

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2022 REGULAR SESSION
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Amend printed copy of **HB 3/SCS 1**

On page 58, line 27, place brackets around and strike through "post-fertilization" and insert in lieu thereof "gestational"; and

On page 59, line 4 onto line 5, place brackets around and strike through "post-fertilization" and insert in lieu thereof "gestational"; and

On page 59, line 9, place brackets around and strike through "post-fertilization" and insert in lieu thereof "gestational"; and

On page 59, line 9, place brackets around and strike through "twenty (20)" and insert in lieu thereof "fifteen (15)"; and

On page 59, line 15, after the word "cabinet" insert the word "that includes at"; and

On page 59, line 17, delete "post-fertilization" and insert in lieu thereof "gestational"; and

On page 64, delete lines 7 through 11 and insert in lieu thereof the following:

"→SECTION 32. A NEW SECTION OF KRS 311.781 TO 311.786 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares, according to contemporary medical research, all of the following:

(1) Medical and other authorities now know more about human prenatal development than ever before, including:

(a) Between five (5) and six (6) weeks' gestation, an unborn child's heart begins

Amendment No. SFA 3

Rep. Sen. Max Wise

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

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beating;

(b) At approximately eight (8) weeks' gestation, an unborn child begins to move about in the womb;

(c) At nine (9) weeks' gestation, all basic physiological functions are present, including teeth, eyes, and external genitalia;

(d) At ten (10) weeks' gestation, an unborn child's vital organs begin to function, and hair, fingernails, and toenails begin to form;

(e) At eleven (11) weeks' gestation, an unborn child's diaphragm is developing, he or she may even hiccup, and he or she is beginning to move about freely in the womb; and

(f) At twelve (12) weeks' gestation, an unborn child can open and close his or her fingers, starts to make sucking motions, senses stimulation from the world outside the womb, and has taken on "the human form" in all relevant aspects under *Gonzales v. Carhart*, 550 U.S. 124, 160 (2007);

(2) The United States Supreme Court has long recognized that the state has an "important and legitimate interest in protecting the potentiality of human life," *Roe v. Wade*, 410 U.S. 113, 162 (1973), and specifically that "the state has an interest in protecting the life of the unborn". *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 873 (1992);

(3) The majority of abortion procedures performed after fifteen (15) weeks' gestation are dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child apart before removing the pieces of the dead child from the womb, procedures prohibited under Section 36 of this Act, and the General Assembly finds that the intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical

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profession;

- (4) Abortion carries significant physical and psychological risks to the maternal patient, and these physical and psychological risks increase with gestational age;**
- (5) As the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term;**
- (6) Seventy-five percent (75%) of all the nations in the world do not permit abortion after twelve (12) weeks' gestation except, in most instances, to save the life and preserve the physical health of the mother; and**
- (7) The Commonwealth of Kentucky has legitimate interests from the outset of the pregnancy in protecting both the health of the woman and the life of an unborn human individual who may be born.**

➔Section 33. KRS 311.781 is amended to read as follows:

As used in KRS 311.781 to 311.786:

- (1)** "Fertilization" means the fusion of a human spermatozoon with a human ovum;
- (2)** **"Gestational age" has the same meaning as in KRS 311.7701;**
- (3)** "Medical emergency" means a condition that in the physician's reasonable medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create;
- ~~(4)~~~~(3)~~** "Pain-capable unborn child" means an unborn child of a probable **gestational**~~[post-~~
~~fertilization]~~ age of **fifteen (15)**~~[twenty (20)]~~ weeks or more;
- ~~(5)~~~~(4)~~** "Physician" has the same meaning as in KRS 311.720;

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

~~[(5) "Post fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum;~~

~~(6) "Probable post fertilization age" means, in reasonable medical judgment and with reasonable probability, the age of the unborn child, as calculated from fertilization, at the time the abortion is performed or induced or attempted to be performed or induced;]~~

(7) "Reasonable medical judgment" means 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;

(8) "Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. A medically diagnosed condition that constitutes a "serious risk of the substantial and irreversible impairment of a major bodily function" includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes, but does not include a condition related to the woman's mental health; and

(9) "Unborn child" means an individual organism of the species homo sapiens from fertilization until live birth.

➔Section 34. KRS 311.782 is amended to read as follows:

(1) No person shall intentionally perform or induce or intentionally attempt to perform or induce an abortion on a pregnant woman when the probable ***gestational***~~[post fertilization]~~ age of the unborn child is ***fifteen (15)***~~[twenty (20)]~~ weeks or greater.

