

1 AN ACT relating to unborn human individuals.

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

3 ➔Section 1. KRS 211.603 is amended to read as follows:

- 4 (1) There is created a trust fund to be known as the rape crisis center trust fund. The
5 fund shall be administered by the Cabinet for Health and Family Services.
- 6 (2) The trust fund shall be funded with moneys collected through the designation of a
7 taxpayer's refund as provided by KRS 141.447 and any contributions, gifts,
8 donations, or appropriations designated for the trust fund. Moneys in the fund shall
9 be used to support the services listed in KRS 211.600(3). No moneys in the fund
10 shall be used to support abortion services or abortion education, ***except abortion***
11 ***education may be provided to a woman who is reasonably believed to be pregnant***
12 ***as the result of being a victim of rape or incest.***
- 13 (3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the
14 fiscal year shall not lapse but shall be carried forward into the succeeding fiscal
15 year to be used for the purposes set forth in subsection (2) of this section.
- 16 (4) Any interest earned upon moneys in the rape crisis center trust fund shall become a
17 part of the fund and shall not lapse.
- 18 (5) Moneys deposited in the fund are appropriated for the purposes set forth in this
19 section and shall not be appropriated or transferred by the General Assembly for
20 any other purposes.

21 ➔Section 2. KRS 216B.400 is amended to read as follows:

- 22 (1) Where a person has been determined to be in need of emergency care by any person
23 with admitting authority, no such person shall be denied admission by reason only
24 of his or her inability to pay for services to be rendered by the hospital.
- 25 (2) Every hospital of this state which offers emergency services shall provide that a
26 physician, a sexual assault nurse examiner, who shall be a registered nurse licensed
27 in the Commonwealth and credentialed by the Kentucky Board of Nursing as

1 provided under KRS 314.142, or another qualified medical professional, as defined
2 by administrative regulation promulgated by the Justice and Public Safety Cabinet
3 in consultation with the Sexual Assault Response Team Advisory Committee as
4 defined in KRS 403.707, is available on call twenty-four (24) hours each day for the
5 examinations of persons seeking treatment as victims of sexual offenses as defined
6 by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120,
7 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.

8 (3) An examination provided in accordance with this section of a victim of a sexual
9 offense may be performed in a sexual assault examination facility as defined in
10 KRS 216B.015. An examination under this section shall apply only to an
11 examination of a victim.

12 (4) The physician, sexual assault nurse examiner, or other qualified medical
13 professional, acting under a statewide medical forensic protocol which shall be
14 developed by the Justice and Public Safety Cabinet in consultation with the Sexual
15 Assault Response Team Advisory Committee as defined in KRS 403.707, and
16 promulgated by the secretary of justice and public safety pursuant to KRS Chapter
17 13A shall, upon the request of any peace officer or prosecuting attorney, and with
18 the consent of the victim, or upon the request of the victim, examine such person
19 for the purposes of providing basic medical care relating to the incident and
20 gathering samples that may be used as physical evidence. This examination shall
21 include but not be limited to:

22 (a) Basic treatment and sample gathering services; and

23 (b) Laboratory tests, as appropriate.

24 (5) Each victim shall be informed of available services for treatment of sexually
25 transmitted infections, pregnancy, and other medical and psychiatric problems.
26 Pregnancy counseling shall not include abortion counseling or referral information
27 **unless the pregnancy is reasonably believed to be the result of rape or incest.**

- 1 (6) Each victim shall be informed of available crisis intervention or other mental health
2 services provided by regional rape crisis centers providing services to victims of
3 sexual assault.
- 4 (7) Notwithstanding any other provision of law, a minor may consent to examination
5 under this section. This consent is not subject to disaffirmance because of minority,
6 and consent of the parents or guardians of the minor is not required for the
7 examination.
- 8 (8) (a) The examinations provided in accordance with this section shall be paid for
9 by the Crime Victims Compensation Board at a rate to be determined by the
10 administrative regulation promulgated by the board after consultation with the
11 Sexual Assault Response Team Advisory Committee as defined in KRS
12 403.707.
- 13 (b) Upon receipt of a completed claim form supplied by the board and an
14 itemized billing for a forensic sexual assault examination or related services
15 that are within the scope of practice of the respective provider and were
16 performed no more than twelve (12) months prior to submission of the form,
17 the board shall reimburse the hospital or sexual assault examination facility,
18 pharmacist, health department, physician, sexual assault nurse examiner, or
19 other qualified medical professional as provided in administrative regulations
20 promulgated by the board pursuant to KRS Chapter 13A. Reimbursement
21 shall be made to an out-of-state nurse who is credentialed in the other state to
22 provide sexual assault examinations, an out-of-state hospital, or an out-of-
23 state physician if the sexual assault occurred in Kentucky.
- 24 (c) Independent investigation by the Crime Victims Compensation Board shall
25 not be required for payment of claims under this section; however, the board
26 may require additional documentation or proof that the forensic medical
27 examination was performed.

