

1 AN ACT relating to unborn children and declaring an emergency.

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

3 ➔Section 1. KRS 507A.010 is amended to read as follows:

4 (1) As used in this chapter:

5 (a) "Abortion" ***means the use of any means whatsoever to terminate the***
 6 ***pregnancy of a woman known to be pregnant with the intent to cause the***
 7 ***death of the unborn child***~~[has the same meaning as in KRS 311.720];~~

8 (b) ***"Fertilization" means the fusion of a human spermatozoon with a human***
 9 ***ovum***~~["Health care provider" has the same meaning as in KRS 304.17A-005];~~
 10 and

11 (c) "Unborn child" means a ***human being***~~[member of the species homo sapiens in~~
 12 ~~utero]~~ from ***fertilization until live birth***~~[conception onward]~~, without regard
 13 to age, health, or condition of dependency.

14 (2) In a prosecution for the death of an unborn child, ~~[nothing in]~~ this chapter shall
 15 apply ***without limitation and notwithstanding KRS 311.720 to 311.820, KRS***
 16 ***Chapter 216B relating to abortion facilities, or any other provisions of the law***
 17 ***relating to an abortion, regardless of the identity of the actor***~~[to acts performed by~~
 18 ~~or at the direction of a health care provider that cause the death of an unborn child if~~
 19 ~~those acts were committed:~~

20 ~~(a) During any abortion for which the consent of the pregnant woman has been~~
 21 ~~obtained or for which the consent is implied by law in a medical emergency;~~
 22 ~~or~~

23 ~~(b) As part of or incident to diagnostic testing or therapeutic medical or fertility~~
 24 ~~treatment, provided that the acts were performed with that degree of care and~~
 25 ~~skill which an ordinarily careful, skilled, and prudent health care provider or a~~
 26 ~~person acting under the provider's direction would exercise under the same or~~
 27 ~~similar circumstances.~~

1 ~~(3) — Nothing in this chapter shall apply to any acts of a pregnant woman that caused the~~
2 ~~death of her unborn child].~~

3 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
4 READ AS FOLLOWS:

5 **(1) The Attorney General shall monitor the enforcement of the provisions of KRS**
6 **Chapter 507A.**

7 **(2) The Commonwealth's attorneys and, where applicable, the Attorney General**
8 **shall enforce KRS Chapter 507A, regardless of any contrary or conflicting state**
9 **or federal laws, administrative regulations, executive orders, or judicial decisions.**

10 ➔Section 3. KRS 211.027 is amended to read as follows:

11 The Cabinet for Health and Family Services shall promulgate reasonable rules and
12 regulations to effectuate the purposes of KRS 213.101 and 213.106 and KRS
13 **311.720**~~[311.710]~~ to **311.820**~~[311.810]~~, which shall be submitted to the Legislative
14 Research Commission in a manner prescribed in KRS Chapter 13A; the Legislative
15 Research Commission shall refer said rules and regulations to the Interim Committee on
16 Health and Welfare for the purpose of approval or disapproval.

17 ➔Section 4. KRS 311.720 is amended to read as follows:

18 As used in KRS **311.720**~~[311.710]~~ to 311.820, and laws of the Commonwealth unless the
19 context otherwise requires:

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

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

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

- 1 (4) "Consent," as used in KRS ~~311.720~~~~[311.710]~~ to 311.820 with reference to those
2 who must give their consent, means an informed consent expressed by a written
3 agreement to submit to an abortion on a written form of consent to be promulgated
4 by the secretary for health and family services;
- 5 (5) "Family planning services" means educational, medical, and social services and
6 activities that enable individuals to determine the number and spacing of their
7 children and to select the means by which this may be achieved;
- 8 (6) "Fetus" means a human being from fertilization until birth;
- 9 (7) "Hospital" means those institutions licensed in the Commonwealth of Kentucky
10 pursuant to the provisions of KRS Chapter 216;
- 11 (8) "Human being" means any member of the species homo sapiens from fertilization
12 until death;
- 13 (9) "Medical emergency" means any condition which, on the basis of the physician's
14 good-faith clinical judgment, so complicates the medical condition of a pregnant
15 female as to necessitate the immediate abortion of her pregnancy to avert her death
16 or for which a delay will create serious risk of substantial and irreversible
17 impairment of a major bodily function;
- 18 (10) "Medical necessity" means a medical condition of a pregnant woman that, in the
19 reasonable judgment of the physician who is attending the woman, so complicates
20 the pregnancy that it necessitates the immediate performance or inducement of an
21 abortion;
- 22 (11) "Partial-birth abortion" means an abortion in which the physician performing the
23 abortion partially vaginally delivers a living fetus before killing the fetus and
24 completing the delivery;
- 25 (12) "Physician" means any person licensed to practice medicine in the Commonwealth
26 or osteopathy pursuant to this chapter;
- 27 (13) "Probable gestational age of the embryo or fetus" means the gestational age that, in

1 the judgment of a physician, is, with reasonable probability, the gestational age of
2 the embryo or fetus at the time that the abortion is planned to be performed;

