AN ACT relating to children's health.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 of this Act:

(1) "Biological sex" means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to a person's psychological, chosen, or subjective experience of gender;

(2) "Cross-sex hormones" means:

(a) Testosterone or other androgens given to biological females in amounts that are larger or more potent than would normally occur naturally in healthy biological females; and

(b) Estrogen given to biological males in amounts that are larger or more potent than would normally occur naturally in healthy biological males;

(3) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or female;

(4) "Gender reassignment surgery" means any medical or surgical service that seeks to surgically alter or remove healthy physical or anatomical characteristics or features that are typical for the person's biological sex in order to instill or create physiological or anatomical characteristics that resemble a sex different from the person's biological sex, including but not limited to genital or nongenital gender reassignment surgery performed for the purpose of assisting a person with a gender transition;

(5) "Gender transition" means the process in which a person goes from identifying with and living as a gender that corresponds to his or her biological sex to

identifying with and living as a gender different from his or her biological sex, and may involve social, legal, or physical changes;

(6) (a) "Gender transition procedures" means any medical or surgical service provided or performed for the purpose of assisting a person with a physical gender transition. Gender transition procedures include but are not limited to physician's services, inpatient and outpatient hospital services, puberty-blocking drugs, cross-sex hormones, or genital or nongenital gender reassignment surgery.

(b) Gender transition procedures do not include:

1. Services to persons born with a medically verifiable disorder of sex development, including a person with unresolvable, ambiguous external biological sex characteristics, such as those born with forty-six (46) XX chromosomes with virilization, forty-six (46) XY chromosomes with undervirilization, or having both ovarian and testicular tissue;

2. Services provided when a physician has otherwise diagnosed a disorder of sexual development that the physician has determined through genetic or biochemical testing indicates that a person does not have normal sex chromosome structure, sex steroid production, or sex steroid hormone action;

3. The acute and chronic treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not the gender transition procedure was performed in accordance with state and federal law or whether or not funding for the gender transition procedure is permissible under Sections 1 to 5 of this Act; or

4. Any procedure undertaken because a person suffers from a physical

disorder, physical injury, or physical illness that would, as certified by a physician, place the person in imminent danger of death or impairment of major bodily function unless surgery is performed;

(7) "Health care provider" has the same meaning as in KRS 304.17A-005;

(8) "Nongenital gender reassignment surgery" means medical procedures performed for the purpose of assisting a person with a physical gender transition, including but not limited to:

(a) Surgical procedures for biologically male patients, such as augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice feminization surgery, thyroid cartilage reduction, gluteal augmentation, hair reconstruction, or various aesthetic procedures; or

(b) Surgical procedures for biologically female patients, such as subcutaneous mastectomy, voice masculinization surgery, liposuction, lipofilling, pectoral implants, or various aesthetic procedures;

(9) "Physician" has the same meaning as in KRS 311.550;

(10) "Puberty-blocking drugs" means gonadotropin-releasing hormone analogues or other synthetic drugs used in biological males to stop luteinizing hormone secretion and therefore testosterone secretion, or synthetic drugs used in biological females which stop the production of estrogen and progesterone, when used to delay or suppress pubertal development in children for the purpose of assisting a child with a gender transition; and

(11) "Public funds" means the same as in KRS 446.010.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) A physician or other health care provider shall not provide gender transition procedures to any child under the age of eighteen (18) years.

(2) A physician or other health care provider shall not refer any child under the age

<u>of eighteen (18) years to any health care provider for gender transition procedures.</u>

<u>(3) Any referral for or provision of gender transition procedures to a child under the age of eighteen (18) years by a health care provider shall be considered unprofessional conduct and be subject to disciplinary action by the appropriate licensing or certifying entity.</u>

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

<u>(1) Any violation of Section 2 of this Act shall be deemed as acting recklessly as defined in KRS 501.020 for purposes of tort claims.</u>

<u>(2) Notwithstanding any other provision of the law to the contrary, for any violation of Section 2 of this Act, the action may be brought by the child's parent or guardian before the child attains age eighteen (18) years and may be brought by the child within thirty (30) years after the child attains the age of eighteen (18) years except:</u>

<u>(a) If at the time the child attains the age of eighteen (18) years he or she is under other legal disability, the limitation period shall not begin to run until the removal of the disability; or</u>

<u>(b) If during any period of time the person is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud perpetrated by the physician or health care provider who prescribed or otherwise provided gender transition procedures or by any person acting in the interest of the physician or other health care provider, the limitation period shall not run during this time period.</u>