- 1 (9) No charge shall be made to the victim for sexual assault examinations by the
2 hospital, the sexual assault examination facility, the physician, the pharmacist, the
3 health department, the sexual assault nurse examiner, other qualified medical
4 professional, the victim's insurance carrier, or the Commonwealth.
- 5 (10) (a) Each victim shall have the right to determine whether a report or other
6 notification shall be made to law enforcement, except where reporting of
7 abuse and neglect of a child or a vulnerable adult is required, as set forth in
8 KRS 209.030 and 620.030. No victim shall be denied an examination because
9 the victim chooses not to file a police report, cooperate with law enforcement,
10 or otherwise participate in the criminal justice system.
- 11 (b) If the victim chooses to report to law enforcement, the hospital shall notify
12 law enforcement within twenty-four (24) hours.
- 13 (c) 1. All samples collected during an exam where the victim has chosen not
14 to immediately report to law enforcement shall be stored, released, and
15 destroyed, if appropriate, in accordance with an administrative
16 regulation promulgated by the Justice and Public Safety Cabinet in
17 consultation with the Sexual Assault Response Team Advisory
18 Committee as defined in KRS 403.707.
- 19 2. Facilities collecting samples pursuant to this section may provide the
20 required secure storage, sample destruction, and related activities, or
21 may enter into agreements with other agencies qualified to do so,
22 pursuant to administrative regulation.
- 23 3. All samples collected pursuant to this section shall be stored for at least
24 one (1) year from the date of collection in accordance with the
25 administrative regulation promulgated pursuant to this subsection.
- 26 4. Notwithstanding KRS 524.140, samples collected during exams where
27 the victim chose not to report immediately or file a report within one (1)

1 year after collection may be destroyed as set forth in accordance with
2 the administrative regulation promulgated pursuant to this subsection.
3 The victim shall be informed of this process at the time of the
4 examination. No hospital, sexual assault examination facility, or
5 designated storage facility shall be liable for destruction of samples after
6 the required storage period has expired.

7 ➔Section 3. KRS 311.723 is amended to read as follows:

- 8 (1) No abortion shall be performed except by a physician after~~either~~:
- 9 (a) **The physician**~~[He]~~ determines that, in his **or her** best clinical judgment, the
10 abortion is necessary; or
- 11 (b) **The physician**~~[He]~~ receives what he **or she** reasonably believes to be a written
12 statement signed by another physician, hereinafter called the "referring
13 physician," certifying that in the referring physician's best clinical judgment
14 the abortion is necessary, and, in addition, he **or she** receives a copy of the
15 report form required by KRS 213.101; **or**
- 16 **(c) 1. In the reasonable judgment of two (2) physicians, there is definitive**
17 **evidence that the unborn child the pregnant woman is carrying has an**
18 **abnormality that is incompatible with life outside the womb of the**
19 **mother;**
- 20 **2. Each physician referred to in subparagraph 1. of this paragraph**
21 **specifies, in writing, the findings supporting that physician's**
22 **reasonable medical judgment that there is definitive evidence that the**
23 **unborn child the pregnant woman is carrying has an abnormality that**
24 **is incompatible with life outside of the womb of the mother; and**
- 25 **3. Each physician places the written documentation required by**
26 **subparagraph 2. of this paragraph in the physician's own records for**
27 **at least seven (7) years from the date the document is created; or**

1 control methods or devices, including, but not limited to, intrauterine devices, oral
2 contraceptives, or any other birth control method or device.

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

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

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

12 1. The nature and purpose of the particular abortion procedure or treatment
13 to be performed and of those medical risks and alternatives to the
14 procedure or treatment that a reasonable patient would consider material
15 to the decision of whether or not to undergo the abortion;

16 2. The probable gestational age of the embryo or fetus at the time the
17 abortion is to be performed, **except this disclosure shall not be required**
18 **in the case of an abortion performed or induced due to an abnormality**
19 **that is incompatible with life outside of the womb of the mother as**
20 **provided under Sections 3 and 7 of this Act;**

21 3. The medical risks associated with the pregnant woman carrying her
22 pregnancy to term; and

23 4. The potential ability of a physician to reverse the effects of prescription
24 drugs intended to induce abortion, where additional information about
25 this possibility may be obtained, and contact information for assistance
26 in locating a physician who may aid in the reversal;

27 (b) At least twenty-four (24) hours prior to the abortion, in an individual, private

1 setting, a physician, licensed nurse, physician assistant, or social worker to
2 whom the responsibility has been delegated by the physician has informed the
3 pregnant woman that:

4 1. The cabinet publishes the printed materials described in subsection
5 (2)(a), (b), and (c) of this section and that she has a right to review the
6 printed materials and that copies will be provided to her by the
7 physician, licensed nurse, physician assistant, or social worker free of
8 charge if she chooses to review the printed materials;

