

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

EMW WOMEN’S SURGICAL CENTER,
P.S.C., on behalf of itself, its staff, and its
patients; ERNEST W. MARSHALL, M.D., on
behalf of himself and his patients,

Plaintiffs,

v.

ANDREW G. BESHEAR, in his official
capacity as Attorney General of the
Commonwealth of Kentucky; ADAM MEIER,
in his official capacity as Secretary of
Kentucky’s Cabinet for Health and Family
Services; MICHAEL S. RODMAN, in his
official capacity as Executive Director of the
Kentucky Board of Medical Licensure; and
THOMAS B. WINE, in his official capacity as
Commonwealth’s Attorney for the 30th Judicial
Circuit of Kentucky,

Defendants.

Case No.: 3:19-cv-00178-DJH

VERIFIED AMENDED COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof state the following:

INTRODUCTION

1. This is a constitutional challenge to Senate Bill 9 (hereinafter “6-week Ban”), attached as Exhibit A, and House Bill 5 (hereinafter “Reason Ban”), attached as Exhibit B. In direct conflict with *Roe v. Wade*, 410 U.S. 113 (1973), and more than four decades of precedent affirming *Roe*’s central holding, the two Bans criminalize pre-viability abortions. Specifically, the 6-week

Ban makes it a crime to perform an abortion after a fetal heartbeat can be detected, which generally occurs around six weeks in pregnancy, when many people are unaware they are pregnant. In so doing, the 6-week Ban will prohibit approximately 90% of the abortions currently performed in the Commonwealth. Furthermore, the Reason Ban makes it a crime to provide an abortion for a woman whose decision is influenced by either a diagnosis or the potential for a diagnosis of a disability, or the sex, race, color, or national origin of the embryo or fetus. Both Bans violate the Fourteenth Amendment to the United States Constitution, and will inflict irreparable harm on Kentuckians if they are allowed to take effect.

2. The Kentucky Legislature passed the 6-week Ban on March 14, 2019 and the Reason Ban on March 13, 2019, and will send them to Governor Bevin for his signature. Because of the Bans' unusual "emergency" clauses, they will take effect immediately upon his signature, instantly criminalizing most abortions in the Commonwealth. Governor Bevin will sign the Bans. Indeed, he said, about the 6-week Ban, that "I hope to be on my desk here soon so I can sign this into law."¹ Furthermore, during a press interview about another abortion restriction, he said that he would "love to see" the time when people are unable to obtain abortion in the Commonwealth.²

3. Unless this Court immediately grants a temporary restraining order or preliminary or permanent injunction, Plaintiffs will be forced to immediately turn away patients seeking abortion care.

4. Women seek abortion for a variety of reasons, including to care for their existing children or to enable them to leave an abusive partner. Each woman has her own, deeply personal

¹ <https://www.facebook.com/GovMattBevin/videos/398571394240662>.

² Benjamin Fearnow, *Republican Governor Blames Mass Shootings on Zombies, Abortions, Us 'Culture Of Death'—Not Guns*, Newsweek, Nov. 14, 2018, <https://www.newsweek.com/matt-bevin-zombies-abortion-death-obsessed-mass-shootings-culture-kentucky-1215778>.

reasons for making her abortion decision. Absent an immediate injunction, the Bans will prevent Plaintiffs' patients from exercising their fundamental constitutional right to decide whether to have an abortion prior to viability, causing them irreparable harm.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

7. Venue is appropriate under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occur in this judicial district.

PLAINTIFFS

8. Plaintiff EMW Women's Surgical Center, P.S.C. ("EMW"), a Kentucky corporation located in Jefferson County (Louisville), is the sole licensed abortion facility located in Kentucky. EMW has been providing reproductive health care, including abortion, since the 1980s. EMW sues on behalf of itself, its physicians, staff, and its patients.

9. Plaintiff Ernest W. Marshall, M.D., is the owner of EMW, where he provides abortion, and he is a board-certified obstetrician-gynecologist. He sues on his own behalf and on behalf of his patients.

DEFENDANTS

10. Defendant Andrew G. Beshear is the Attorney General of the Commonwealth of Kentucky and, as such, is the Commonwealth's chief law enforcement officer. In his capacity as Attorney General, Defendant Beshear may initiate or participate in criminal prosecutions for violations of the Bans at the request of, *inter alia*, the Governor, any court of the

Commonwealth, or local officials. KRS 15.190, 15.200. Defendant Beshear is likewise charged with seeking injunctive relief against “abortion facilities” to “prevent violations of the provisions of KRS Chapter 216B regarding abortion facilities or the administrative regulations promulgated in furtherance thereof.” KRS 15.241. Those regulations include the requirement that all abortion facilities ensure “compliance with . . . state . . . laws,” including the Bans. 902 KAR 20:360, § 5(1)(a). Defendant Beshear is sued in his official capacity.

11. Defendant Adam Meier is the secretary of the Cabinet for Health and Family Services (“the Cabinet”) – an agency of the Commonwealth of Kentucky. In his capacity as secretary of the Cabinet, Defendant Meier is charged with, *inter alia*, oversight and licensing of abortion providers and the regulatory enforcement of those facilities. KRS 216B.0431(1); 902 KAR 20:360, § 5(1)(a). The Cabinet’s regulations include the requirement that all abortion facilities ensure “compliance with . . . state . . . laws,” including the Bans. 902 KAR. 20:360, § 5(1)(a). Defendant Meier is sued in his official capacity.

12. Defendant Michael S. Rodman serves as Executive Director of the Kentucky Board of Medical Licensure (“KBML” or “the Board”), which is located in Jefferson County. Defendant Rodman and the Board possess authority to pursue disciplinary action up to and including license revocation against Kentucky physicians for violating the Bans. KRS 311.565; KRS 311.606. Defendant Rodman is sued in his official capacity.

13. Defendant Thomas B. Wine serves as Commonwealth’s Attorney for the 30th Judicial Circuit of Kentucky. In this capacity, Defendant Wine has authority to enforce the Bans’ criminal penalties in Jefferson County, where Plaintiffs are located. *See* KRS 15.725(1); KRS 23A.010(1). Defendant Wine is sued in his official capacity.

STATUTORY FRAMEWORK

6-Week Ban

14. If a woman's pregnancy is in the uterus, the 6-week Ban requires the doctor who intends to perform an abortion to determine whether there is a fetal heartbeat, and if there is a heartbeat, it is a crime to "caus[e] or abet[] the termination of" the pregnancy. S.B. 9 § 4(1), 6(1).

15. The 6-week Ban has only two very limited exceptions. It permits abortion after a heartbeat is detected only if the abortion is necessary to 1) prevent the woman's death, or 2) to prevent a "substantial and irreversible impairment of a major bodily function." S.B. 9 § 6(2)(a). "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." KRS 311.781(8).

16. A violation of the 6-week Ban is a Class D felony, which is punishable by imprisonment of one to five years. KRS 311.990(22)(23); KRS 532.060(2)(d). A woman also may bring a civil action for violation of the 6-week Ban. S.B. 9 § 9.

17. The 6-week Ban takes effect immediately upon Governor Bevin's signature. There is no requirement that Governor Bevin sign bills in public or notify the public immediately upon signing a bill. In fact, Governor Bevin signed the last abortion bill, House Bill 454 (2018), which took effect immediately, in private and without notification to the public or EMW. As a result, it is impossible for Plaintiffs to know precisely when the 6-week Ban has taken effect.

Reason Ban

18. The Reason Ban makes it a crime for any person to “intentionally perform or induce or attempt to perform or induce an abortion on a pregnant woman if the person has knowledge that the pregnant woman is seeking the abortion, in whole or in part, because of” the sex, race, color, national origin, or diagnosis or potential diagnosis of Down syndrome or “any other disability.” The Reason Ban defines “any other disability” broadly to include “any disease, defect, or disorder, whether or not genetically inherited.” It then lists some conditions that are considered “disabilit[ies],” but makes clear that the term “is not limited to those conditions.” The only exclusion from the term is for “lethal fetal anomalies,” a term that is not defined by the Reason Ban. H.B. 5 §1.

19. The Reason Ban provides an extremely limited exception “in the case of a medical emergency.” A “medical emergency” is defined as “any condition which, on the basis of the physician’s good-faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.” H.B. 5 § 1(2); KRS 311.720.

20. A violation of the prohibition constitutes a Class D felony, which is punishable by imprisonment of one to five years. H.B. 5 § 4(22); KRS 532.060(2)(d).

21. Any physician who violates the prohibition is also subject to mandatory license revocation by the State Board of Medical Licensure. Any individual or licensed abortion facility is also subject to mandatory license revocation by the Cabinet for Health and Family Services for violation of the prohibition. H.B. 5 § 1(4)-1(5).

22. Furthermore, the Reason Ban mandates that the physician or the physician’s

delegate inform a pregnant woman at least twenty-four (24) hours prior to abortion before that “[i]t is illegal in Kentucky to intentionally perform an abortion, in whole or in part, because of the sex of the unborn child; the race, color, or national origin of the unborn child; or the diagnosis, or potential diagnosis, of Down syndrome or any other disability.” H.B. 5 § 3(4).

23. Any physician who fails to abide by this provision of the Reason Ban is subject to potential medical license denial, probation, suspension, limitation, restriction, or revocation by the State Board of Medical Licensure. KRS 311.725; KRS 311.595.

24. The Reason Ban, like the 6-week Ban, takes effect immediately upon Governor Bevin’s signature.

FACTUAL ALLEGATIONS

25. Women seek abortions for a variety of deeply personal reasons, including familial, medical, and financial. Some women have abortions because they conclude that it is not the right time in their lives to have a child or to add to their families: For example, some decide to end a pregnancy because they want to pursue their education; some because they feel they lack the necessary economic resources or level of partner support or stability; some because they are concerned that adding a children to their family will make them less able to adequately provide and care for their existing children. Some women seek abortions to preserve their life or health; some because they have become pregnant as a result of rape; and others because they decide not to have children at all. Some women decide to have an abortion because of an indication or diagnosis of a fetal medical condition or anomaly. Some families do not feel they have the resources—financial, medical, educational, or emotional—to care for a child with special needs or to simultaneously provide for the children they already have. The decision to terminate a pregnancy for any reason is motivated by a combination of diverse, complex, and

interrelated factors that are intimately related to the individual woman's values and beliefs, culture and religion, health status and reproductive history, familial situation, and resources and economic stability.

26. Approximately one in four women in this country will have an abortion by age forty-five. A majority of women having abortions (61%) already have at least one child, while most (66%) also plan to have a child or additional children in the future.

27. Legal abortion is one of the safest medical procedures in the United States, and is substantially safer than continuing a pregnancy through to childbirth.

28. Pregnancy is commonly measured from the first day of a woman's last menstrual period ("lmp"). A woman's menstrual cycle is usually four weeks. Fertilization typically occurs around two weeks lmp. The medical profession considers pregnancy to actually begin when a fertilized egg implants in the uterus, typically around three weeks lmp, approximately a week before a woman with a typical and regular menstrual cycle will expect to get her period. A full term pregnancy is approximately forty weeks as measured from the woman's lmp.

29. In a normally developing embryo, cells that form the basis for development of the heart later in gestation produce cardiac activity that can be detected with ultrasound.

30. In early pregnancy, Plaintiffs typically performs a vaginal ultrasound to date the pregnancy.

31. Using vaginal ultrasound, cardiac activity is generally detectible beginning at approximately six weeks lmp.

32. Prior to the time a heartbeat is generally detectible, many women do not know they are pregnant. This is particularly true for women who have irregular periods, who have certain medical conditions, who have been using contraceptives, or who are breastfeeding.

