

1 AN ACT relating to full disclosure in public safety and declaring an emergency.

2 WHEREAS, ultrasound requirements serve an essential medical purpose in
3 confirming the presence, location, and gestational age of a pregnancy; and

4 WHEREAS, ultrasound requirements also serve an essential medical purpose in
5 diagnosing ectopic pregnancies which, if left undiagnosed, can result in infertility or even
6 fatal blood loss; and

7 WHEREAS, it is critical to the psychological and physical well-being of a woman
8 considering an abortion that she receive complete and accurate information on the reality
9 and status of her pregnancy and of her unborn child; and

10 WHEREAS, the decision to abort "is an important, and often a stressful one, and it
11 is desirable and imperative that it be made with full knowledge of its nature and
12 consequences." *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 67
13 (1976); and

14 WHEREAS, the knowledgeable exercise of a woman's decision to have an abortion
15 depends on the extent to which the woman receives sufficient information to make an
16 informed choice between the two alternatives of giving birth or having an abortion; and

17 WHEREAS, the purpose of this Act is to protect the physical health and welfare of
18 every woman considering an abortion; and

19 WHEREAS, the purpose of this Act is to ensure that every woman considering an
20 abortion receive complete information on the reality and status of her pregnancy and of
21 her unborn child and that every woman submitting to an abortion do so only after giving
22 her voluntary and informed consent to the abortion procedure; and

23 WHEREAS, the purpose of this Act is to protect the unborn child from a woman's
24 uninformed decision to have an abortion; and

25 WHEREAS, the purpose of this Act is to reduce "the risk that a woman may elect
26 an abortion, only to discover later, with devastating psychological consequences, that her
27 decision was not fully informed." *Planned Parenthood of Southeastern Pennsylvania v.*

1 *Casey*, 505 U.S. 833, 882 (1992);

2 NOW, THEREFORE,

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

4 ➔SECTION 1. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED
5 TO READ AS FOLLOWS:

6 (1) *As used in the section:*

7 (a) *"Ascultate" means to examine by listening for sounds made by internal*
8 *organs of the fetus, specifically for a fetal heartbeat, utilizing an ultrasound*
9 *transducer or a fetal heart rate monitor;*

10 (b) *"Obstetric ultrasound" or "ultrasound" means the use of ultrasonic waves*
11 *for diagnostic or therapeutic purposes, specifically to monitor a developing*
12 *fetus; and*

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

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

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

22 (b) *Provide a simultaneous explanation of what the ultrasound is depicting,*
23 *which shall include the presence and location of the unborn child within*
24 *the uterus and the number of unborn children depicted and also, if the*
25 *ultrasound image indicates that fetal demise has occurred, inform the*
26 *woman of that fact;*

27 (c) *Display the ultrasound images so that the pregnant woman may view the*

1 images;

2 (d) Ascultate the fetal heartbeat of the unborn child so that the pregnant
3 woman may hear the heartbeat if the heartbeat is audible;

4 (e) Provide a medical description of the ultrasound images, which shall include
5 the dimensions of the embryo or fetus and the presence of external members
6 and internal organs, if present and viewable; and

7 (f) Retain in the woman's medical record a signed certification from the
8 pregnant woman that she has been presented with the information required
9 to be provided under paragraphs (c) and (d) of this subsection and has
10 viewed the ultrasound images, listened to the heartbeat if the heartbeat is
11 audible, or declined to do so. The signed certification shall be on a form
12 prescribed by the cabinet.

13 (3) When the ultrasound images and heartbeat sounds are provided to and reviewed
14 with the pregnant woman, nothing in this section shall be construed to prevent
15 the pregnant woman from averting her eyes from the ultrasound images or
16 requesting the volume of the heartbeat be reduced or turned off if the heartbeat is
17 audible. Neither the physician, the qualified technician, nor pregnant woman
18 shall be subject to any penalty if the pregnant woman refuses to look at the
19 displayed ultrasound images or to listen to the heartbeat if the heartbeat is
20 audible.

21 (4) The requirements of this section shall be in addition to any requirement
22 contained in KRS 311.725 or any other section of KRS 311.710 to 311.820.

23 (5) The provisions of this section shall not apply in the case of a medical emergency
24 or medical necessity. If a medical emergency or medical necessity compels the
25 performance or inducement of an abortion, the physician who will perform or
26 induce the abortion, prior to its performance or inducement if possible, shall
27 inform the pregnant woman of the medical indications supporting the physician's

1 judgment that an immediate abortion is necessary. Any physician who performs
2 or induces an abortion without the prior satisfaction of the requirements of this
3 section because of a medical emergency or medical necessity shall enter the
4 reasons for the conclusion that a medical emergency or medical necessity exists
5 in the medical record of the pregnant woman.

6 ➔Section 2. KRS 311.990 is amended to read as follows:

- 7 (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- 8 (2) Any college or professor thereof violating the provisions of KRS 311.300 to
9 311.350 shall be civilly liable on his bond for a sum not less than one hundred
10 dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation,
11 which may be recovered by an action in the name of the Commonwealth.
- 12 (3) Any person who presents to the county clerk for the purpose of registration any
13 license which has been fraudulently obtained, or obtains any license under KRS
14 311.380 to 311.510 by false or fraudulent statement or representation, or practices
15 podiatry under a false or assumed name or falsely impersonates another practitioner
16 or former practitioner of a like or different name, or aids and abets any person in the
17 practice of podiatry within the state without conforming to the requirements of KRS
18 311.380 to 311.510, or otherwise violates or neglects to comply with any of the
19 provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor.
20 Each case of practicing podiatry in violation of the provisions of KRS 311.380 to
21 311.510 shall be considered a separate offense.
- 22 (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- 23 (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under
24 this subsection of a holder of a license or permit shall result automatically in
25 permanent revocation of such license or permit.
- 26 (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or
27 interfering with the board or any of its members, or of any officer, agent, inspector,

1 or investigator of the board or the Cabinet for Health and Family Services, in the
2 administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class
3 A misdemeanor.