9 2. Medical assistance benefits may be available for prenatal care,
10 childbirth, and neonatal care, and that more detailed information on the
11 availability of such assistance is contained in the printed materials
12 published by the cabinet;

13 3. The father of the fetus is liable to assist in the support of her child, even
14 in instances where he has offered to pay for the abortion; and

15 4. It is illegal in Kentucky to intentionally perform an abortion, in whole or
16 in part, because of:

17 a. The sex of the unborn child;

18 b. The race, color, or national origin of the unborn child; or

19 c. The diagnosis, or potential diagnosis, of Down syndrome or any
20 other disability, except an abnormality that is incompatible with
21 life outside of the womb of the mother as provided under
22 Sections 3 and 7 of this Act;

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

26 (d) The pregnant woman certifies in writing, prior to the performance or
27 inducement of the abortion:

- 1 1. That she has received the information required to be provided under
2 paragraphs (a), (b), and (c) of this subsection; and
- 3 2. That she consents to the particular abortion voluntarily and knowingly,
4 and she is not under the influence of any drug of abuse or alcohol; and
- 5 (e) Prior to the performance or inducement of the abortion, the physician who is
6 scheduled to perform or induce the abortion or the physician's agent receives a
7 copy of the pregnant woman's signed statement, on a form which may be
8 provided by the physician, on which she consents to the abortion and that
9 includes the certification required by paragraph (d) of this subsection.
- 10 (2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface
11 not less than 12 point type the following materials:
- 12 (a) Materials that inform the pregnant woman about public and private agencies
13 and services that are available to assist her through her pregnancy, upon
14 childbirth, and while her child is dependent, including, but not limited to,
15 adoption agencies. The materials shall include a comprehensive list of the
16 available agencies and a description of the services offered by the agencies
17 and the telephone numbers and addresses of the agencies, and inform the
18 pregnant woman about available medical assistance benefits for prenatal care,
19 childbirth, and neonatal care and about the support obligations of the father of
20 a child who is born alive. The cabinet shall ensure that the materials are
21 comprehensive and do not directly or indirectly promote, exclude, or
22 discourage the use of any agency or service described in this section;
- 23 (b) Materials that inform the pregnant woman of the probable anatomical and
24 physiological characteristics of the zygote, blastocyte, embryo, or fetus at two
25 (2) week gestational increments for the first sixteen (16) weeks of her
26 pregnancy and at four (4) week gestational increments from the seventeenth
27 week of her pregnancy to full term, including any relevant information

1 regarding the time at which the fetus possibly would be viable. The materials
2 shall use language that is understandable by the average person who is not
3 medically trained, shall be objective and nonjudgmental, and shall include
4 only accurate scientific information about the zygote, blastocyte, embryo, or
5 fetus at the various gestational increments. The materials shall include, for
6 each of the two (2) of four (4) week increments specified in this paragraph, a
7 pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus.
8 The materials shall also include, in a conspicuous manner, a scale or other
9 explanation that is understandable by the average person and that can be used
10 to determine the actual size of the zygote, blastocyte, embryo, or fetus at a
11 particular gestational increment as contrasted with the depicted size of the
12 zygote, blastocyte, embryo, or fetus at that gestational increment; and

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

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

23 (4) If a medical emergency or medical necessity compels the performance or
24 inducement of an abortion, the physician who will perform or induce the abortion,
25 prior to its performance or inducement if possible, shall inform the pregnant woman
26 of the medical indications supporting the physician's judgment that an immediate
27 abortion is necessary. Any physician who performs or induces an abortion without

1 the prior satisfaction of the conditions specified in subsection (1) of this section
2 because of a medical emergency or medical necessity shall enter the reasons for the
3 conclusion that a medical emergency exists in the medical record of the pregnant
4 woman.

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

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

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

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

16 (1) As used in this section:

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

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

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

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

1 ultrasound images or to listen to the heartbeat if the heartbeat is audible.

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

4 (5) The provisions of this section shall not apply:

5 (a) In the case of a medical emergency or medical necessity. If a medical
6 emergency or medical necessity compels the performance or inducement of an
7 abortion, the physician who will perform or induce the abortion, prior to its
8 performance or inducement if possible, shall inform the pregnant woman of
9 the medical indications supporting the physician's judgment that an immediate
10 abortion is necessary. Any physician who performs or induces an abortion
11 without the prior satisfaction of the requirements of this section because of a
12 medical emergency or medical necessity shall enter the reasons for the
13 conclusion that a medical emergency or medical necessity exists in the
14 medical record of the pregnant woman;

15 (b) If there is definitive evidence that the unborn child the pregnant woman is
16 carrying has an abnormality that is incompatible with life outside of the
17 womb of the mother as provided in Sections 3 and 7 of this Act; or

18 (c) 1. If the physician reasonably believes the pregnancy is the result of rape
19 or incest and the probable gestational age of the unborn child is less
20 than fifteen (15) weeks; and

21 2. Before the abortion, the physician certifies in writing, after proper
22 examination, the abortion is being performed at the woman's request
23 because the pregnancy is the result of rape or incest. All facts and
24 reasons supporting the certification shall be set forth by the physician
25 in writing and attached to the certificate.

