the pregnant woman that:

1. The cabinet publishes the printed materials described in paragraphs (a) and (b) of subsection (2) of this section and that she has a right to review the printed materials~~[and]~~ that~~[copies]~~ will be provided to her by the physician, licensed nurse, physician assistant, or social worker free of charge if she chooses to review the printed materials;
2. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the cabinet; and
3. The father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion;

- (c) At least twenty-four (24) hours prior to the abortion,~~[a copy of]~~ the printed materials have~~[has]~~ been provided to the pregnant woman if she chooses to view these materials;

- (d) On the day the abortion is performed, the pregnant woman shall certify by signing and dating the form required by subparagraph 1. of paragraph (e) of this subsection that:

1. The in-person meeting required by paragraphs (a) and (b) of this subsection did occur;
2. She either received or declined to receive the information as required by paragraphs (b) and (c) of this subsection;
3. She consents to the particular abortion voluntarily and knowingly;

4. She is not under the influence of any drug of abuse or alcohol; and
5. The form is true and complete~~[The pregnant woman certifies in writing, prior to the performance or inducement of the abortion:~~
- ~~1. That she has received the information required to be provided under paragraphs (a), (b), and (c) of this subsection; and~~
  - ~~2. That she consents to the particular abortion voluntarily and knowingly, and she is not under the influence of any drug of abuse or alcohol]; and~~
- (e) 1. Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives~~[a copy of]~~ the pregnant woman's **original** signed statement, on a form which **shall**~~[may]~~ be provided by the physician, on which she consents to the abortion and that includes the certification required by paragraph (d) of this subsection.
2. The form shall contain:
- a. The name of the woman;
  - b. The name of the physician who is to perform the abortion;
  - c. The name, title, and date of the person with whom the woman had the in-person meeting required by paragraphs (a) and (b) of this subsection, along with a summary of the information provided;
  - d. The signature of the physician who is to perform the abortion, along with the date and a certification that the form is true and complete; and
  - e. The certification in accordance with paragraph (d) of this subsection.
3. The physician shall retain the form with the patient's records for not less than five (5) years from the date of the execution of the form.
4. The physician shall provide a copy of the form without charge to the woman who executed the form.

5. The inspector general of the cabinet and any other person authorized in writing by the secretary of the cabinet shall inspect, at any time, informed consent records maintained pursuant to this section.

- (2) (a) ~~{By January 1, 1999, }~~The cabinet shall cause to be published in English and Spanish in a typeface not less than 12 point type the following materials:

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

2. {b)} Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two (2) week gestational increments for the first sixteen (16) weeks of her pregnancy and at four (4) week gestational increments from the seventeenth week of her pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall include, for each of the two (2)

of four (4) week increments specified in this paragraph, a pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus. The materials shall also include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

**(b) The woman shall be provided with original documents provided by the cabinet.**

- (3) Upon submission of a request to the cabinet by any person, hospital, physician, or medical facility for one (1) or more copies of the materials published in accordance with subsection (2) of this section, the cabinet shall make the requested number of copies of the materials available to the person, hospital, physician, or medical facility that requested the copies.
- (4) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.
- (5) If the conditions specified in subsection (1) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.
- (6) The failure of a physician to satisfy the conditions of subsection (1) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of disciplinary action pursuant to KRS 311.595.



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

Section 5. KRS 311.765 is repealed, reenacted, and amended to read as follows:

- (1) No physician shall **knowingly** perform a partial-birth abortion **and thereby kill a human fetus. This section shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.**
- (2) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of eighteen (18) years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. This relief shall include:
- (a) Money damages for all injuries, psychological and physical, occasioned by the violation of this section; and
- (b) Statutory damages equal to three (3) times the cost of the partial-birth abortion.

Section 6. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS

311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.

- (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health and Family Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.
- (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and  
(b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS

311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.

2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.
  3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.
- (b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.
  - (c) No penalty *under this section or KRS Chapter 506* shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.
- (12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
  - (13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.
  - (14) Any person who performs an abortion upon a married woman either with knowledge

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

- (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- (17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.
- (18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- (19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- (20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
- (21) Any administrator, officer, or employee of a publicly owned hospital or publicly owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- (22) Any person who violates KRS 311.905(3) shall be guilty of a violation.
- (23) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- (24) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;
- (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
- (25) Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- (26) Any person who offers remuneration for any transplantable organ for use in

transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

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

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

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

(30) (a) Any person who violates Section 2 or 3 of this Act shall be fined not more than one hundred thousand dollars (\$100,000) for a first offense and not more than two hundred fifty thousand dollars (\$250,000) for each subsequent offense.

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

(31) Any person who violates Section 4 of this Act shall be guilty of a Class A misdemeanor.

Section 7. Whereas the provisions of this Act seek to prevent conduct posing a clear and present danger to the people of the Commonwealth, and any delay risks the loss of human life, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.