

1 AN ACT relating to the protection of unborn children.

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

3 ➔Section 1. KRS 311.772 is amended to read as follows:

4 (1) As used in this section:

5 (a) **"Abortifacient" means any medicine, drug, substance, chemical, or means**
6 **used to cause an abortion which either requires a prescription based on**
7 **Federal Drug Administration guidelines or is not approved by the Federal**
8 **Drug Administration, and is primarily used to cause an abortion;**

9 **(b)** "Fertilization" means that point in time when a male human sperm penetrates
10 the zona pellucida of a female human ovum;

11 **(c)** **"Foreign sender" means a person or entity that:**

12 **1. Mails or sends by common carrier an abortifacient to an address in**
13 **this state or to a person in this state;**

14 **2. Intentionally places an abortifacient into the stream of commerce**
15 **when the person or entity knows there is a substantial likelihood that**
16 **the abortifacient will be used in this state, or mailed or sent by**
17 **common carrier to an address or to a person in this state; or**

18 **3. Knowingly prescribes an abortifacient to a person in this state,**
19 **regardless of whether the prescriber was in this state or knew the**
20 **recipient was in this state;**

21 **(d)(b)** "Pregnant" means the human female reproductive condition of having a
22 living unborn human being within her body throughout the entire embryonic
23 and fetal stages of the unborn child from fertilization to full gestation and
24 childbirth; and

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

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

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

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

(3) (a) No person may knowingly:

1. Administer to, prescribe for, procure for, **mail, send by common carrier, intentionally place into the stream of commerce,** or sell to any pregnant woman any medicine, drug, **abortifacient,** or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being; or
2. Use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

(b) Any person who violates paragraph (a) of this subsection shall be guilty of a Class D felony **unless the person is a foreign sender, in which case it is a Class C felony punishable by a term of imprisonment, or a fine of not more than one hundred thousand dollars (\$100,000), or both.**

(c) It shall not be a defense under paragraph (b) of this subsection that a foreign sender did not know or intend that an abortion would be performed or the life of an unborn human being would be terminated.

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

(a) For a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death

1 due to a physical condition, or to prevent the serious, permanent impairment
2 of a life-sustaining organ of a pregnant woman. However, the physician shall
3 make reasonable medical efforts under the circumstances to preserve both the
4 life of the mother and the life of the unborn human being in a manner
5 consistent with reasonable medical practice; or

6 (b) Medical treatment provided to the mother by a licensed physician which
7 results in the accidental or unintentional injury or death to the unborn human
8 being.

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

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

17 (7) (a) In addition to the remedies available under the laws of this state, a pregnant
18 woman who receives an abortifacient may bring a civil action against
19 another person or entity, including a foreign sender, that knowingly or
20 intentionally performs or attempts to perform an abortion or provide for the
21 termination of the life of an unborn human being in violation of this
22 section.

23 (b) A woman who prevails in an action filed under this subsection shall receive:
24 1. Injunctive relief;
25 2. Damages in the amount of ten thousand dollars (\$10,000) for each
26 abortion that the person, entity, or foreign sender knowingly and
27 intentionally performed or attempted to perform; and

1 **3. Court costs and attorney's fees.**

2 **(c) Any action under this subsection shall be commenced within three (3) years**
3 **after the date the cause of action accrues or up to one (1) year after the**
4 **lifting or expiration of any applicable stay, injunction, or temporary**
5 **restraining order that was put in place less than three (3) years after the**
6 **date the cause of action accrued, whichever is later.**

7 **(d) Notwithstanding any other law to the contrary, a court shall not award**
8 **attorney's fees or costs to a defendant in a civil action brought under this**
9 **section.**

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

16 ➔Section 2. KRS 218A.100 is amended to read as follows:

17 The Cabinet for Health and Family Services shall place a substance in Schedule IV if:

18 **(1)** It finds that:

19 ~~**(a)(1)**~~ The substance has a low potential for abuse relative to substances in
20 Schedule III;

21 ~~**(b)(2)**~~ The substance has currently accepted medical use in treatment in the
22 United States; and

23 ~~**(c)(3)**~~ Abuse of the substance may lead to limited physical dependence or
24 psychological dependence relative to the substances in Schedule III; **or**

25 **(2) The substance is an abortifacient as defined in Section 1 of this Act, or an**
26 **abortion-inducing drug as defined in KRS 311.7731.**