26 ➔Section 6. KRS 311.735 is amended to read as follows:

27 (1) Prior to performing an abortion, the physician who is to perform the abortion or the

1 physician's~~his~~ agent shall notify, if reasonably possible, the spouse of the woman
 2 upon whom the abortion is to be performed. If it is not reasonably possible to notify
 3 the spouse prior to the abortion, the physician or the physician's~~his~~ agent shall do
 4 so, if reasonably possible, within thirty (30) days of the abortion.

5 (2) ~~{(a)—}~~The requirements of this section shall not apply if:~~{,}~~

6 (a) Before the abortion is performed, either party to a marriage has filed a petition
 7 for dissolution of marriage which has been served on the respondent;

8 ~~(b) {The requirements of this section shall not apply when, }~~In the medical
 9 judgment of the attending physician based on the particular facts of the case
 10 before him, there exists a medical emergency. In such a case, the physician
 11 shall describe the basis of his or her medical judgment that such an
 12 emergency exists on a form prescribed by the cabinet as required by KRS
 13 213.101, and the physician or the physician's~~his~~ agent shall notify, if
 14 reasonably possible, the spouse of the woman upon whom the abortion was
 15 performed, within thirty (30) days of the abortion;

16 (c) There is definitive evidence that the unborn child the pregnant woman is
 17 carrying has an abnormality that is incompatible with life outside of the
 18 womb of the mother as provided in Sections 3 and 7 of this Act; or

19 (d) 1. The physician reasonably believes the pregnancy is the result of rape
 20 or incest and the probable gestational age of the unborn child is less
 21 than fifteen (15) weeks; and

22 2. Before the abortion, the physician certifies, after proper examination,
 23 the abortion is being performed at the woman's request because the
 24 pregnancy is the result of rape or incest. All facts and reasons
 25 supporting the certification shall be set forth by the physician in
 26 writing and attached to the certificate.

27 (3) Failure to notify a spouse as required by this section is prima facie evidence of

1 interference with family relations in appropriate civil actions. The law of this
2 Commonwealth shall not be construed to preclude the award of punitive damages or
3 damages for emotional distress, even if unaccompanied by physical complications
4 in any civil action brought pursuant to violations of this section. Nothing in this
5 section shall be construed to limit the common law rights of a husband.

6 ➔Section 7. KRS 311.7704 is amended to read as follows:

- 7 (1) (a) A person who intends to perform or induce an abortion on a pregnant woman
8 shall determine whether there is a detectable fetal heartbeat of the unborn
9 human individual the pregnant woman is carrying. The method of determining
10 the presence of a fetal heartbeat shall be consistent with the person's good-
11 faith understanding of standard medical practice, provided that if
12 administrative regulations have been promulgated under subsection (2) of this
13 section, the method chosen shall be one that is consistent with the regulations.
- 14 (b) The person who determines the presence or absence of a fetal heartbeat shall
15 record in the pregnant woman's medical record the estimated gestational age
16 of the unborn human individual, the method used to test for a fetal heartbeat,
17 the date and time of the test, and the results of the test.
- 18 (c) The person who performs the examination for the presence of a fetal heartbeat
19 shall give the pregnant woman the option to view or hear the fetal heartbeat.
- 20 (2) The secretary of the Cabinet for Health and Family Services may promulgate
21 administrative regulations specifying the appropriate methods of performing an
22 examination for the purpose of determining the presence of a fetal heartbeat of an
23 unborn human individual based on standard medical practice. The regulations shall
24 require only that an examination shall be performed externally.
- 25 (3) A person is not in violation of subsection (1) or (2) of this section if:
- 26 (a) The person has performed an examination for the purpose of determining the
27 presence of a fetal heartbeat of an unborn human individual utilizing standard

- 1 medical practice;
- 2 (b) The examination does not reveal a fetal heartbeat or the person has been
- 3 informed by a physician who has performed the examination for a fetal
- 4 heartbeat that the examination did not reveal a fetal heartbeat; and
- 5 (c) The person notes in the pregnant woman's medical records the procedure
- 6 utilized to detect the presence of a fetal heartbeat.