33. Even for women with highly regular periods, six weeks lmp will be just two weeks after they have missed their period.

34. Six weeks is a previability point in pregnancy. The earliest that fetuses can become viable is months after this point, typically around 24 weeks lmp.

35. Current Kentucky law prohibits abortion after 21.6 weeks lmp, which is before viability. KRS 311.782.

36. Approximately 90% of abortions at EMW take place after six weeks lmp.

37. Prior to performing an abortion, Plaintiffs provide non-directive patient counseling to each patient, which means they listen to, support, and provide information to the patient, without directing her course of action. That process is designed to ensure that patients are well-informed with respect to all of their options, including terminating the pregnancy; carrying the pregnancy to term and parenting; and carrying to term and placing the baby for adoption. In addition, the process is designed to ensure that the woman's choice is voluntary and not coerced.

38. Although some of Plaintiffs' patients disclose at least some information about the reasons they are seeking an abortion during these non-directive discussions, Plaintiffs do not require that patients disclose any or all of their reasons for seeking an abortion.

39. Plaintiffs are aware that some of their patients seek abortions based at least in part on a potential or confirmed prenatal diagnosis of a disability as defined by the Reason Ban. Under the Reason Ban, these patients would be prohibited from obtaining an abortion.

40. The Reason Ban prohibits intentionally performing or attempting to perform an abortion if a person "has knowledge" that a patient "is seeking the abortion in whole or in part"

because of the prohibited reasons, but fails to define what constitutes “knowledge” that gives rise to the Reason Ban’s severe criminal and licensure penalties.

41. Without any standardized or objective definition of “having knowledge” of the reason for a patient’s decision, Plaintiffs cannot know the standard by which Defendants will ultimately judge their conduct.

42. Because it is unclear when a person has “knowledge” that a patient is seeking an abortion under prohibited circumstances, Plaintiffs cannot be certain that their good faith efforts to comply with the Reason Ban meet its requirements, and thus run the risk of devastating criminal penalties and mandatory license revocation. Indeed, violating the Reason Ban is a felony, and penalties for violation include mandatory revocation of the physician’s and abortion facility’s licenses. Given the Cabinet for Health and Family Services’ particular hostility towards Plaintiffs, Plaintiffs have particular concern that their medical care decisions will be scrutinized under an unpredictable standard.

43. While the Reason Ban lists a number of specific disabilities, including Down Syndrome, dwarfism, and amelia, the Reason Ban’s prohibition is not limited to those medical conditions. Rather, the Reason Ban makes it a crime for a woman to have an abortion if her decision is motivated in whole *or in part* by the diagnosis or potential diagnosis of “any disability,” including but not limited to any physical, mental, or intellectual disability, or any physical or mental disease.

44. The American College of Obstetricians and Gynecologists (“ACOG”), which is the preeminent professional association for OB/GYNs, recommends that all women should be counseled about prenatal genetic screening and diagnostic testing options as early as possible in the pregnancy, ideally at the first prenatal visit. ACOG recommends that all women, regardless

of age, be offered the option of screening or diagnostic testing for fetal genetic disorders. ACOG also recommends that women with positive screening test results be offered further counseling and diagnostic testing.

45. The Reason Ban provides an exception for circumstances where a woman has decided to have an abortion because of diagnosis or potential diagnosis of “lethal fetal anomaly,” but that term is not statutorily defined. It is unclear whether this exception from criminal liability applies, for example, only to circumstances when the fetus would not be born alive or whether it includes circumstances when the child is likely to die would die within the first few months or years of life.

46. Thus, Plaintiffs face a very real threat of arbitrary enforcement, particularly given Defendants’ repeated efforts to eliminate all access to abortion in the Commonwealth.³

47. The second exception for “medical emergencies” is extremely limited, and would not protect a patient who needs an abortion to protect her health but was not yet facing a medical emergency.

48. For example, some women with high-risk pregnancies—because of advanced maternal age or some other underlying medical condition—have complications that lead them to end their pregnancies to preserve their lives or health. In some of these situations, there is also a diagnosis or potential diagnosis of a fetal anomaly.

49. There are numerous conditions that pose a substantial mortality risk in pregnancy, including pulmonary hypertension and maternal cardiac disease, some with mortality risks as high as 50%.

³ Defendants have repeatedly targeted Plaintiffs, and tried to eliminate abortion access in Kentucky. Plaintiffs now operate the only abortion clinic in the Commonwealth. See Sheryl Gay Stolberg, *Legal Fight Could Make Kentucky Only State With No Abortion Clinic*, N.Y. Times, May 2, 2017, <https://www.nytimes.com/2017/05/02/us/kentucky-abortion-clinic.html>.

50. The Reason Ban’s extremely narrow exception for “medical emergencies” would not allow a woman whose health or life was at risk to decide to have an abortion if the diagnosis or potential diagnosis of a fetal anomaly was part of her decision, until her condition has so deteriorated as to constitute a medical emergency, at which point the procedure would be permitted under this law. This would unnecessarily jeopardize the health and even the life of the woman.

51. If a woman is forced to continue a pregnancy against her will, it can pose a risk to her physical, mental, and emotional health, and even her life, as well as to the stability and wellbeing of her family, including her existing children.

52. Absent an injunction, Plaintiffs will have no choice but to turn away patients in need of abortion care. The constitutional rights of Kentucky women would suffer irreparably, as would their well-being and dignity. The Bans irreparably harm Plaintiffs, Plaintiffs’ staff, and their patients.

CLAIMS FOR RELIEF

COUNT I

(Substantive Due Process – 6-Week Ban and Reason Ban)

53. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 52.

54. By imposing bans on abortion prior to viability, the 6-week Ban and the Reason Ban violates Kentuckians’ right to privacy guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT II

(Due Process—Vagueness – Reason Ban)

55. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 52.

56. By failing to give Plaintiffs fair notice of how to comply with the mandates of the Reason Ban, and imposing serious criminal and licensure penalties, it violates Plaintiffs' right to due process as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

INJUNCTIVE RELIEF

57. If the Bans are allowed to take effect, Plaintiffs and their patients will be subject to irreparable harm for which no adequate remedy at law exists.

58. Enforcement of the Bans will cause irreparable harm by threatening Plaintiffs and their staff with substantial criminal penalties for providing abortion services; and by preventing Plaintiffs' patients from obtaining an abortion in Kentucky, thereby causing them to suffer significant medical, emotional, and other harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

- A. To immediately issue a temporary restraining order and/or preliminary injunction, and a permanent injunction, restraining Defendants, their employees, agents, and successors in office from enforcing S.B. 9 and H.B. 5.
- B. To enter a judgment declaring that S.B. 9 and H.B. 5 violate the Fourteenth Amendment to the United States Constitution.
- C. To award Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988.
- D. To grant such other and further relief as the Court deems just and proper.

Dated: March 15, 2019

s/Amy D. Cabbage
Amy D. Cabbage
Ackerson & Yann, PLLC
734 West Main Street, Suite 200
Louisville, Kentucky 40202
(502) 583-7400
acabbage@ackersonlegal.com

Heather L. Gatnarek
ACLU of Kentucky
325 Main Street, Suite 2210
Louisville, Kentucky 40202
(502) 581-9746
heather@aclu-ky.org

Brigitte Amiri*
Jennifer Dalven*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2633
bamiri@aclu.org
jdalven@aclu.org

Leah Godesky*
O'Melveny & Myers
7 Times Square
New York, NY 10036
(212) 326-2000
lgodesky@omm.com

Kendall Turner*
O'Melveny & Myers
1625 Eye St. NW
Washington, DC 20006
(202) 383-5300
kendallturner@omm.com

**pro hac vice motions forthcoming*

ATTORNEYS FOR PLAINTIFFS

DECLARATION

I declare under penalty of perjury that the statements contained in the Complaint are true and accurate to the best of my knowledge and belief.

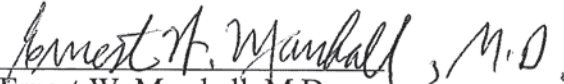

Ernest W. Marshall, M.D.

EXHIBIT A

UNOFFICIAL COPY

19 RS SB 9/GA

1 AN ACT relating to abortion and declaring an emergency.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
4 TO READ AS FOLLOWS:

5 *As used in Sections 1 to 11 of this Act:*

6 *(1) "Conception" means fertilization;*

7 *(2) "Contraceptive" means a drug, device, or chemical that prevents conception;*

8 *(3) "Fertilization" has the same meaning as in KRS 311.781;*

9 *(4) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic*
10 *contraction of the fetal heart within the gestational sac;*

11 *(5) "Fetus" means the human offspring developing during pregnancy from the*
12 *moment of conception and includes the embryonic stage of development;*

13 *(6) "Frivolous conduct" has the same meaning as in KRS 311.784;*

14 *(7) "Gestational age" means the age of an unborn human individual as calculated*
15 *from the first day of the last menstrual period of a pregnant woman;*

16 *(8) "Gestational sac" means the structure that comprises the extraembryonic*
17 *membranes that envelop the fetus and that is typically visible by ultrasound after*
18 *the fourth week of pregnancy;*

19 *(9) "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to*
20 *the placenta within the uterus of the pregnant woman;*

21 *(10) "Medical emergency" has the same meaning as in KRS 311.781;*

22 *(11) "Physician" has the same meaning as in KRS 311.720;*

23 *(12) "Pregnancy" means the human female reproductive condition that begins with*
24 *fertilization, when the woman is carrying the developing human offspring, and*
25 *that is calculated from the first day of the last menstrual period of the woman;*

26 *(13) "Serious risk of the substantial and irreversible impairment of a major bodily*
27 *function" has the same meaning as in KRS 311.781;*

UNOFFICIAL COPY

19 RS SB 9/GA

1 (14) "Spontaneous miscarriage" means the natural or accidental termination of a
 2 pregnancy and the expulsion of the fetus, typically caused by genetic defects in
 3 the fetus or physical abnormalities in the pregnant woman;

4 (15) "Standard medical practice" means the degree of skill, care, and diligence that a
 5 physician of the same medical specialty would employ in like circumstances. As
 6 applied to the method used to determine the presence of a fetal heartbeat for
 7 purposes of Section 4 of this Act, "standard medical practice" includes
 8 employing the appropriate means of detection depending on the estimated
 9 gestational age of the fetus and the condition of the woman and her pregnancy;
 10 and

11 (16) "Unborn child" and "unborn human individual" have the same meaning as
 12 "unborn child" has in KRS 311.781.

13 ➔SECTION 2. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
 14 TO READ AS FOLLOWS:

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

17 (1) As many as thirty percent (30%) of natural pregnancies end in spontaneous
 18 miscarriage;

19 (2) Less than five percent (5%) of all natural pregnancies end in spontaneous
 20 miscarriage after detection of fetal cardiac activity;

21 (3) Over ninety percent (90%) of intrauterine pregnancies survive the first trimester
 22 if cardiac activity is detected in the gestational sac;

23 (4) Nearly ninety percent (90%) of in vitro pregnancies do not survive the first
 24 trimester where cardiac activity is not detected in the gestational sac;

25 (5) Fetal heartbeat, therefore, has become a key medical predictor that an unborn
 26 human individual will reach live birth;

27 (6) Cardiac activity begins at a biologically identifiable moment in time, normally

UNOFFICIAL COPY

19 RS SB 9/GA

1 when the fetal heart is formed in the gestational sac;

2 (7) The Commonwealth of Kentucky has legitimate interests from the outset of the
 3 pregnancy in protecting the health of the woman and the life of an unborn
 4 human individual who may be born; and

5 (8) In order to make an informed choice about whether to continue her pregnancy,
 6 the pregnant woman has a legitimate interest in knowing the likelihood of the
 7 fetus surviving to full-term birth based upon the presence of cardiac activity.