(2) It shall be an affirmative defense to a charge under subsection (1) of this section that the abortion was intentionally performed or induced or intentionally attempted to be performed or induced by a physician and that the physician determined, in the physician's reasonable

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medical judgment, based on the facts known to the physician at that time, that either of the following applied:

- (a) The probable ***gestational***~~[post-fertilization]~~ age of the unborn child was less than ***fifteen (15)***~~[twenty (20)]~~ weeks; or
 - (b) The abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. No abortion shall be necessary if it is based on a claim or diagnosis that the pregnant woman will engage in conduct that would result in her death or in substantial and irreversible impairment of a major bodily function or if it is based on any reason related to her mental health.
- (3) (a) Except when a medical emergency exists that prevents compliance with KRS 311.783, the affirmative defense set forth in subsection (2)(a) of this section does not apply unless the physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion makes a determination of the probable ***gestational***~~[post-fertilization]~~ age of the unborn child as required by KRS 311.783(1) or relied upon such a determination made by another physician and certifies in writing, based on the results of the tests performed, that in the physician's reasonable medical judgment the unborn child's probable ***gestational***~~[post-fertilization]~~ age is less than ***fifteen (15)***~~[twenty (20)]~~ weeks.
- (b) Except when a medical emergency exists that prevents compliance with one (1) or more of the following conditions, the affirmative defense set forth in subsection (2)(b) of this section does not apply unless the physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion complies with all of the following conditions:
- 1. The physician who intentionally performs or induces or intentionally attempts to

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- perform or induce the abortion certifies in writing that, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, the abortion is necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;
2. A different physician not professionally related to the physician described in subparagraph 1. of this paragraph certifies in writing that, in that different physician's reasonable medical judgment, based on the facts known to that different physician at that time, the abortion is necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;
 3. The physician intentionally performs or induces or intentionally attempts to perform or induce the abortion in a hospital or other health care facility that has appropriate neonatal services for premature infants;
 4. The physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, that the termination of the pregnancy in that manner poses a greater risk of death of the pregnant woman or a greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion;
 5. The physician certifies in writing the available method or techniques considered and the reasons for choosing the method or technique employed; and

6. The physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced or attempted to be performed or induced at least one (1) other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.
- (4) The state Board of Medical Licensure shall revoke a physician's license to practice medicine in this state if the physician violates or fails to comply with this section.
- (5) Any physician who intentionally performs or induces or intentionally attempts to perform or induce an abortion on a pregnant woman with actual knowledge that neither of the affirmative defenses set forth in subsection (2) of this section applies, or with a heedless indifference as to whether either affirmative defense applies, is liable in a civil action for compensatory and punitive damages and reasonable attorney's fees to any person, or the representative of the estate of any person including but not limited to an unborn child, who sustains injury, death, or loss to person or property as the result of the performance or inducement or the attempted performance or inducement of the abortion. In any action under this subsection, the court also may award any injunctive or other equitable relief that the court considers appropriate.
- (6) A pregnant woman on whom an abortion is intentionally performed or induced or intentionally attempted to be performed or induced in violation of subsection (1) of this section is not guilty of violating subsection (1) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (1) of this section.

➔SECTION 35. A NEW SECTION OF KRS 311.781 TO 311.786 IS CREATED TO

READ AS FOLLOWS:

The Attorney General shall have authority to bring an action in law or equity to enforce any provisions of KRS 311.781 to 311.786 on behalf of the Commonwealth of Kentucky. The state Board of Medical Licensure shall also have authority to bring an action on its own behalf.

➔ Section 36. KRS 311.787 is amended to read as follows:

(1) As used in this section:

- (a) "Bodily dismemberment, crushing, or human vivisection" means a procedure in which a person, with the purpose of causing the death of an unborn child, dismembers the living unborn child and extracts portions, pieces, or limbs of the unborn child from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two (2) rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, any portion, piece, or limb of the unborn child's body to cut or separate the portion, piece, or limb from the body. The term includes a procedure that is used to cause the death of an unborn child and in which suction is subsequently used to extract portions, pieces, or limbs of the unborn child after the unborn child's death;
- (b) "Medical emergency" has the same meaning as in KRS 311.720;
- (c) "Probable **gestational**~~[post fertilization]~~ age" has the same meaning as in KRS **311.720**~~[311.781]~~; and
- (d) "Unborn child" has the same meaning as in KRS 311.781.

(2) No person shall intentionally perform or induce or attempt to perform or induce an abortion on a pregnant woman:

- (a) That will result in the bodily dismemberment, crushing, or human vivisection of the unborn child; and
- (b) When the probable **gestational**~~[post fertilization]~~ age of the unborn child is eleven

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(11) weeks or greater;

except in the case of a medical emergency.

- (3) A pregnant woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of subsection (2) of this section is not guilty of violating subsection (2) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (2) of this section.

➔Section 37. (1) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

(2) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(3) Nothing in Section 27 or Sections 32 to 36 of this Act shall be construed as altering generally accepted medical standards.

➔Section 38. Sections 1 to 31 of this Act may be cited as the Humanity in Healthcare Act of 2022."; and

Re-number subsequent section accordingly.