7 **(4) A person is not in violation of subsection (1) or (2) of this section if:**

- 8 **(a) 1. In the reasonable judgment of two (2) physicians, there is definitive**
- 9 **evidence that the unborn child the pregnant woman is carrying has an**
- 10 **abnormality that is incompatible with life outside the womb of the**
- 11 **mother;**
- 12 **2. Each physician referred to in subparagraph 1. of this paragraph**
- 13 **specifies, in writing, the findings supporting that physician's**
- 14 **reasonable medical judgment that there is definitive evidence that the**
- 15 **unborn child the pregnant woman is carrying has an abnormality that**
- 16 **is incompatible with life outside of the womb of the mother; and**
- 17 **3. Each physician places the written documentation required by**
- 18 **subparagraph 2. of this paragraph in the physician's own records for**
- 19 **at least seven (7) years from the date the document is created; or**
- 20 **(b) 1. The physician reasonably believes the pregnancy is the result of rape**
- 21 **or incest and the probable gestational age of the unborn child is less**
- 22 **than fifteen (15) weeks; and**
- 23 **2. Before the abortion, the physician certifies in writing, after proper**
- 24 **examination, the abortion is being performed at the woman's request**
- 25 **because the pregnancy is the result of rape or incest. All facts and**
- 26 **reasons supporting the certification shall be set forth by the physician**
- 27 **in writing and attached to the certificate.**

1 ➔Section 8. KRS 311.7706 is amended to read as follows:

- 2 (1) Except as provided in subsections~~[subsection]~~ (2) and (3) of this section, no person
3 shall intentionally perform or induce an abortion on a pregnant woman with the
4 specific intent of causing or abetting the termination of the life of the unborn human
5 individual the pregnant woman is carrying and whose fetal heartbeat has been
6 detected in accordance with KRS 311.7704(1).
- 7 (2) (a) Subsection (1) of this section shall not apply to a physician who performs a
8 medical procedure that, in the physician's reasonable medical judgment, is
9 designed or intended to prevent the death of the pregnant woman or to prevent
10 a serious risk of the substantial and irreversible impairment of a major bodily
11 function of the pregnant woman.
- 12 (b) A physician who performs a medical procedure as described in paragraph (a)
13 of this subsection shall, in writing:
- 14 1. Declare that the medical procedure is necessary, to the best of the
15 physician's reasonable medical judgment, to prevent the death of the
16 pregnant woman or to prevent a serious risk of the substantial and
17 irreversible impairment of a major bodily function of the pregnant
18 woman; and
- 19 2. Specify the pregnant woman's medical condition that the medical
20 procedure is asserted to address and the medical rationale for the
21 physician's conclusion that the medical procedure is necessary to
22 prevent the death of the pregnant woman or to prevent a serious risk of
23 the substantial and irreversible impairment of a major bodily function of
24 the pregnant woman.
- 25 (c) The physician shall place the written document required by paragraph (b) of
26 this subsection in the pregnant woman's medical records. The physician shall
27 maintain a copy of the document in the physician's own records for at least

1 seven (7) years from the date the document is created.

2 (3) **Subsection (1) of this section shall not apply to a physician who performs or**
3 **induces an abortion on a pregnant woman in compliance with subsection (4) of**
4 **Section 7 of this Act.**

5 (4) A person is not in violation of subsection (1) of this section if the person acts in
6 accordance with KRS 311.7704(1) and the method used to determine the presence
7 of a fetal heartbeat does not reveal a fetal heartbeat.

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

14 ~~(6)~~(5) Subsection (1) of this section shall not repeal or limit any other provision of
15 the Kentucky Revised Statutes that restricts or regulates the performance or
16 inducement of an abortion by a particular method or during a particular stage of a
17 pregnancy.

18 ➔Section 9. KRS 311.7707 is amended to read as follows:

19 (1) The provisions of this section are independent of the requirements of KRS
20 311.7704, 311.7705, and 311.7706.

21 (2) A person who performs or induces an abortion on a pregnant woman shall:

22 (a) If the reason for the abortion purported is to preserve the health of the
23 pregnant woman, specify in a written document the medical condition that the
24 abortion is asserted to address and the medical rationale for the person's
25 conclusion that the abortion is necessary to address that condition;~~or~~

26 (b) If the reason for the abortion is other than to preserve the health of the
27 pregnant woman, specify in a written document that maternal health is not the

1 purpose of the abortion; or

2 (c) If the reason for the abortion is as provided under subsection (4) of Section
3 7 of this Act, comply with the documentation requirements of that
4 subsection.

5 (3) The person who specifies the information in the document described in subsection
6 (2) of this section shall place the document in the pregnant woman's medical
7 records. The person who specifies the information shall maintain a copy of the
8 document in the person's own records for at least seven (7) years from the date the
9 document is created.

10 ➔Section 10. KRS 311.772 is amended to read as follows:

11 (1) As used in this section:

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

14 (b) "Pregnant" means the human female reproductive condition of having a living
15 unborn human being within her body throughout the entire embryonic and
16 fetal stages of the unborn child from fertilization to full gestation and
17 childbirth; and

18 (c) "Unborn human being" means an individual living member of the species
19 homo sapiens throughout the entire embryonic and fetal stages of the unborn
20 child from fertilization to full gestation and childbirth.