8 ➔SECTION 3. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
 9 TO READ AS FOLLOWS:

10 Sections 4 to 6 of this Act apply only to intrauterine pregnancies.

11 ➔SECTION 4. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
 12 TO READ AS FOLLOWS:

13 (1) (a) A person who intends to perform or induce an abortion on a pregnant
 14 woman shall determine whether there is a detectable fetal heartbeat of the
 15 unborn human individual the pregnant woman is carrying. The method of
 16 determining the presence of a fetal heartbeat shall be consistent with the
 17 person's good-faith understanding of standard medical practice, provided
 18 that if administrative regulations have been promulgated under subsection
 19 (2) of this section, the method chosen shall be one that is consistent with the
 20 regulations.

21 (b) The person who determines the presence or absence of a fetal heartbeat
 22 shall record in the pregnant woman's medical record the estimated
 23 gestational age of the unborn human individual, the method used to test for
 24 a fetal heartbeat, the date and time of the test, and the results of the test.

25 (c) The person who performs the examination for the presence of a fetal
 26 heartbeat shall give the pregnant woman the option to view or hear the fetal
 27 heartbeat.

UNOFFICIAL COPY

19 RS SB 9/GA

1 (2) The secretary of the Cabinet for Health and Family Services may promulgate
 2 administrative regulations specifying the appropriate methods of performing an
 3 examination for the purpose of determining the presence of a fetal heartbeat of
 4 an unborn human individual based on standard medical practice. The
 5 regulations shall require only that an examination shall be performed externally.

6 (3) A person is not in violation of subsection (1) or (2) of this section if:

7 (a) The person has performed an examination for the purpose of determining
 8 the presence of a fetal heartbeat of an unborn human individual utilizing
 9 standard medical practice;

10 (b) The examination does not reveal a fetal heartbeat or the person has been
 11 informed by a physician who has performed the examination for a fetal
 12 heartbeat that the examination did not reveal a fetal heartbeat; and

13 (c) The person notes in the pregnant woman's medical records the procedure
 14 utilized to detect the presence of a fetal heartbeat.

15 ➔SECTION 5. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
 16 TO READ AS FOLLOWS:

17 (1) Except as provided in subsection (2) of this section, no person shall intentionally
 18 perform or induce an abortion on a pregnant woman before determining in
 19 accordance with subsection (1) of Section 4 of this Act whether the unborn
 20 human individual the pregnant woman is carrying has a detectable fetal
 21 heartbeat.

22 (2) (a) Subsection (1) of this section shall not apply to a physician who performs or
 23 induces the abortion if the physician believes that a medical emergency
 24 exists that prevents compliance with subsection (1) of this section.

25 (b) A physician who performs or induces an abortion on a pregnant woman
 26 based on the exception in paragraph (a) of this subsection shall make
 27 written notations in the pregnant woman's medical records of both of the

UNOFFICIAL COPY

19 RS SB 9/GA

1 following:

2 1. The physician's belief that a medical emergency necessitating the
3 abortion existed; and

4 2. The medical condition of the pregnant woman that prevented
5 compliance with subsection (1) of this section.

6 The physician shall maintain a copy of the notations in the physician's own
7 records for at least seven (7) years from the date the notations were made.

8 (3) A person is not in violation of subsection (1) of this section if the person acts in
9 accordance with subsection (1) of Section 4 of this Act and the method used to
10 determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

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

17 ➔SECTION 6. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
18 TO READ AS FOLLOWS:

19 (1) Except as provided in subsection (2) of this section, no person shall intentionally
20 perform or induce an abortion on a pregnant woman with the specific intent of
21 causing or abetting the termination of the life of the unborn human individual
22 the pregnant woman is carrying and whose fetal heartbeat has been detected in
23 accordance with subsection (1) of Section 4 of this Act.

24 (2) (a) Subsection (1) of this section shall not apply to a physician who performs a
25 medical procedure that, in the physician's reasonable medical judgment, is
26 designed or intended to prevent the death of the pregnant woman or to
27 prevent a serious risk of the substantial and irreversible impairment of a

1 major bodily function of the pregnant woman.

2 (b) A physician who performs a medical procedure as described in paragraph

3 (a) of this subsection shall, in writing:

4 1. Declare that the medical procedure is necessary, to the best of the
5 physician's reasonable medical judgment, to prevent the death of the
6 pregnant woman or to prevent a serious risk of the substantial and
7 irreversible impairment of a major bodily function of the pregnant
8 woman; and

9 2. Specify the pregnant woman's medical condition that the medical
10 procedure is asserted to address and the medical rationale for the
11 physician's conclusion that the medical procedure is necessary to
12 prevent the death of the pregnant woman or to prevent a serious risk
13 of the substantial and irreversible impairment of a major bodily
14 function of the pregnant woman.

15 (c) The physician shall place the written document required by paragraph (b)
16 of this subsection in the pregnant woman's medical records. The physician
17 shall maintain a copy of the document in the physician's own records for at
18 least seven (7) years from the date the document is created.

19 (3) A person is not in violation of subsection (1) of this section if the person acts in
20 accordance with subsection (1) of Section 4 of this Act and the method used to
21 determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

22 (4) A pregnant woman on whom an abortion is intentionally performed or induced
23 in violation of subsection (1) of this section is not guilty of violating subsection
24 (1) of this section or of attempting to commit, conspiring to commit, or complicity
25 in committing a violation of subsection (1) of this section. In addition, the
26 pregnant woman is not subject to a civil penalty based on the abortion being
27 performed or induced in violation of subsection (1) of this section.

UNOFFICIAL COPY

19 RS SB 9/GA

1 (5) Subsection (1) of this section shall not repeal or limit any other provision of the
2 Kentucky Revised Statutes that restricts or regulates the performance or
3 inducement of an abortion by a particular method or during a particular stage of
4 a pregnancy.

5 ➔SECTION 7. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
6 TO READ AS FOLLOWS:

7 (1) The provisions of this section are independent of the requirements of Sections 4
8 to 6 of this Act.

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

10 (a) If the reason for the abortion purported is to preserve the health of the
11 pregnant woman, specify in a written document the medical condition that
12 the abortion is asserted to address and the medical rationale for the person's
13 conclusion that the abortion is necessary to address that condition; or

14 (b) If the reason for the abortion is other than to preserve the health of the
15 pregnant woman, specify in a written document that maternal health is not
16 the purpose of the abortion.

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

22 ➔SECTION 8. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
23 TO READ AS FOLLOWS:

24 Nothing in Sections 1 to 11 of this Act prohibits the sale, use, prescription, or
25 administration of a drug, device, or chemical that is designed for contraceptive
26 purposes.

27 ➔SECTION 9. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED

UNOFFICIAL COPY

19 RS SB 9/GA

1 TO READ AS FOLLOWS:

2 (1) A woman on whom an abortion was performed or induced in violation of
3 subsection (1) of Section 5 of this Act or subsection (1) of Section 6 of this Act
4 may file a civil action for the wrongful death of her unborn child.

5 (2) A woman who prevails in an action filed under subsection (1) of this section shall
6 receive from the person who performed or induced the abortion:

7 (a) Damages in an amount equal to ten thousand dollars (\$10,000) or an
8 amount determined by the trier of fact after consideration of the evidence at
9 the mother's election at any time prior to final judgment subject to the same
10 defenses and requirements of proof, except any requirement of live birth, as
11 would apply to a suit for the wrongful death of a child who had been born
12 alive; and

13 (b) Court costs and reasonable attorney's fees.

14 (3) A determination that subsection (1) of Section 5 of this Act or subsection (1) of
15 Section 6 of this Act is unconstitutional shall be a defense to an action filed
16 under subsection (1) of this section alleging that the defendant violated the
17 subsection that was determined to be unconstitutional.

18 (4) If the defendant in an action filed under subsection (1) of this section prevails
19 and:

20 (a) The court finds that the commencement of the action constitutes frivolous
21 conduct;

22 (b) The court's finding in paragraph (a) of this subsection is not based on that
23 court or another court determining that subsection (1) of Section 5 of this
24 Act or subsection (1) of Section 6 of this Act is unconstitutional; and

25 (c) The court finds that the defendant was adversely affected by the frivolous
26 conduct;

27 the court shall award reasonable attorney's fees to the defendant.

UNOFFICIAL COPY

19 RS SB 9/GA

1 ➔SECTION 10. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
2 TO READ AS FOLLOWS:

3 *The Cabinet for Health and Family Services shall inspect the medical records from*
4 *any facility that performs abortions to ensure that the physicians or other persons who*
5 *perform abortions at that facility are in compliance with the reporting requirements*
6 *under Section 15 of this Act. The facility shall make the medical records available for*
7 *inspection to the Cabinet for Health and Family Services but shall not release any*
8 *personal medical information in the medical records that is prohibited by law.*

9 ➔SECTION 11. A NEW SECTION OF KRS 311.710 TO 311.830 IS CREATED
10 TO READ AS FOLLOWS:

11 *(1) It is the intent of the General Assembly that a court judgment or order*
12 *suspending enforcement of any provision of Sections 1 to 11 of this Act is not to*
13 *be regarded as tantamount to repeal of that provision.*

14 *(2) (a) After the issuance of a decision by the Supreme Court of the United States*
15 *overruling Roe v. Wade, 410 U.S. 113 (1973), the issuance of any other*
16 *court order or judgment restoring, expanding, or clarifying the authority of*
17 *states to prohibit or regulate abortion entirely or in part, or the effective*
18 *date of an amendment to the Constitution of the United States restoring,*
19 *expanding, or clarifying the authority of states to prohibit or regulate*
20 *abortion entirely or in part, the Attorney General may apply to the pertinent*
21 *state or federal court for either or both of the following:*

22 *1. A declaration that any one (1) or more sections specified in subsection*
23 *(1) of this section are constitutional; or*
24 *2. A judgment or order lifting an injunction against the enforcement of*
25 *any one (1) or more sections specified in subsection (1) of this section.*

26 *(b) If the Attorney General fails to apply for the relief described in paragraph*
27 *(a) of this subsection within thirty (30) days of an event described in*

UNOFFICIAL COPY

19 RS SB 9/GA

1 paragraph (a) of this subsection, any Commonwealth or county attorney
2 may apply to the appropriate state or federal court for such relief.

3 (3) If any provision of Sections 1 to 11 of this Act are held invalid, or if the
4 application of such provision to any person or circumstance is held invalid, the
5 invalidity of that provision does not affect any other provisions or applications of
6 Sections 1 to 11 of this Act that can be given effect without the invalid provision
7 or application, and to this end the provisions of Sections 1 to 11 of this Act are
8 severable as provided in KRS 446.090. In particular, it is the intent of the General
9 Assembly that:

10 (a) Any invalidity or potential invalidity of a provision of Sections 1 to 11 of this
11 Act is not to impair the immediate and continuing enforceability of the
12 remaining provisions; and

13 (b) The provisions of Sections 1 to 11 of this Act are not to have the effect of
14 repealing or limiting any other laws of this state, except as specified by
15 Sections 1 to 11 of this Act.