4 (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a
5 Class B misdemeanor, and, for each subsequent offense shall be a Class A
6 misdemeanor.

7 (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a
8 violation, and, for each subsequent offense, be a Class B misdemeanor.

9 (9) Each day of violation of either subsection of KRS 311.375 shall constitute a
10 separate offense.

11 (10) (a) Any person who intentionally or knowingly performs an abortion contrary to
12 the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and

13 (b) Any person who intentionally, knowingly, or recklessly violates the
14 requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.

15 (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS
16 311.765 shall be guilty of a Class D felony. However, a physician shall
17 not be guilty of the criminal offense if the partial-birth abortion was
18 necessary to save the life of the mother whose life was endangered by a
19 physical disorder, illness, or injury.

20 2. A physician may seek a hearing before the State Board of Medical
21 Licensure on whether the physician's conduct was necessary to save the
22 life of the mother whose life was endangered by a physical disorder,
23 illness, or injury. The board's findings, decided by majority vote of a
24 quorum, shall be admissible at the trial of the physician. The board shall
25 promulgate administrative regulations to carry out the provisions of this
26 subparagraph.

27 3. Upon a motion of the physician, the court shall delay the beginning of

1 the trial for not more than thirty (30) days to permit the hearing, referred
2 to in subparagraph 2. of this paragraph, to occur.

3 (b) Any person other than a physician who performs a partial-birth abortion shall
4 not be prosecuted under this subsection but shall be prosecuted under
5 provisions of law which prohibit any person other than a physician from
6 performing any abortion.

7 (c) No penalty shall be assessed against the woman upon whom the partial-birth
8 abortion is performed or attempted to be performed.

9 (12) Any person who intentionally performs an abortion with knowledge that, or with
10 reckless disregard as to whether, the person upon whom the abortion is to be
11 performed is an unemancipated minor, and who intentionally or knowingly fails to
12 conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.

13 (13) Any person who negligently releases information or documents which are
14 confidential under KRS 311.732 is guilty of a Class B misdemeanor.

15 (14) Any person who performs an abortion upon a married woman either with
16 knowledge or in reckless disregard of whether KRS 311.735 applies to her and who
17 intentionally, knowingly, or recklessly fails to conform to the requirements of KRS
18 311.735 shall be guilty of a Class D felony.

19 (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.

20 (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.

21 (17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D
22 felony.

23 (18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.

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

25 (20) Any professional medical association or society, licensed physician, or hospital or
26 hospital medical staff who shall have violated the provisions of KRS 311.606 shall
27 be guilty of a Class B misdemeanor.

- 1 (21) Any administrator, officer, or employee of a publicly owned hospital or publicly
2 owned health care facility who performs or permits the performance of abortions in
3 violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- 4 (22) Any person who violates KRS 311.905(3) shall be guilty of a violation.
- 5 (23) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A
6 misdemeanor.
- 7 (24) (a) Any person who fails to test organs, skin, or other human tissue which is to be
8 transplanted, or violates the confidentiality provisions required by KRS
9 311.281, shall be guilty of a Class A misdemeanor;
- 10 (b) Any person who has human immunodeficiency virus infection, who knows he
11 is infected with human immunodeficiency virus, and who has been informed
12 that he may communicate the infection by donating organs, skin, or other
13 human tissue who donates organs, skin, or other human tissue shall be guilty
14 of a Class D felony.
- 15 (25) Any person who sells or makes a charge for any transplantable organ shall be guilty
16 of a Class D felony.
- 17 (26) Any person who offers remuneration for any transplantable organ for use in
18 transplantation into himself shall be fined not less than five thousand dollars
19 (\$5,000) nor more than fifty thousand dollars (\$50,000).
- 20 (27) Any person brokering the sale or transfer of any transplantable organ shall be guilty
21 of a Class C felony.
- 22 (28) Any person charging a fee associated with the transplantation of a transplantable
23 organ in excess of the direct and indirect costs of procuring, distributing, or
24 transplanting the transplantable organ shall be fined not less than fifty thousand
25 dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).
- 26 (29) Any hospital performing transplantable organ transplants which knowingly fails to
27 report the possible sale, purchase, or brokering of a transplantable organ shall be

1 fined not less than ten thousand dollars (\$10,000) or more than fifty thousand
2 dollars (\$50,000).

3 **(30) (a) Any physician or qualified technician who violates Section 1 of this Act**
4 **shall be fined not more than one hundred thousand dollars (\$100,000) for a**
5 **first offense and not more than two hundred fifty thousand dollars**
6 **(\$250,000) for each subsequent offense.**

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

10 ➔Section 3. Sections 1 and 2 of this Act shall be known and may be cited as the
11 Ultrasound Informed Consent Act.

12 ➔Section 4. Whereas ultrasound requirements serve an essential medical purpose
13 in confirming the presence, location, and gestational age of a pregnancy, and whereas the
14 knowledgeable exercise of a woman's decision to have an abortion depends on the extent
15 to which the woman receives sufficient information to make an informed choice between
16 the two alternatives of giving birth or having an abortion, an emergency is declared to
17 exist, and this Act takes effect upon its passage and approval by the Governor or upon its
18 otherwise becoming law.