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

23 (a) Any decision of the United States Supreme Court which reverses, in whole or
24 in part, Roe v. Wade, 410 U.S. 113 (1973), thereby restoring to the
25 Commonwealth of Kentucky the authority to prohibit abortion; or

26 (b) Adoption of an amendment to the United States Constitution which, in whole
27 or in part, restores to the Commonwealth of Kentucky the authority to prohibit

1 abortion.

2 (3) (a) No person may knowingly:

3 1. Administer to, prescribe for, procure for, or sell to any pregnant woman
4 any medicine, drug, or other substance with the specific intent of
5 causing or abetting the termination of the life of an unborn human being;
6 or

7 2. Use or employ any instrument or procedure upon a pregnant woman
8 with the specific intent of causing or abetting the termination of the life
9 of an unborn human being.

10 (b) Any person who violates paragraph (a) of this subsection shall be guilty of a
11 Class D felony.

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

13 (a) For a licensed physician to perform a medical procedure necessary in
14 reasonable medical judgment to prevent the death or substantial risk of death
15 due to a physical condition, or to prevent the serious, permanent impairment
16 of a life-sustaining organ of a pregnant woman. However, the physician shall
17 make reasonable medical efforts under the circumstances to preserve both the
18 life of the mother and the life of the unborn human being in a manner
19 consistent with reasonable medical practice;~~[-or]~~

20 (b) *There is definitive evidence that the unborn human being the pregnant*
21 *woman is carrying has an abnormality that is incompatible with life outside*
22 *of the womb of the mother as provided in Sections 3 and 7 of this Act;*

23 (c) *The physician reasonably believes the pregnancy is the result of rape or*
24 *incest and the probable gestational age of the unborn human being is less*
25 *than fifteen (15) weeks; or*

26 (d) Medical treatment provided to the mother by a licensed physician which
27 results in the accidental or unintentional injury or death to the unborn human

1 being.

2 (5) Nothing in this section may be construed to subject the pregnant mother upon
3 whom any abortion is performed or attempted to any criminal conviction and
4 penalty.

5 (6) Nothing in this section may be construed to prohibit the sale, use, prescription, or
6 administration of a contraceptive measure, drug, or chemical, if it is administered
7 prior to the time when a pregnancy could be determined through conventional
8 medical testing and if the contraceptive measure is sold, used, prescribed, or
9 administered in accordance with manufacturer instructions.

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

15 ➔Section 11. KRS 311.7735 is amended to read as follows:

16 (1) An abortion-inducing drug as defined in KRS 311.7731 shall not be provided to a
17 pregnant patient without the informed consent of the patient. Informed consent shall
18 be obtained at least twenty-four (24) hours before the abortion-inducing drug is
19 provided to a pregnant patient, except if *the qualified physician reasonably*
20 *believes the pregnancy is the result of rape or incest and the probable gestational*
21 *age of the unborn child is less than fifteen (15) weeks, or*, in the reasonable
22 medical judgment of the qualified physician, compliance with this subsection would
23 pose a risk of:

24 (a) The death of the pregnant patient; or

25 (b) The substantial and irreversible physical impairment of a major bodily
26 function, not including psychological or emotional conditions, of the pregnant
27 patient.

- 1 (2) A qualified physician shall use a form created by the Cabinet for Health and Family
2 Services to obtain the consent required prior to providing an abortion-inducing drug
3 as defined in KRS 311.7731 and submit the completed form to the cabinet.
- 4 (3) A consent form is not valid and consent is not sufficient, unless:
- 5 (a) The patient initials each entry, list, description, or declaration required to be
6 on the consent form;
- 7 (b) The patient signs the consent statement; and
- 8 (c) The qualified physician signs the qualified physician declaration.
- 9 (4) The consent form shall include but is not limited to the following:
- 10 (a) The probable gestational age of the unborn child as determined by both
11 patient history and by ultrasound results used to confirm gestational age;
- 12 (b) A detailed description of the steps to complete the drug-induced abortion;
- 13 (c) A detailed list of the risks related to the specific abortion-inducing drug as
14 defined in KRS 311.7731 or drugs to be used, including potential
15 complications and adverse events as defined in KRS 311.7731;
- 16 (d) If the pregnant patient was Rh negative, the pregnant patient was provided
17 with an Rh negative information fact sheet and offered treatment with the
18 prevailing medical standard of care to prevent harmful fetal or child outcomes
19 or Rh incompatibility in future pregnancies;
- 20 (e) That the risks of complications from a medication abortion, including
21 incomplete abortion, increase with advancing gestational age;
- 22 (f) That it may be possible to reverse the effects of the abortion-inducing drug if
23 desired but that this should be done as soon as possible;
- 24 (g) That the patient may see the remains of the unborn child in the process of
25 completing the abortion;
- 26 (h) That initial studies suggest that children born after reversing the effects of the
27 abortion-inducing drug mifeprex/mifepristone have no greater risk of birth