16 ➔Section 12. KRS 311.595 is amended to read as follows:

17 If the power has not been transferred by statute to some other board, commission, or
18 agency of this state, the board may deny an application or reregistration for a license;
19 place a licensee on probation for a period not to exceed five (5) years; suspend a license
20 for a period not to exceed five (5) years; limit or restrict a license for an indefinite period;
21 or revoke any license heretofore or hereafter issued by the board, upon proof that the
22 licensee has:

23 (1) Knowingly made or presented, or caused to be made or presented, any false,
24 fraudulent, or forged statement, writing, certificate, diploma, or other thing, in
25 connection with an application for a license or permit;

26 (2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion,
27 or conspiracy in connection with an examination for a license;

UNOFFICIAL COPY

19 RS SB 9/GA

- 1 (3) Committed, procured, or aided in the procurement of an unlawful abortion,
2 including a partial-birth abortion;
- 3 (4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or
4 without the Commonwealth of Kentucky of a crime as defined in KRS 335B.010, if
5 in accordance with KRS Chapter 335B;
- 6 (5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a
7 patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or
8 been found by the board to have had sexual contact as defined in KRS 510.010(7)
9 with a patient while the patient was under the care of the physician;
- 10 (6) Become addicted to a controlled substance;
- 11 (7) Become a chronic or persistent alcoholic;
- 12 (8) Been unable or is unable to practice medicine according to acceptable and
13 prevailing standards of care by reason of mental or physical illness or other
14 condition including but not limited to physical deterioration that adversely affects
15 cognitive, motor, or perceptive skills, or by reason of an extended absence from the
16 active practice of medicine;
- 17 (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely
18 to deceive, defraud, or harm the public or any member thereof;
- 19 (10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false
20 statement in any document executed in connection with the practice of his
21 profession;
- 22 (11) Employed, as a practitioner of medicine or osteopathy in the practice of his
23 profession in this state, any person not duly licensed or otherwise aided, assisted, or
24 abetted the unlawful practice of medicine or osteopathy or any other healing art;
- 25 (12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the
26 violation of, or conspired to violate any provision or term of any medical practice
27 act, including but not limited to the code of conduct promulgated by the board under

UNOFFICIAL COPY

19 RS SB 9/GA

- 1 KRS 311.601 or any other valid regulation of the board;
- 2 (13) Violated any agreed order, letter of agreement, final order, or emergency order
3 issued by the board;
- 4 (14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a
5 false or assumed name, or impersonated another practitioner of a like, similar, or
6 different name;
- 7 (15) Obtained a fee or other thing of value on the fraudulent representation that a
8 manifestly incurable condition could be cured;
- 9 (16) Willfully violated a confidential communication;
- 10 (17) Had his license to practice medicine or osteopathy in any other state, territory, or
11 foreign nation revoked, suspended, restricted, or limited or has been subjected to
12 other disciplinary action by the licensing authority thereof. This subsection shall not
13 require relitigation of the disciplinary action;
- 14 (18) Failed or refused, without legal justification, to practice medicine in a rural area of
15 this state in violation of a valid medical scholarship loan contract with the trustees
16 of the rural Kentucky medical scholarship fund;
- 17 (19) Given or received, directly or indirectly, from any person, firm, or corporation, any
18 fee, commission, rebate, or other form of compensation for sending, referring, or
19 otherwise inducing a person to communicate with a person licensed under KRS
20 311.530 to 311.620 in his professional capacity or for any professional services not
21 actually and personally rendered; provided, however, that nothing contained in this
22 subsection shall prohibit persons holding valid and current licenses under KRS
23 311.530 to 311.620 from practicing medicine in partnership or association or in a
24 professional service corporation authorized by KRS Chapter 274, as now or
25 hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees
26 and moneys received by them or by the partnership, corporation, or association in
27 accordance with the partnership agreement or the policies of the board of directors

UNOFFICIAL COPY

19 RS SB 9/GA

1 of the corporation or association. Nothing contained in this subsection shall
 2 abrogate the right of two (2) or more persons holding valid and current licenses
 3 under KRS 311.530 to 311.620 to receive adequate compensation for concurrently
 4 rendering professional care to a single patient and divide a fee, if the patient has full
 5 knowledge of this division and if the division is made in proportion to the services
 6 performed and responsibility assumed by each;

7 (20) Been removed, suspended, expelled, or disciplined by any professional medical
 8 association or society when the action was based upon what the association or
 9 society found to be unprofessional conduct, professional incompetence, malpractice,
 10 or a violation of any provision of KRS Chapter 311. This subsection shall not
 11 require relitigation of the disciplinary action;

12 (21) Been disciplined by a licensed hospital or medical staff of the hospital, including
 13 removal, suspension, limitation of hospital privileges, failing to renew privileges for
 14 cause, resignation of privileges under pressure or investigation, or other disciplinary
 15 action if the action was based upon what the hospital or medical staff found to be
 16 unprofessional conduct, professional incompetence, malpractice, or a violation of
 17 any provisions of KRS Chapter 311. This subsection shall not require relitigation of
 18 the disciplinary action;~~or~~

19 (22) Failed to comply with the requirements of KRS 213.101, 311.782, or 311.783 or
 20 failed to submit to the Vital Statistics Branch in accordance with a court order a
 21 complete report as described in KRS 213.101;

22 **(23) Failed to comply with any of the requirements regarding making or maintaining**
 23 **medical records or documents described in Section 4 or 7 of this Act; or**

24 **(24) Failed to comply with the requirements of Section 5 or 6 of this Act.**

25 ➔Section 13. KRS 311.990 (Effective until July 1, 2019) is amended to read as
 26 follows:

27 (1) Any person who violates KRS 311.250 shall be guilty of a violation.

UNOFFICIAL COPY

19 RS SB 9/GA

- 1 (2) Any college or professor thereof violating the provisions of KRS 311.300 to
2 311.350 shall be civilly liable on his bond for a sum not less than one hundred
3 dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation,
4 which may be recovered by an action in the name of the Commonwealth.
- 5 (3) Any person who presents to the county clerk for the purpose of registration any
6 license which has been fraudulently obtained, or obtains any license under KRS
7 311.380 to 311.510 by false or fraudulent statement or representation, or practices
8 podiatry under a false or assumed name or falsely impersonates another practitioner
9 or former practitioner of a like or different name, or aids and abets any person in the
10 practice of podiatry within the state without conforming to the requirements of KRS
11 311.380 to 311.510, or otherwise violates or neglects to comply with any of the
12 provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor.
13 Each case of practicing podiatry in violation of the provisions of KRS 311.380 to
14 311.510 shall be considered a separate offense.
- 15 (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- 16 (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under
17 this subsection of a holder of a license or permit shall result automatically in
18 permanent revocation of such license or permit.
- 19 (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or
20 interfering with the board or any of its members, or of any officer, agent, inspector,
21 or investigator of the board or the Cabinet for Health and Family Services, in the
22 administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class
23 A misdemeanor.
- 24 (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a
25 Class B misdemeanor, and, for each subsequent offense shall be a Class A
26 misdemeanor.
- 27 (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a

UNOFFICIAL COPY

19 RS SB 9/GA

1 violation, and, for each subsequent offense, be a Class B misdemeanor.

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

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

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

8 (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS
9 311.765 shall be guilty of a Class D felony. However, a physician shall
10 not be guilty of the criminal offense if the partial-birth abortion was
11 necessary to save the life of the mother whose life was endangered by a
12 physical disorder, illness, or injury.

13 2. A physician may seek a hearing before the State Board of Medical
14 Licensure on whether the physician's conduct was necessary to save the
15 life of the mother whose life was endangered by a physical disorder,
16 illness, or injury. The board's findings, decided by majority vote of a
17 quorum, shall be admissible at the trial of the physician. The board shall
18 promulgate administrative regulations to carry out the provisions of this
19 subparagraph.

20 3. Upon a motion of the physician, the court shall delay the beginning of
21 the trial for not more than thirty (30) days to permit the hearing, referred
22 to in subparagraph 2. of this paragraph, to occur.

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

27 (c) No penalty shall be assessed against the woman upon whom the partial-birth

UNOFFICIAL COPY

19 RS SB 9/GA

1 abortion is performed or attempted to be performed.

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

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

8 (14) Any person who performs an abortion upon a married woman either with
9 knowledge or in reckless disregard of whether KRS 311.735 applies to her and who
10 intentionally, knowingly, or recklessly fails to conform to the requirements of KRS
11 311.735 shall be guilty of a Class D felony.

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

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

14 (17) Any person who violates KRS 311.770 shall be guilty of a Class D felony.

15 (18) Except as provided in KRS 311.787(3), any person who intentionally violates KRS
16 311.787 shall be guilty of a Class D felony.

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

18 (20) Except as provided in KRS 311.782(6), any person who intentionally violates KRS
19 311.782 shall be guilty of a Class D felony.

20 (21) Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.

21 (22) **Any person who violates subsection (1) of Section 5 of this Act is guilty of a Class**
22 **D felony.**

23 **(23) Any person who violates subsection (1) of Section 6 of this Act is guilty of a Class**
24 **D felony.**

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

26 **(25)**~~(23)~~ Any professional medical association or society, licensed physician, or
27 hospital or hospital medical staff who shall have violated the provisions of KRS

UNOFFICIAL COPY

19 RS SB 9/GA

1 311.606 shall be guilty of a Class B misdemeanor.

2 ~~(26)~~~~(24)~~ Any administrator, officer, or employee of a publicly owned hospital or
3 publicly owned health care facility who performs or permits the performance of
4 abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.

5 ~~(27)~~~~(25)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.

6 ~~(28)~~~~(26)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a
7 Class A misdemeanor.

8 ~~(29)~~~~(27)~~ (a) Any person who fails to test organs, skin, or other human tissue which is
9 to be transplanted, or violates the confidentiality provisions required by KRS
10 311.281, shall be guilty of a Class A misdemeanor.

11 (b) Any person who has human immunodeficiency virus infection, who knows he
12 is infected with human immunodeficiency virus, and who has been informed
13 that he may communicate the infection by donating organs, skin, or other
14 human tissue who donates organs, skin, or other human tissue shall be guilty
15 of a Class D felony.

16 ~~(30)~~~~(28)~~ Any person who sells or makes a charge for any transplantable organ shall be
17 guilty of a Class D felony.

18 ~~(31)~~~~(29)~~ Any person who offers remuneration for any transplantable organ for use in
19 transplantation into himself shall be fined not less than five thousand dollars
20 (\$5,000) nor more than fifty thousand dollars (\$50,000).

21 ~~(32)~~~~(30)~~ Any person brokering the sale or transfer of any transplantable organ shall be
22 guilty of a Class C felony.

23 ~~(33)~~~~(31)~~ Any person charging a fee associated with the transplantation of a
24 transplantable organ in excess of the direct and indirect costs of procuring,
25 distributing, or transplanting the transplantable organ shall be fined not less than
26 fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars
27 (\$500,000).

UNOFFICIAL COPY

19 RS SB 9/GA

1 ~~(34)~~~~(32)~~ Any hospital performing transplantable organ transplants which knowingly
2 fails to report the possible sale, purchase, or brokering of a transplantable organ
3 shall be fined not less than ten thousand dollars (\$10,000) or more than fifty
4 thousand dollars (\$50,000).

5 ~~(35)~~~~(33)~~ (a) Any physician or qualified technician who violates KRS 311.727 shall
6 be fined not more than one hundred thousand dollars (\$100,000) for a first
7 offense and not more than two hundred fifty thousand dollars (\$250,000) for
8 each subsequent offense.

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

12 ~~(36)~~~~(34)~~ Any person who violates KRS 311.691 shall be guilty of a Class B
13 misdemeanor for the first offense, and a Class A misdemeanor for a second or
14 subsequent offense. In addition to any other penalty imposed for that violation, the
15 board may, through the Attorney General, petition a Circuit Court to enjoin the
16 person who is violating KRS 311.691 from practicing genetic counseling in
17 violation of the requirements of KRS 311.690 to 311.700.

18 ➔Section 14. KRS 311.990 (Effective July 1, 2019) is amended to read as
19 follows:

20 (1) Any person who violates KRS 311.250 shall be guilty of a violation.