3 (14) "Public agency" means the Commonwealth of Kentucky; any agency, department,
4 entity, or instrumentality thereof; any city, county, agency, department, entity, or
5 instrumentality thereof; or any other political subdivision of the Commonwealth,
6 agency, department, entity, or instrumentality thereof;

7 (15) "Vaginally delivers a living fetus before killing the fetus" means deliberately and
8 intentionally delivers into the vagina a living fetus, or a substantial portion thereof,
9 for the purpose of performing a procedure the physician knows will kill the fetus,
10 and kills the fetus; and

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

14 ➔Section 5. KRS 311.727 is amended to read as follows:

15 (1) As used in this section:

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

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

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

27 (2) Prior to a woman giving informed consent to having any part of an abortion

1 performed, the physician who is to perform the abortion or a qualified technician to
2 whom the responsibility has been delegated by the physician shall:

- 3 (a) Perform an obstetric ultrasound on the pregnant woman;
- 4 (b) Provide a simultaneous explanation of what the ultrasound is depicting, which
5 shall include the presence and location of the unborn child within the uterus
6 and the number of unborn children depicted and also, if the ultrasound image
7 indicates that fetal demise has occurred, inform the woman of that fact;
- 8 (c) Display the ultrasound images so that the pregnant woman may view the
9 images;
- 10 (d) Ascultate the fetal heartbeat of the unborn child so that the pregnant woman
11 may hear the heartbeat if the heartbeat is audible;
- 12 (e) Provide a medical description of the ultrasound images, which shall include
13 the dimensions of the embryo or fetus and the presence of external members
14 and internal organs, if present and viewable; and
- 15 (f) Retain in the woman's medical record a signed certification from the pregnant
16 woman that she has been presented with the information required to be
17 provided under paragraphs (c) and (d) of this subsection and has viewed the
18 ultrasound images, listened to the heartbeat if the heartbeat is audible, or
19 declined to do so. The signed certification shall be on a form prescribed by the
20 cabinet.
- 21 (3) When the ultrasound images and heartbeat sounds are provided to and reviewed
22 with the pregnant woman, nothing in this section shall be construed to prevent the
23 pregnant woman from averting her eyes from the ultrasound images or requesting
24 the volume of the heartbeat be reduced or turned off if the heartbeat is audible.
25 Neither the physician, the qualified technician, nor the pregnant woman shall be
26 subject to any penalty if the pregnant woman refuses to look at the displayed
27 ultrasound images or to listen to the heartbeat if the heartbeat is audible.

1 (4) The requirements of this section shall be in addition to any requirement contained in
2 KRS 311.725 or any other section of KRS 311.720~~[311.710]~~ to 311.820.

3 (5) The provisions of this section shall not apply in the case of a medical emergency or
4 medical necessity. If a medical emergency or medical necessity compels the
5 performance or inducement of an abortion, the physician who will perform or
6 induce the abortion, prior to its performance or inducement if possible, shall inform
7 the pregnant woman of the medical indications supporting the physician's judgment
8 that an immediate abortion is necessary. Any physician who performs or induces an
9 abortion without the prior satisfaction of the requirements of this section because of
10 a medical emergency or medical necessity shall enter the reasons for the conclusion
11 that a medical emergency or medical necessity exists in the medical record of the
12 pregnant woman.

13 ➔Section 6. KRS 311.760 is amended to read as follows:

14 An abortion may be performed in this state only under the following circumstances:

15 (1) During the first trimester of pregnancy by a woman upon herself upon the advice of
16 a licensed physician or by a licensed physician.

17 (2) After the first trimester of pregnancy, except in cases of emergency to protect the
18 life or health of the pregnant woman, where an abortion is permitted under other
19 provisions of KRS 311.720~~[311.710]~~ to 311.820, by a duly licensed physician in a
20 hospital duly licensed by the Kentucky Health Facilities and Health Services
21 Certificate of Need and Licensure Board.

22 ➔Section 7. The following KRS sections are repealed:

23 311.710 Legislative findings.

24 507A.060 Death sentence prohibited.

25 ➔Section 8. This Act applies only to conduct and offenses that occur or are
26 committed on or after the effective date of this Act. Conduct and offenses that occurred or
27 were committed before the effective date of this Act shall be governed by the law in

1 effect at the time the conduct occurred or the offense was committed.

2 ➔Section 9. Any federal statute, administrative regulation, executive order, or
3 judicial decision that purports to supersede, stay, or overrule the provisions of this Act is
4 in violation of the Kentucky Constitution and the Constitution of the United States of
5 America and is therefore void. The Commonwealth of Kentucky and its political
6 subdivisions, and agents thereof, may not enter an appearance, special or otherwise, in
7 any federal suit challenging the provisions of this Act.

8 ➔Section 10. This Act may be cited as the Abolition of Abortion in Kentucky
9 Act.

10 ➔Section 11. Whereas an average of more than nine unborn children are killed
11 via abortion in Kentucky each day, an emergency is declared to exist, and this Act takes
12 effect upon its passage and approval by the Governor or upon its otherwise becoming a
13 law.