- 1 defects than the general population;
- 2 (i) That initial studies suggest that there is no increased risk of maternal mortality
3 after reversing the effects of the abortion-inducing drug
4 mifeprex/mifepristone;
- 5 (j) That information on and assistance with reversing the effects of abortion-
6 inducing drugs are available in the state-prepared materials and on the
7 cabinet's website~~[Web site]~~;
- 8 (k) An "acknowledgment of risks and consent statement" which the pregnant
9 patient shall sign. The pregnant patient shall initial by each statement and the
10 statement shall include but is not limited to the following declarations:
- 11 1. That the pregnant patient understands that the abortion-inducing drug
12 regimen or procedure is intended to end the pregnancy and will result in
13 the death of the unborn child;
- 14 2. That the pregnant patient is not being forced to have an abortion, has the
15 choice not to have the abortion, and may withdraw consent to the
16 abortion-inducing drug regimen even after it has been provided;
- 17 3. That the pregnant patient understands that the abortion-inducing drug to
18 be provided has specific risks and may result in specific complications;
- 19 4. That the pregnant patient has been given the opportunity to ask
20 questions about the pregnancy, the development of the unborn child,
21 alternatives to abortion, the abortion-inducing drug or drugs to be used,
22 and the risks and complications possible when abortion-inducing drugs
23 are provided;
- 24 5. That the pregnant patient was specifically told that information on the
25 potential ability of qualified medical professionals to reverse the effects
26 of a drug-induced abortion is available and where to obtain information
27 for assistance in locating a medical professional that can aid in the

- 1 reversal of a drug-induced abortion;
- 2 6. That the pregnant patient has been provided access to printed materials
- 3 on informed consent for abortion;
- 4 7. That the pregnant patient has been given the name and phone number of
- 5 the associated physician who has agreed to provide medical care and
- 6 treatment in the event of complications associated with the abortion-
- 7 inducing drug regimen or procedure;
- 8 8. That the qualified physician will schedule an in-person follow-up visit
- 9 for the patient for approximately seven (7) to fourteen (14) days after
- 10 providing the abortion-inducing drug or drugs to confirm that the
- 11 pregnancy is completely terminated and to assess any degree of bleeding
- 12 and other complications;
- 13 9. That the pregnant patient has received or been given sufficient
- 14 information to give informed consent to the abortion-inducing drug
- 15 regimen or procedure; and
- 16 10. That the patient has a private right of action to sue the qualified
- 17 physician under the laws of Kentucky if the patient feels coerced or
- 18 misled prior to obtaining an abortion;
- 19 (l) A qualified physician's declaration that states that the qualified physician has
- 20 explained the abortion-inducing drug or drugs to be provided, has provided all
- 21 of the information required in paragraph (k) of this subsection, and has
- 22 answered all of the woman's questions, shall be signed by the qualified
- 23 physician; and
- 24 (m) If prescribing for the purpose of inducing an abortion, a qualified physician
- 25 shall include the following on the prescription for an abortion-inducing drug:
- 26 "For The Purpose of Abortion Inducement".
- 27 ➔Section 12. KRS 311.782 is amended to read as follows:

- 1 (1) No person shall intentionally perform or induce or intentionally attempt to perform
2 or induce an abortion on a pregnant woman when the probable gestational age of
3 the unborn child is fifteen (15) weeks or greater.
- 4 (2) It shall be an affirmative defense to a charge under subsection (1) of this section
5 that the abortion was intentionally performed or induced or intentionally attempted
6 to be performed or induced by a physician and that the physician determined, in the
7 physician's reasonable medical judgment, based on the facts known to the physician
8 at that time, that ~~either of the following applied~~:
- 9 (a) The probable gestational age of the unborn child was less than fifteen (15)
10 weeks; ~~or~~
- 11 (b) The abortion was necessary to prevent the death of the pregnant woman or to
12 avoid a serious risk of the substantial and irreversible impairment of a major
13 bodily function of the pregnant woman. No abortion shall be necessary if it is
14 based on a claim or diagnosis that the pregnant woman will engage in conduct
15 that would result in her death or in substantial and irreversible impairment of
16 a major bodily function or if it is based on any reason related to her mental
17 health;
- 18 **(c) There is definitive evidence that the unborn child the pregnant woman is**
19 **carrying has an abnormality that is incompatible with life outside of the**
20 **womb of the mother as provided in Sections 3 and 7 of this Act; or**
- 21 **(d) 1. The physician reasonably believes the pregnancy is a result of rape or**
22 **incest and the probable gestational age of the unborn child is less than**
23 **fifteen (15) weeks; and**
- 24 **2. Before the abortion, the physician certifies, after proper examination,**
25 **the abortion is being performed at the woman's request because the**
26 **pregnancy is the result of rape or incest. All facts and reasons**
27 **supporting the certification shall be set forth by the physician in**

1 writing and attached to the certificate.