21 (2) Any college or professor thereof violating the provisions of KRS 311.300 to
22 311.350 shall be civilly liable on his bond for a sum not less than one hundred
23 dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation,
24 which may be recovered by an action in the name of the Commonwealth.

25 (3) Any person who presents to the county clerk for the purpose of registration any
26 license which has been fraudulently obtained, or obtains any license under KRS
27 311.380 to 311.510 by false or fraudulent statement or representation, or practices

UNOFFICIAL COPY

19 RS SB 9/GA

- 1 podiatry under a false or assumed name or falsely impersonates another practitioner
2 or former practitioner of a like or different name, or aids and abets any person in the
3 practice of podiatry within the state without conforming to the requirements of KRS
4 311.380 to 311.510, or otherwise violates or neglects to comply with any of the
5 provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor.
6 Each case of practicing podiatry in violation of the provisions of KRS 311.380 to
7 311.510 shall be considered a separate offense.
- 8 (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- 9 (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under
10 this subsection of a holder of a license or permit shall result automatically in
11 permanent revocation of such license or permit.
- 12 (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or
13 interfering with the board or any of its members, or of any officer, agent, inspector,
14 or investigator of the board or the Cabinet for Health and Family Services, in the
15 administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class
16 A misdemeanor.
- 17 (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a
18 Class B misdemeanor, and, for each subsequent offense shall be a Class A
19 misdemeanor.
- 20 (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a
21 violation, and, for each subsequent offense, be a Class B misdemeanor.
- 22 (9) Each day of violation of either subsection of KRS 311.375 shall constitute a
23 separate offense.
- 24 (10) (a) Any person who intentionally or knowingly performs an abortion contrary to
25 the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
26 (b) Any person who intentionally, knowingly, or recklessly violates the
27 requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.

UNOFFICIAL COPY

19 RS SB 9/GA

- 1 (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS
2 311.765 shall be guilty of a Class D felony. However, a physician shall
3 not be guilty of the criminal offense if the partial-birth abortion was
4 necessary to save the life of the mother whose life was endangered by a
5 physical disorder, illness, or injury.
- 6 2. A physician may seek a hearing before the State Board of Medical
7 Licensure on whether the physician's conduct was necessary to save the
8 life of the mother whose life was endangered by a physical disorder,
9 illness, or injury. The board's findings, decided by majority vote of a
10 quorum, shall be admissible at the trial of the physician. The board shall
11 promulgate administrative regulations to carry out the provisions of this
12 subparagraph.
- 13 3. Upon a motion of the physician, the court shall delay the beginning of
14 the trial for not more than thirty (30) days to permit the hearing, referred
15 to in subparagraph 2. of this paragraph, to occur.
- 16 (b) Any person other than a physician who performs a partial-birth abortion shall
17 not be prosecuted under this subsection but shall be prosecuted under
18 provisions of law which prohibit any person other than a physician from
19 performing any abortion.
- 20 (c) No penalty shall be assessed against the woman upon whom the partial-birth
21 abortion is performed or attempted to be performed.
- 22 (12) Any person who intentionally performs an abortion with knowledge that, or with
23 reckless disregard as to whether, the person upon whom the abortion is to be
24 performed is an unemancipated minor, and who intentionally or knowingly fails to
25 conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
- 26 (13) Any person who negligently releases information or documents which are
27 confidential under KRS 311.732 is guilty of a Class B misdemeanor.

UNOFFICIAL COPY

19 RS SB 9/GA

- 1 (14) Any person who performs an abortion upon a married woman either with
 2 knowledge or in reckless disregard of whether KRS 311.735 applies to her and who
 3 intentionally, knowingly, or recklessly fails to conform to the requirements of KRS
 4 311.735 shall be guilty of a Class D felony.
- 5 (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- 6 (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- 7 (17) Any person who violates KRS 311.770 shall be guilty of a Class D felony.
- 8 (18) Except as provided in KRS 311.787(3), any person who intentionally violates KRS
 9 311.787 shall be guilty of a Class D felony.
- 10 (19) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- 11 (20) Except as provided in KRS 311.782(6), any person who intentionally violates KRS
 12 311.782 shall be guilty of a Class D felony.
- 13 (21) Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.
- 14 (22) **Any person who violates subsection (1) of Section 5 of this Act is guilty of a Class**
 15 **D felony.**
- 16 (23) **Any person who violates subsection (1) of Section 6 of this Act is guilty of a Class**
 17 **D felony.**
- 18 (24) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- 19 (25)~~(23)~~ Any professional medical association or society, licensed physician, or
 20 hospital or hospital medical staff who shall have violated the provisions of KRS
 21 311.606 shall be guilty of a Class B misdemeanor.
- 22 (26)~~(24)~~ Any administrator, officer, or employee of a publicly owned hospital or
 23 publicly owned health care facility who performs or permits the performance of
 24 abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- 25 (27)~~(25)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- 26 (28)~~(26)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a
 27 Class A misdemeanor.

UNOFFICIAL COPY

19 RS SB 9/GA

1 ~~(29)~~~~(27)~~ (a) Any person who fails to test organs, skin, or other human tissue which is
2 to be transplanted, or violates the confidentiality provisions required by KRS
3 311.281, shall be guilty of a Class A misdemeanor.

4 (b) Any person who has human immunodeficiency virus infection, who knows he
5 is infected with human immunodeficiency virus, and who has been informed
6 that he may communicate the infection by donating organs, skin, or other
7 human tissue who donates organs, skin, or other human tissue shall be guilty
8 of a Class D felony.

9 ~~(30)~~~~(28)~~ Any person who sells or makes a charge for any transplantable organ shall be
10 guilty of a Class D felony.

11 ~~(31)~~~~(29)~~ Any person who offers remuneration for any transplantable organ for use in
12 transplantation into himself shall be fined not less than five thousand dollars
13 (\$5,000) nor more than fifty thousand dollars (\$50,000).

14 ~~(32)~~~~(30)~~ Any person brokering the sale or transfer of any transplantable organ shall be
15 guilty of a Class C felony.

16 ~~(33)~~~~(31)~~ Any person charging a fee associated with the transplantation of a
17 transplantable organ in excess of the direct and indirect costs of procuring,
18 distributing, or transplanting the transplantable organ shall be fined not less than
19 fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars
20 (\$500,000).

21 ~~(34)~~~~(32)~~ Any hospital performing transplantable organ transplants which knowingly
22 fails to report the possible sale, purchase, or brokering of a transplantable organ
23 shall be fined not less than ten thousand dollars (\$10,000) or more than fifty
24 thousand dollars (\$50,000).

25 ~~(35)~~~~(33)~~ (a) Any physician or qualified technician who violates KRS 311.727 shall
26 be fined not more than one hundred thousand dollars (\$100,000) for a first
27 offense and not more than two hundred fifty thousand dollars (\$250,000) for

UNOFFICIAL COPY

19 RS SB 9/GA

1 each subsequent offense.

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

5 ~~(36)~~~~(34)~~ Any person who violates KRS 311.691 shall be guilty of a Class B
6 misdemeanor for the first offense, and a Class A misdemeanor for a second or
7 subsequent offense. In addition to any other penalty imposed for that violation, the
8 board may, through the Attorney General, petition a Circuit Court to enjoin the
9 person who is violating KRS 311.691 from practicing genetic counseling in
10 violation of the requirements of KRS 311.690 to 311.700.

11 ~~(37)~~~~(35)~~ Any person convicted of violating KRS 311.728 shall be guilty of a Class D
12 felony.

13 ➔Section 15. KRS 213.101 is amended to read as follows:

14 (1) (a) Each induced termination of pregnancy which occurs in the Commonwealth,
15 regardless of the length of gestation, shall be reported to the Vital Statistics
16 Branch by the person in charge of the institution within fifteen (15) days after
17 the end of the month in which the termination occurred. If the induced
18 termination of pregnancy was performed outside an institution, the attending
19 physician shall prepare and file the report within fifteen (15) days after the end
20 of the month in which the termination occurred.

21 (b) The report shall include all the information the physician is required to certify
22 or provide in writing or determine under KRS 311.782, ~~and~~ 311.783,
23 Sections 4, 5, 6, and 7 of this Act, but shall not include information which
24 will identify the physician, woman, or man involved.

25 (c) If a person other than the physician described in this subsection makes or
26 maintains a record required by Section 4, 5, 6, or 7 of this Act on the
27 physician's behalf or at the physician's direction, that person shall comply

UNOFFICIAL COPY

19 RS SB 9/GA

1 with the reporting requirement described in this subsection as if the person
2 were the physician.

- 3 (2) The name of the person completing the report and the reporting institution shall not
4 be subject to disclosure under KRS 61.870 to 61.884.
- 5 (3) By September 30 of each year, the Vital Statistics Branch shall issue a public report
6 that provides statistics for the previous calendar year compiled from all of the
7 reports covering that calendar year submitted to the cabinet in accordance with this
8 section for each of the items listed in subsection (1) of this section. Each annual
9 report shall also provide statistics for all previous calendar years in which this
10 section was in effect, adjusted to reflect any additional information from late or
11 corrected reports. The Vital Statistics Branch shall ensure that none of the
12 information included in the report could reasonably lead to the identification of any
13 pregnant woman upon whom an abortion was performed or attempted.
- 14 (4) (a) Any person or institution who fails to submit a report by the end of thirty (30)
15 days following the due date set in subsection (1) of this section shall be
16 subject to a late fee of five hundred dollars (\$500) for each additional thirty
17 (30) day period or portion of a thirty (30) day period the report is overdue.
- 18 (b) Any person or institution who fails to submit a report, or who has submitted
19 only an incomplete report, more than one (1) year following the due date set in
20 subsection (1) of this section, may in a civil action brought by the Vital
21 Statistics Branch be directed by a court of competent jurisdiction to submit a
22 complete report within a time period stated by court order or be subject to
23 contempt of court.
- 24 (c) Failure by any physician to comply with the requirements of this section, other
25 than filing a late report, or to submit a complete report in accordance with a
26 court order shall subject the physician to KRS 311.595.
- 27 (5) Intentional falsification of any report required under this section is a Class A

UNOFFICIAL COPY

19 RS SB 9/GA

1 misdemeanor.

2 (6) ~~[Within ninety (90) days of January 9, 2017,]~~The Vital Statistics Branch shall
3 promulgate administrative regulations in accordance with KRS Chapter 13A to
4 assist in compliance with this section.

5 ➔Section 16. The restrictions of KRS 6.945(1) shall not apply to Sections 1 to 15
6 of this Act.

7 ➔Section 17. If any provision of this Act or the application thereof to any person
8 or circumstance is held invalid, the invalidity shall not affect other provisions or
9 applications of the Act that can be given effect without the invalid provision or
10 application, and to this end the provisions of the Act are severable.

11 ➔Section 18. Whereas the Commonwealth of Kentucky has legitimate interests
12 from the outset of the pregnancy in protecting the health of the woman and the life of an
13 unborn human individual who may be born, an emergency is declared to exist, and this
14 Act takes effect upon its passage and approval by the Governor or upon its otherwise
15 becoming law.

EXHIBIT B

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 AN ACT relating to the human rights of unborn children to not be discriminated
2 against and declaring an emergency.

3 WHEREAS, the purpose of this Act is to protect the rights of unborn children by
4 prohibiting physicians and other medical professionals from performing abortive
5 procedures for discriminatory purposes; and

6 WHEREAS, state, federal, and international law supports the rights of all people to
7 dignity, equality, and freedom from discrimination based on sex, race, color, national
8 origin, or disability; and

9 WHEREAS, the Declaration of Independence recognizes the fundamental truth that
10 all people have been endowed by their Creator with certain unalienable rights, that among
11 these are life, liberty, and the pursuit of happiness; and

12 WHEREAS, the Constitution of this Commonwealth guarantees that all people
13 have the right of seeking and pursuing their safety and happiness; and

14 WHEREAS, the Commonwealth of Kentucky statutorily recognizes an unborn child
15 as a human being from conception onward, without regard to age, health, or condition of
16 dependency; and

17 WHEREAS, the Kentucky General Assembly has already enacted a statute that
18 reads "currently, in the Commonwealth, there is inadequate legislation to protect the life,
19 health, and welfare of pregnant women and unborn human life"; and

20 WHEREAS, the Commonwealth of Kentucky statutorily bans discrimination
21 against individuals based on sex, race, color, national origin, or disability; and

22 WHEREAS, these statutory acknowledgments of the unborn child's humanity and
23 the rights of persons, regardless of sex, race, color, national origin, or disability, to live
24 unencumbered by discrimination compel a recognition of the imperative to prevent the
25 ending of an unborn child's life for discriminatory purposes; and

26 WHEREAS, this Act establishes a reasonable accommodation for unborn children
27 through the prohibition of discriminatory abortive procedures so that they may enjoy the

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 right to life, dignity, and equality regardless of sex, race, color, national origin, or
2 disability; and

3 WHEREAS, the Supreme Court of the United States of America has recognized
4 that states have a legitimate interest in protecting the life of the unborn; and

5 WHEREAS, recognizing the human rights of an unborn child does not contravene
6 prior Supreme Court jurisprudence nor undermine a woman's right to self-determination
7 or bodily autonomy, but instead upholds the state's legitimate interest in protecting the
8 lives of unborn human beings and the rights of persons regardless of sex, race, color,
9 national origin, or disability; and

10 WHEREAS, the right to bodily autonomy and self-determination is separate and
11 distinct from the termination of a pregnancy based on the unborn child's sex, race, color,
12 national origin, or disability; and

13 WHEREAS, moral and philosophical concepts of dignity hold that all human beings
14 are entitled to receive ethical and humane treatment and are to be respected and valued in
15 all phases of life, regardless of sex, race, color, national origin, or disability; and

16 WHEREAS, certain abortive medical procedures are unfairly discriminatory against
17 unborn children because of their sex, race, color, national origin, or disability is in
18 contravention of their unalienable rights; and

19 WHEREAS, children born, regardless of their sex, race, color, national origin, or
20 disability, can live full and healthy lives and become upstanding and valuable members of
21 communities within the Commonwealth;

22 NOW, THEREFORE,

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

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

26 **(1) As used in this section:**

27 **(a) "Abortion facility" has the same meaning as in KRS 216B.015;**

1 (b) "Any other disability" means any disease, defect, or disorder, whether or
2 not genetically inherited. The term includes but is not limited to the
3 following:

- 4 1. A physical disability;
5 2. A mental or intellectual disability;
6 3. A physical disfigurement;
7 4. Scoliosis;
8 5. Dwarfism;
9 6. Albinism;
10 7. Amelia; or
11 8. A physical or mental disease.

12 However, the term does not include a lethal fetal anomaly;

13 (c) "Corporation" has the same meaning as in KRS 271B.1-400;

14 (d) "Down syndrome" means a chromosome disorder associated either with an
15 extra chromosome twenty-one (21), in whole or in part, or an effective
16 trisomy for chromosome twenty-one (21);

17 (e) "Human being" has the same meaning as in KRS 311.720;

18 (f) "Medical emergency" has the same meaning as in KRS 311.720;

19 (g) "Person" includes any human being and any corporation;

20 (h) "Physician" has the same meaning as in KRS 311.720; and

21 (i) "Unborn child" has the same meaning as in KRS 311.781.

22 (2) No person shall intentionally perform or induce or attempt to perform or induce
23 an abortion on a pregnant woman if the person has knowledge that the pregnant
24 woman is seeking the abortion, in whole or in part, because of any of the
25 following:

26 (a) The sex of the unborn child;

27 (b) The race, color, or national origin of the unborn child; or

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 (c) The diagnosis, or potential diagnosis, of Down syndrome or any other
2 disability;
3 except in the case of a medical emergency.
- 4 (3) In the report required under Section 6 of this Act, the attending physician shall
5 certify in writing whether the attending physician had knowledge that the
6 pregnant woman was seeking the abortion, in whole or in part, because of any of
7 the following:
- 8 (a) The sex of the unborn child;
9 (b) The race, color, or national origin of the unborn child; or
10 (c) The diagnosis, or potential diagnosis, of Down syndrome or any other
11 disability.
- 12 (4) The State Board of Medical Licensure shall revoke a physician's license to
13 practice medicine in this state if the physician violates subsection (2) of this
14 section.
- 15 (5) The Cabinet for Health and Family Services shall revoke the license of any
16 person, including a licensed abortion facility, who violates subsection (2) of this
17 section.
- 18 (6) Any physician or other person who violates subsection (2) of this section is liable
19 in a civil action for compensatory and punitive damages and reasonable
20 attorney's fees to any person, including an unborn child, or the representative of
21 the estate of any person, including an unborn child, who sustains injury, death,
22 or loss to person or property as the result of the performance or inducement or
23 the attempted performance or inducement of the abortion. In any action under
24 this subsection, the court also may award any injunctive or other equitable relief
25 that the court considers appropriate.
- 26 (7) A pregnant woman on whom an abortion is performed or induced or attempted to
27 be performed or induced in violation of subsection (2) of this section is not guilty

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 of violating subsection (2) of this section or of attempting to commit, conspiring
 2 to commit, or complicity in committing a violation of subsection (2) of this
 3 section.

4 (8) If any provision of this section is held invalid, or if the application of any
 5 provision of this section to any person or circumstance is held invalid, the
 6 invalidity of that provision does not affect any other provisions or applications of
 7 this section or KRS 311.710 to 311.820 that can be given effect without the
 8 invalid provision or application, and to this end the provisions of this section and
 9 KRS 311.710 to 311.820 are severable. In particular, it is the intent of the
 10 General Assembly that any invalidity or potential invalidity of a provision of this
 11 section is not to impair the immediate and continuing enforceability of any other
 12 provisions of this section and KRS 311.710 to 311.820. It is furthermore the
 13 intent of the General Assembly that the provisions of this section are not to have
 14 the effect of repealing or limiting any other laws of this state.

15 ➔Section 2. KRS 311.595 is amended to read as follows:

16 If the power has not been transferred by statute to some other board, commission, or
 17 agency of this state, the board may deny an application or reregistration for a license;
 18 place a licensee on probation for a period not to exceed five (5) years; suspend a license
 19 for a period not to exceed five (5) years; limit or restrict a license for an indefinite period;
 20 or revoke any license heretofore or hereafter issued by the board, upon proof that the
 21 licensee has:

- 22 (1) Knowingly made or presented, or caused to be made or presented, any false,
 23 fraudulent, or forged statement, writing, certificate, diploma, or other thing, in
 24 connection with an application for a license or permit;
- 25 (2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion,
 26 or conspiracy in connection with an examination for a license;
- 27 (3) Committed, procured, or aided in the procurement of an unlawful abortion,

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 including a partial-birth abortion or an abortion in violation of Section 1 of this
2 Act;
- 3 (4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or
4 without the Commonwealth of Kentucky of a crime as defined in KRS 335B.010, if
5 in accordance with KRS Chapter 335B;
- 6 (5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a
7 patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or
8 been found by the board to have had sexual contact as defined in KRS 510.010(7)
9 with a patient while the patient was under the care of the physician;
- 10 (6) Become addicted to a controlled substance;
- 11 (7) Become a chronic or persistent alcoholic;
- 12 (8) Been unable or is unable to practice medicine according to acceptable and
13 prevailing standards of care by reason of mental or physical illness or other
14 condition including but not limited to physical deterioration that adversely affects
15 cognitive, motor, or perceptive skills, or by reason of an extended absence from the
16 active practice of medicine;
- 17 (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely
18 to deceive, defraud, or harm the public or any member thereof;
- 19 (10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false
20 statement in any document executed in connection with the practice of his
21 profession;
- 22 (11) Employed, as a practitioner of medicine or osteopathy in the practice of his
23 profession in this state, any person not duly licensed or otherwise aided, assisted, or
24 abetted the unlawful practice of medicine or osteopathy or any other healing art;
- 25 (12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the
26 violation of, or conspired to violate any provision or term of any medical practice
27 act, including but not limited to the code of conduct promulgated by the board under

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 KRS 311.601 or any other valid regulation of the board;
- 2 (13) Violated any agreed order, letter of agreement, final order, or emergency order
3 issued by the board;
- 4 (14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a
5 false or assumed name, or impersonated another practitioner of a like, similar, or
6 different name;
- 7 (15) Obtained a fee or other thing of value on the fraudulent representation that a
8 manifestly incurable condition could be cured;
- 9 (16) Willfully violated a confidential communication;
- 10 (17) Had his license to practice medicine or osteopathy in any other state, territory, or
11 foreign nation revoked, suspended, restricted, or limited or has been subjected to
12 other disciplinary action by the licensing authority thereof. This subsection shall not
13 require relitigation of the disciplinary action;
- 14 (18) Failed or refused, without legal justification, to practice medicine in a rural area of
15 this state in violation of a valid medical scholarship loan contract with the trustees
16 of the rural Kentucky medical scholarship fund;
- 17 (19) Given or received, directly or indirectly, from any person, firm, or corporation, any
18 fee, commission, rebate, or other form of compensation for sending, referring, or
19 otherwise inducing a person to communicate with a person licensed under KRS
20 311.530 to 311.620 in his professional capacity or for any professional services not
21 actually and personally rendered; provided, however, that nothing contained in this
22 subsection shall prohibit persons holding valid and current licenses under KRS
23 311.530 to 311.620 from practicing medicine in partnership or association or in a
24 professional service corporation authorized by KRS Chapter 274, as now or
25 hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees
26 and moneys received by them or by the partnership, corporation, or association in
27 accordance with the partnership agreement or the policies of the board of directors

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 of the corporation or association. Nothing contained in this subsection shall
2 abrogate the right of two (2) or more persons holding valid and current licenses
3 under KRS 311.530 to 311.620 to receive adequate compensation for concurrently
4 rendering professional care to a single patient and divide a fee, if the patient has full
5 knowledge of this division and if the division is made in proportion to the services
6 performed and responsibility assumed by each;

7 (20) Been removed, suspended, expelled, or disciplined by any professional medical
8 association or society when the action was based upon what the association or
9 society found to be unprofessional conduct, professional incompetence, malpractice,
10 or a violation of any provision of KRS Chapter 311. This subsection shall not
11 require relitigation of the disciplinary action;

12 (21) Been disciplined by a licensed hospital or medical staff of the hospital, including
13 removal, suspension, limitation of hospital privileges, failing to renew privileges for
14 cause, resignation of privileges under pressure or investigation, or other disciplinary
15 action if the action was based upon what the hospital or medical staff found to be
16 unprofessional conduct, professional incompetence, malpractice, or a violation of
17 any provisions of KRS Chapter 311. This subsection shall not require relitigation of
18 the disciplinary action; or

19 (22) Failed to comply with the requirements of KRS 213.101, 311.782, or 311.783 or
20 failed to submit to the Vital Statistics Branch in accordance with a court order a
21 complete report as described in KRS 213.101.