2 (3) (a) Except when a medical emergency exists that prevents compliance with KRS
3 311.783, the affirmative defense set forth in subsection (2)(a) of this section
4 does not apply unless the physician who intentionally performs or induces or
5 intentionally attempts to perform or induce the abortion makes a
6 determination of the probable gestational age of the unborn child as required
7 by KRS 311.783(1) or relied upon such a determination made by another
8 physician and certifies in writing, based on the results of the tests performed,
9 that in the physician's reasonable medical judgment the unborn child's
10 probable gestational age is less than fifteen (15) weeks.

11 (b) Except when a medical emergency exists that prevents compliance with one
12 (1) or more of the following conditions, the affirmative defense set forth in
13 subsection (2)(b) of this section does not apply unless the physician who
14 intentionally performs or induces or intentionally attempts to perform or
15 induce the abortion complies with all of the following conditions:

16 1. The physician who intentionally performs or induces or intentionally
17 attempts to perform or induce the abortion certifies in writing that, in the
18 physician's reasonable medical judgment, based on the facts known to
19 the physician at that time, the abortion is necessary to prevent the death
20 of the pregnant woman or to avoid a serious risk of the substantial and
21 irreversible impairment of a major bodily function of the pregnant
22 woman;

23 2. A different physician not professionally related to the physician
24 described in subparagraph 1. of this paragraph certifies in writing that,
25 in that different physician's reasonable medical judgment, based on the
26 facts known to that different physician at that time, the abortion is
27 necessary to prevent the death of the pregnant woman or to avoid a

- 1 serious risk of the substantial and irreversible impairment of a major
2 bodily function of the pregnant woman;
- 3 3. The physician intentionally performs or induces or intentionally
4 attempts to perform or induce the abortion in a hospital or other health
5 care facility that has appropriate neonatal services for premature infants;
- 6 4. The physician who intentionally performs or induces or intentionally
7 attempts to perform or induce the abortion terminates or attempts to
8 terminate the pregnancy in the manner that provides the best opportunity
9 for the unborn child to survive, unless that physician determines, in the
10 physician's reasonable medical judgment, based on the facts known to
11 the physician at that time, that the termination of the pregnancy in that
12 manner poses a greater risk of death of the pregnant woman or a greater
13 risk of the substantial and irreversible impairment of a major bodily
14 function of the pregnant woman than would other available methods of
15 abortion;
- 16 5. The physician certifies in writing the available method or techniques
17 considered and the reasons for choosing the method or technique
18 employed; and
- 19 6. The physician who intentionally performs or induces or intentionally
20 attempts to perform or induce the abortion has arranged for the
21 attendance in the same room in which the abortion is to be performed or
22 induced or attempted to be performed or induced at least one (1) other
23 physician who is to take control of, provide immediate medical care for,
24 and take all reasonable steps necessary to preserve the life and health of
25 the unborn child immediately upon the child's complete expulsion or
26 extraction from the pregnant woman.
- 27 (4) The state Board of Medical Licensure shall revoke a physician's license to practice

1 medicine in this state if the physician violates or fails to comply with this section.

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

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

18 ➔Section 13. KRS 311.787 is amended to read as follows:

19 (1) As used in this section:

20 (a) "Bodily dismemberment, crushing, or human vivisection" means a procedure
21 in which a person, with the purpose of causing the death of an unborn child,
22 dismembers the living unborn child and extracts portions, pieces, or limbs of
23 the unborn child from the uterus through the use of clamps, grasping forceps,
24 tongs, scissors, or a similar instrument that, through the convergence of two
25 (2) rigid levers, slices, crushes, or grasps, or performs any combination of
26 those actions on, any portion, piece, or limb of the unborn child's body to cut
27 or separate the portion, piece, or limb from the body. The term includes a

1 procedure that is used to cause the death of an unborn child and in which
2 suction is subsequently used to extract portions, pieces, or limbs of the unborn
3 child after the unborn child's death;

4 (b) "Medical emergency" has the same meaning as in KRS 311.720;

5 (c) "Probable gestational age" has the same meaning as in KRS 311.720; and

6 (d) "Unborn child" has the same meaning as in KRS 311.781.

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

9 (a) That will result in the bodily dismemberment, crushing, or human vivisection
10 of the unborn child; and

11 (b) When the probable gestational age of the unborn child is eleven (11) weeks or
12 greater;

13 except in the case of a medical emergency, or when there is definitive evidence
14 that the unborn child the pregnant woman is carrying has an abnormality that is
15 incompatible with life outside of the womb or the mother as provided under
16 Sections 3 and 7 of this Act.

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