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

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

27 (a) At least twenty-four (24) hours prior to the abortion, a physician, licensed

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 nurse, physician assistant, or social worker to whom the responsibility has
 2 been delegated by the physician has verbally informed the woman of all of the
 3 following:

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

12 (b) At least twenty-four (24) hours prior to the abortion, in an individual, private
 13 setting, a physician, licensed nurse, physician assistant, or social worker to
 14 whom the responsibility has been delegated by the physician has informed the
 15 pregnant woman that:

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

27 **4. It is illegal in Kentucky to intentionally perform an abortion, in whole**

1 *or in part, because of:*

2 *a. The sex of the unborn child;*

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

4 *c. The diagnosis, or potential diagnosis, of Down syndrome or any*
 5 *other disability;*

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

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

11 1. That she has received the information required to be provided under
 12 paragraphs (a), (b), and (c) of this subsection; and

13 2. That she consents to the particular abortion voluntarily and knowingly,
 14 and she is not under the influence of any drug of abuse or alcohol; and

15 (e) Prior to the performance or inducement of the abortion, the physician who is
 16 scheduled to perform or induce the abortion or the physician's agent receives a
 17 copy of the pregnant woman's signed statement, on a form which may be
 18 provided by the physician, on which she consents to the abortion and that
 19 includes the certification required by paragraph (d) of this subsection.

20 (2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface
 21 not less than 12 point type the following materials:

22 (a) Materials that inform the pregnant woman about public and private agencies
 23 and services that are available to assist her through her pregnancy, upon
 24 childbirth, and while her child is dependent, including, but not limited to,
 25 adoption agencies. The materials shall include a comprehensive list of the
 26 available agencies and a description of the services offered by the agencies
 27 and the telephone numbers and addresses of the agencies, and inform the

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 pregnant woman about available medical assistance benefits for prenatal care,
2 childbirth, and neonatal care and about the support obligations of the father of
3 a child who is born alive. The cabinet shall ensure that the materials are
4 comprehensive and do not directly or indirectly promote, exclude, or
5 discourage the use of any agency or service described in this section; and

6 (b) Materials that inform the pregnant woman of the probable anatomical and
7 physiological characteristics of the zygote, blastocyte, embryo, or fetus at two
8 (2) week gestational increments for the first sixteen (16) weeks of her
9 pregnancy and at four (4) week gestational increments from the seventeenth
10 week of her pregnancy to full term, including any relevant information
11 regarding the time at which the fetus possibly would be viable. The materials
12 shall use language that is understandable by the average person who is not
13 medically trained, shall be objective and nonjudgmental, and shall include
14 only accurate scientific information about the zygote, blastocyte, embryo, or
15 fetus at the various gestational increments. The materials shall include, for
16 each of the two (2) of four (4) week increments specified in this paragraph, a
17 pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus.
18 The materials shall also include, in a conspicuous manner, a scale or other
19 explanation that is understandable by the average person and that can be used
20 to determine the actual size of the zygote, blastocyte, embryo, or fetus at a
21 particular gestational increment as contrasted with the depicted size of the
22 zygote, blastocyte, embryo, or fetus at that gestational increment.

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

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 (4) If a medical emergency or medical necessity compels the performance or
2 inducement of an abortion, the physician who will perform or induce the abortion,
3 prior to its performance or inducement if possible, shall inform the pregnant woman
4 of the medical indications supporting the physician's judgment that an immediate
5 abortion is necessary. Any physician who performs or induces an abortion without
6 the prior satisfaction of the conditions specified in subsection (1) of this section
7 because of a medical emergency or medical necessity shall enter the reasons for the
8 conclusion that a medical emergency exists in the medical record of the pregnant
9 woman.
- 10 (5) If the conditions specified in subsection (1) of this section are satisfied, consent to
11 an abortion shall be presumed to be valid and effective.
- 12 (6) The failure of a physician to satisfy the conditions of subsection (1) of this section
13 prior to performing or inducing an abortion upon a pregnant woman may be the
14 basis of disciplinary action pursuant to KRS 311.595.
- 15 (7) The cabinet shall charge a fee for each copy of the materials distributed in
16 accordance with subsections (1) and (3) of this section. The fee shall be sufficient to
17 cover the cost of the administration of the materials published in accordance with
18 subsection (2) of this section, including the cost of preparation and distribution of
19 materials.
- 20 ➔Section 4. KRS 311.990 (Effective until July 1, 2019) is amended to read as
21 follows:
- 22 (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- 23 (2) Any college or professor thereof violating the provisions of KRS 311.300 to
24 311.350 shall be civilly liable on his bond for a sum not less than one hundred
25 dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation,
26 which may be recovered by an action in the name of the Commonwealth.
- 27 (3) Any person who presents to the county clerk for the purpose of registration any

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 license which has been fraudulently obtained, or obtains any license under KRS
2 311.380 to 311.510 by false or fraudulent statement or representation, or practices
3 podiatry under a false or assumed name or falsely impersonates another practitioner
4 or former practitioner of a like or different name, or aids and abets any person in the
5 practice of podiatry within the state without conforming to the requirements of KRS
6 311.380 to 311.510, or otherwise violates or neglects to comply with any of the
7 provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor.
8 Each case of practicing podiatry in violation of the provisions of KRS 311.380 to
9 311.510 shall be considered a separate offense.
- 10 (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- 11 (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under
12 this subsection of a holder of a license or permit shall result automatically in
13 permanent revocation of such license or permit.
- 14 (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or
15 interfering with the board or any of its members, or of any officer, agent, inspector,
16 or investigator of the board or the Cabinet for Health and Family Services, in the
17 administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class
18 A misdemeanor.
- 19 (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a
20 Class B misdemeanor, and, for each subsequent offense shall be a Class A
21 misdemeanor.
- 22 (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a
23 violation, and, for each subsequent offense, be a Class B misdemeanor.
- 24 (9) Each day of violation of either subsection of KRS 311.375 shall constitute a
25 separate offense.
- 26 (10) (a) Any person who intentionally or knowingly performs an abortion contrary to
27 the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and

UNOFFICIAL COPY

19 RS HB 5/HCS 1

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

3 (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS
4 311.765 shall be guilty of a Class D felony. However, a physician shall
5 not be guilty of the criminal offense if the partial-birth abortion was
6 necessary to save the life of the mother whose life was endangered by a
7 physical disorder, illness, or injury.

8 2. A physician may seek a hearing before the State Board of Medical
9 Licensure on whether the physician's conduct was necessary to save the
10 life of the mother whose life was endangered by a physical disorder,
11 illness, or injury. The board's findings, decided by majority vote of a
12 quorum, shall be admissible at the trial of the physician. The board shall
13 promulgate administrative regulations to carry out the provisions of this
14 subparagraph.

15 3. Upon a motion of the physician, the court shall delay the beginning of
16 the trial for not more than thirty (30) days to permit the hearing, referred
17 to in subparagraph 2. of this paragraph, to occur.

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

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

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

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 (13) Any person who negligently releases information or documents which are
2 confidential under KRS 311.732 is guilty of a Class B misdemeanor.
- 3 (14) Any person who performs an abortion upon a married woman either with
4 knowledge or in reckless disregard of whether KRS 311.735 applies to her and who
5 intentionally, knowingly, or recklessly fails to conform to the requirements of KRS
6 311.735 shall be guilty of a Class D felony.
- 7 (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- 8 (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- 9 (17) Any person who violates KRS 311.770 shall be guilty of a Class D felony.
- 10 (18) Except as provided in KRS 311.787(3), any person who intentionally violates KRS
11 311.787 shall be guilty of a Class D felony.
- 12 (19) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- 13 (20) Except as provided in KRS 311.782(6), any person who intentionally violates KRS
14 311.782 shall be guilty of a Class D felony.
- 15 (21) Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.
- 16 (22) **Except as provided in subsection (7) of Section 1 of this Act, any person who**
17 **violates subsection (2) of Section 1 of this Act shall be guilty of a Class D felony.**
- 18 **(23)** Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- 19 **(24)**~~(23)~~ Any professional medical association or society, licensed physician, or
20 hospital or hospital medical staff who shall have violated the provisions of KRS
21 311.606 shall be guilty of a Class B misdemeanor.
- 22 **(25)**~~(24)~~ Any administrator, officer, or employee of a publicly owned hospital or
23 publicly owned health care facility who performs or permits the performance of
24 abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- 25 **(26)**~~(25)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- 26 **(27)**~~(26)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a
27 Class A misdemeanor.

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 ~~(28)~~~~(27)~~ (a) Any person who fails to test organs, skin, or other human tissue which is
2 to be transplanted, or violates the confidentiality provisions required by KRS
3 311.281, shall be guilty of a Class A misdemeanor.

4 (b) Any person who has human immunodeficiency virus infection, who knows he
5 is infected with human immunodeficiency virus, and who has been informed
6 that he may communicate the infection by donating organs, skin, or other
7 human tissue who donates organs, skin, or other human tissue shall be guilty
8 of a Class D felony.

9 ~~(29)~~~~(28)~~ Any person who sells or makes a charge for any transplantable organ shall be
10 guilty of a Class D felony.

11 ~~(30)~~~~(29)~~ Any person who offers remuneration for any transplantable organ for use in
12 transplantation into himself shall be fined not less than five thousand dollars
13 (\$5,000) nor more than fifty thousand dollars (\$50,000).

14 ~~(31)~~~~(30)~~ Any person brokering the sale or transfer of any transplantable organ shall be
15 guilty of a Class C felony.

16 ~~(32)~~~~(31)~~ Any person charging a fee associated with the transplantation of a
17 transplantable organ in excess of the direct and indirect costs of procuring,
18 distributing, or transplanting the transplantable organ shall be fined not less than
19 fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars
20 (\$500,000).

21 ~~(33)~~~~(32)~~ Any hospital performing transplantable organ transplants which knowingly
22 fails to report the possible sale, purchase, or brokering of a transplantable organ
23 shall be fined not less than ten thousand dollars (\$10,000) or more than fifty
24 thousand dollars (\$50,000).

25 ~~(34)~~~~(33)~~ (a) Any physician or qualified technician who violates KRS 311.727 shall
26 be fined not more than one hundred thousand dollars (\$100,000) for a first
27 offense and not more than two hundred fifty thousand dollars (\$250,000) for

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 each subsequent offense.

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

5 ~~(35)~~~~(34)~~ Any person who violates KRS 311.691 shall be guilty of a Class B
6 misdemeanor for the first offense, and a Class A misdemeanor for a second or
7 subsequent offense. In addition to any other penalty imposed for that violation, the
8 board may, through the Attorney General, petition a Circuit Court to enjoin the
9 person who is violating KRS 311.691 from practicing genetic counseling in
10 violation of the requirements of KRS 311.690 to 311.700.

11 ➔Section 5. KRS 311.990 (Effective July 1, 2019) is amended to read as follows:

12 (1) Any person who violates KRS 311.250 shall be guilty of a violation.

13 (2) Any college or professor thereof violating the provisions of KRS 311.300 to
14 311.350 shall be civilly liable on his bond for a sum not less than one hundred
15 dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation,
16 which may be recovered by an action in the name of the Commonwealth.

17 (3) Any person who presents to the county clerk for the purpose of registration any
18 license which has been fraudulently obtained, or obtains any license under KRS
19 311.380 to 311.510 by false or fraudulent statement or representation, or practices
20 podiatry under a false or assumed name or falsely impersonates another practitioner
21 or former practitioner of a like or different name, or aids and abets any person in the
22 practice of podiatry within the state without conforming to the requirements of KRS
23 311.380 to 311.510, or otherwise violates or neglects to comply with any of the
24 provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor.
25 Each case of practicing podiatry in violation of the provisions of KRS 311.380 to
26 311.510 shall be considered a separate offense.

27 (4) Each violation of KRS 311.560 shall constitute a Class D felony.

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under
2 this subsection of a holder of a license or permit shall result automatically in
3 permanent revocation of such license or permit.
- 4 (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or
5 interfering with the board or any of its members, or of any officer, agent, inspector,
6 or investigator of the board or the Cabinet for Health and Family Services, in the
7 administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class
8 A misdemeanor.
- 9 (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a
10 Class B misdemeanor, and, for each subsequent offense shall be a Class A
11 misdemeanor.
- 12 (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a
13 violation, and, for each subsequent offense, be a Class B misdemeanor.
- 14 (9) Each day of violation of either subsection of KRS 311.375 shall constitute a
15 separate offense.
- 16 (10) (a) Any person who intentionally or knowingly performs an abortion contrary to
17 the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
18 (b) Any person who intentionally, knowingly, or recklessly violates the
19 requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- 20 (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS
21 311.765 shall be guilty of a Class D felony. However, a physician shall
22 not be guilty of the criminal offense if the partial-birth abortion was
23 necessary to save the life of the mother whose life was endangered by a
24 physical disorder, illness, or injury.
- 25 2. A physician may seek a hearing before the State Board of Medical
26 Licensure on whether the physician's conduct was necessary to save the
27 life of the mother whose life was endangered by a physical disorder,

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 illness, or injury. The board's findings, decided by majority vote of a
2 quorum, shall be admissible at the trial of the physician. The board shall
3 promulgate administrative regulations to carry out the provisions of this
4 subparagraph.

5 3. Upon a motion of the physician, the court shall delay the beginning of
6 the trial for not more than thirty (30) days to permit the hearing, referred
7 to in subparagraph 2. of this paragraph, to occur.

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

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

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

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

20 (14) Any person who performs an abortion upon a married woman either with
21 knowledge or in reckless disregard of whether KRS 311.735 applies to her and who
22 intentionally, knowingly, or recklessly fails to conform to the requirements of KRS
23 311.735 shall be guilty of a Class D felony.

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

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

26 (17) Any person who violates KRS 311.770 shall be guilty of a Class D felony.

27 (18) Except as provided in KRS 311.787(3), any person who intentionally violates KRS

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 311.787 shall be guilty of a Class D felony.

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

3 (20) Except as provided in KRS 311.782(6), any person who intentionally violates KRS
4 311.782 shall be guilty of a Class D felony.

5 (21) Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.

6 (22) **Except as provided in subsection (7) of Section 1 of this Act, any person who**
7 **violates subsection (2) of Section 1 of this Act shall be guilty of a Class D felony.**

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

9 ~~(24)~~ Any professional medical association or society, licensed physician, or
10 hospital or hospital medical staff who shall have violated the provisions of KRS
11 311.606 shall be guilty of a Class B misdemeanor.

12 ~~(25)~~ Any administrator, officer, or employee of a publicly owned hospital or
13 publicly owned health care facility who performs or permits the performance of
14 abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.

15 ~~(26)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.

16 ~~(27)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a
17 Class A misdemeanor.

18 ~~(28)~~ (a) Any person who fails to test organs, skin, or other human tissue which is
19 to be transplanted, or violates the confidentiality provisions required by KRS
20 311.281, shall be guilty of a Class A misdemeanor.

21 (b) Any person who has human immunodeficiency virus infection, who knows he
22 is infected with human immunodeficiency virus, and who has been informed
23 that he may communicate the infection by donating organs, skin, or other
24 human tissue who donates organs, skin, or other human tissue shall be guilty
25 of a Class D felony.

26 ~~(29)~~ Any person who sells or makes a charge for any transplantable organ shall be
27 guilty of a Class D felony.

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 ~~(30)~~~~(29)~~ Any person who offers remuneration for any transplantable organ for use in
2 transplantation into himself shall be fined not less than five thousand dollars
3 (\$5,000) nor more than fifty thousand dollars (\$50,000).

4 ~~(31)~~~~(30)~~ Any person brokering the sale or transfer of any transplantable organ shall be
5 guilty of a Class C felony.

6 ~~(32)~~~~(31)~~ Any person charging a fee associated with the transplantation of a
7 transplantable organ in excess of the direct and indirect costs of procuring,
8 distributing, or transplanting the transplantable organ shall be fined not less than
9 fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars
10 (\$500,000).

11 ~~(33)~~~~(32)~~ Any hospital performing transplantable organ transplants which knowingly
12 fails to report the possible sale, purchase, or brokering of a transplantable organ
13 shall be fined not less than ten thousand dollars (\$10,000) or more than fifty
14 thousand dollars (\$50,000).

15 ~~(34)~~~~(33)~~ (a) Any physician or qualified technician who violates KRS 311.727 shall
16 be fined not more than one hundred thousand dollars (\$100,000) for a first
17 offense and not more than two hundred fifty thousand dollars (\$250,000) for
18 each subsequent offense.

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

22 ~~(35)~~~~(34)~~ Any person who violates KRS 311.691 shall be guilty of a Class B
23 misdemeanor for the first offense, and a Class A misdemeanor for a second or
24 subsequent offense. In addition to any other penalty imposed for that violation, the
25 board may, through the Attorney General, petition a Circuit Court to enjoin the
26 person who is violating KRS 311.691 from practicing genetic counseling in
27 violation of the requirements of KRS 311.690 to 311.700.

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 ~~(36)~~~~(35)~~ Any person convicted of violating KRS 311.728 shall be guilty of a Class D
2 felony.

3 ➔Section 6. KRS 213.101 is amended to read as follows:

4 (1) Each induced termination of pregnancy which occurs in the Commonwealth,
5 regardless of the length of gestation, shall be reported to the Vital Statistics Branch
6 by the person in charge of the institution within fifteen (15) days after the end of the
7 month in which the termination occurred. If the induced termination of pregnancy
8 was performed outside an institution, the attending physician shall prepare and file
9 the report within fifteen (15) days after the end of the month in which the
10 termination occurred. The report shall include all the information the physician is
11 required to certify in writing or determine under Section 1 of this Act, KRS
12 311.782, and 311.783, but shall not include information which will identify the
13 physician, woman, or man involved.

14 (2) The name of the person completing the report and the reporting institution shall not
15 be subject to disclosure under KRS 61.870 to 61.884.

16 (3) By September 30 of each year, the Vital Statistics Branch shall issue a public report
17 that provides statistics for the previous calendar year compiled from all of the
18 reports covering that calendar year submitted to the cabinet in accordance with this
19 section for each of the items listed in subsection (1) of this section. Each annual
20 report shall also provide statistics for all previous calendar years in which this
21 section was in effect, adjusted to reflect any additional information from late or
22 corrected reports. The Vital Statistics Branch shall ensure that none of the
23 information included in the report could reasonably lead to the identification of any
24 pregnant woman upon whom an abortion was performed or attempted.

25 (4) (a) Any person or institution who fails to submit a report by the end of thirty (30)
26 days following the due date set in subsection (1) of this section shall be
27 subject to a late fee of five hundred dollars (\$500) for each additional thirty

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 (30) day period or portion of a thirty (30) day period the report is overdue.

2 (b) Any person or institution who fails to submit a report, or who has submitted
3 only an incomplete report, more than one (1) year following the due date set in
4 subsection (1) of this section, may in a civil action brought by the Vital
5 Statistics Branch be directed by a court of competent jurisdiction to submit a
6 complete report within a time period stated by court order or be subject to
7 contempt of court.

8 (c) Failure by any physician to comply with the requirements of this section, other
9 than filing a late report, or to submit a complete report in accordance with a
10 court order shall subject the physician to KRS 311.595.

11 (5) Intentional falsification of any report required under this section is a Class A
12 misdemeanor.

13 (6) Within ninety (90) days of *the effective date of this Act*~~January 9, 2017~~, the Vital
14 Statistics Branch shall promulgate administrative regulations in accordance with
15 KRS Chapter 13A to assist in compliance with this section.

16 ➔Section 7. KRS 413.140 is amended to read as follows:

17 (1) The following actions shall be commenced within one (1) year after the cause of
18 action accrued:

19 (a) An action for an injury to the person of the plaintiff, or of her husband, his
20 wife, child, ward, apprentice, or servant;

21 (b) An action for injuries to persons, cattle, or other livestock by railroads or other
22 corporations, with the exception of hospitals licensed pursuant to KRS
23 Chapter 216;

24 (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal
25 conversation, or breach of promise of marriage;

26 (d) An action for libel or slander;

27 (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant

UNOFFICIAL COPY

19 RS HB 5/HCS 1

- 1 to KRS Chapter 216, for negligence or malpractice;
- 2 (f) A civil action, arising out of any act or omission in rendering, or failing to
3 render, professional services for others, whether brought in tort or contract,
4 against a real estate appraiser holding a certificate or license issued under
5 KRS Chapter 324A;
- 6 (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;
- 7 (h) An action for the recovery of usury paid for the loan or forbearance of money
8 or other thing, against the loaner or forbearer or assignee of either;
- 9 (i) An action for the recovery of stolen property, by the owner thereof against any
10 person having the same in his possession;
- 11 (j) An action for the recovery of damages or the value of stolen property, against
12 the thief or any accessory;
- 13 (k) An action arising out of a detention facility disciplinary proceeding, whether
14 based upon state or federal law;
- 15 (l) An action for damages arising out of a deficiency, defect, omission, error, or
16 miscalculation in any survey or plat, whether brought in tort or contract,
17 against a licensed professional land surveyor holding a license under KRS
18 Chapter 322;~~and~~
- 19 (m) An action for violating KRS 311.782; ***and***
- 20 ***(n) An action for violating Section 1 of this Act.***
- 21 (2) In respect to the action referred to in paragraph (e) of subsection (1) of this section,
22 the cause of action shall be deemed to accrue at the time the injury is first
23 discovered or in the exercise of reasonable care should have been discovered;
24 provided that such action shall be commenced within five (5) years from the date on
25 which the alleged negligent act or omission is said to have occurred.
- 26 (3) In respect to the action referred to in paragraph (f) or (l) of subsection (1) of this
27 section, the cause of action shall be deemed to accrue within one (1) year from the

UNOFFICIAL COPY

19 RS HB 5/HCS 1

1 date of the occurrence or from the date when the cause of action was, or reasonably
2 should have been, discovered by the party injured.

3 (4) In respect to the action referred to in paragraph (h) of subsection (1) of this section,
4 the cause of action shall be deemed to accrue at the time of payment. This limitation
5 shall apply to all payments made on all demands, whether evidenced by writing or
6 existing only in parol.

7 (5) In respect to the action referred to in paragraph (i) of subsection (1) of this section,
8 the cause of action shall be deemed to accrue at the time the property is found by its
9 owner.

10 (6) In respect to the action referred to in paragraph (j) of subsection (1) of this section,
11 the cause of action shall be deemed to accrue at the time of discovery of the
12 liability.

13 (7) In respect to the action referred to in paragraph (k) of subsection (1) of this section,
14 the cause of action shall be deemed to accrue on the date an appeal of the
15 disciplinary proceeding is decided by the institutional warden.

16 (8) In respect to the action referred to in subsection (1)(m) and (n) of this section, the
17 cause of action shall be deemed to accrue after the performance or inducement or
18 attempt to perform or induce the abortion.

19 ➔Section 8. This Act may be cited as the Human Rights of the Unborn Child and
20 Anti-Discrimination Act.

21 ➔Section 9. The restrictions of KRS 6.945(1) shall not apply to Section 1 of this
22 Act.

23 ➔Section 10. Whereas the fundamental rights of all Kentuckians, regardless of
24 the unborn child's sex, race, color, national origin, or disability, deserve immediate
25 protection, an emergency is declared to exist, and this Act takes effect upon its passage
26 and approval by the Governor or upon its otherwise becoming a law.