<u>(3) A person may assert an actual or threatened violation of Section 2 of this Act as a claim or defense in a judicial or administrative proceeding.</u>

<u>(4) In an action brought under this section:</u>

__(a) If the plaintiff prevails, he or she shall be entitled to reasonable costs and attorney's fees;__

__(b) Punitive damages as well as compensatory damages shall be awardable, including but not limited to:__

__1. Pain and suffering;__

__2. Loss of reputation;__

__3. Loss of income; and__

__4. Loss of consortium, including the loss of expectation of sharing parenthood; and__

__(c) Injunctive, declaratory, and any other appropriate relief may be awarded.__

__(5) Notwithstanding any other provision of law to the contrary, an action under this section may be commenced, and relief may be granted, in a judicial proceeding without regard to whether the person commencing the action has sought or exhausted available administrative remedies.__

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

__(1) Public funds shall not be directly or indirectly used, granted, paid, or distributed to any entity, organization, or person that provides gender transition procedures to a child under the age of eighteen (18) years.__

__(2) Any amount paid by a person or an entity for the provision of gender transition procedures or as premiums for health care coverage that includes coverage for gender transition procedures shall not be exempt from taxation.__

__(3) Health care services provided to a child under the age of eighteen (18) years shall not include gender transition procedures if provided:__

__(a) In a facility owned by the state or a county or local government; or__

__(b) By a physician or other health care provider employed by the state or a county or local government.__

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General may bring an action to enforce compliance with Sections 1 to 5 of this Act.

(2) Nothing in Sections 1 to 5 of this Act shall deny, impair, or otherwise affect any right or authority of the Attorney General, the Commonwealth of Kentucky, or any agency, officer, or employee of the state, acting under any other law other, to institute or intervene in any proceeding.

(3) The General Assembly of the Commonwealth of Kentucky, by resolution, may appoint one (1) or more of its members who sponsored or cosponsored Sections 1 to 5 of this Act in his or her official capacity to intervene as a matter of right in any case to which the constitutionality or enforceability of Sections 1 to 5 of this Act is challenged.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Department for Medicaid Services and any managed care organization contracted to provide Medicaid benefits pursuant to this chapter shall not reimburse or provide coverage for gender transition procedures as defined in Section 1 of this Act to a child under the age of eighteen (18) years.

➔SECTION 7. A NEW SECTION OF ARTICLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "gender transition procedures" has the same meaning as in Section 1 of this Act.

(2) Health benefit plans shall not be required to provide coverage for gender transition procedures.

(3) If a health benefit plan elects to provide coverage for gender transition procedures, the plan shall not include coverage for gender transition procedures

for a child under the age of eighteen (18) years.

➔Section 8. KRS 141.019 is amended to read as follows:

In the case of taxpayers other than corporations:

(1) Adjusted gross income shall be calculated by subtracting from the gross income of those taxpayers the deductions allowed individuals by Section 62 of the Internal Revenue Code and adjusting as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Pub. L. No. 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;

(g) 1. a. For taxable years beginning after December 31, 2005, but before January 1, 2018, exclude up to forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans; and

b. For taxable years beginning on or after January 1, 2018, exclude up to thirty-one thousand one hundred ten dollars ($31,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

2. As used in this paragraph:

a. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code;

b. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

(h) 1. a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS

136.300; and

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

2. The shareholder's basis of stock held in an S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

(i) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primaries or regular or special elections;

(j) Exclude any capital gains income attributable to property taken by eminent domain;

(k) 1. Exclude all income from all sources for members of the Armed Forces who are on active duty and who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred.

2. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;

(l) Exclude all military pay received by members of the Armed Forces while on active duty;

(m) 1. Include the amount deducted for depreciation under 26 U.S.C. sec. 167 or 168; and

2. Exclude the amounts allowed by KRS 141.0101 for depreciation;

(n) Include the amount deducted under 26 U.S.C. sec. 199A;

(o) Ignore any change in the cost basis of the surviving spouse's share of property owned by a Kentucky community property trust occurring for federal income tax purposes as a result of the death of the predeceasing spouse;~~[and]~~

(p) Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans, deductions attributable to those loans, and tax attributes associated with those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022; and

(q) For taxable years beginning on or after January 1, 2022, include any amount paid for the provision of gender transition procedures or as premiums for health care coverage that includes coverage for gender transition procedures. In this paragraph, "gender transition procedures" has the same meaning as in Section 1 of this Act; and

(2) Net income shall be calculated by subtracting from adjusted gross income all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as modified by KRS 141.0101, except:

(a) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;

(b) Any deduction allowed by 26 U.S.C. sec. 165 for losses, except wagering losses allowed under Section 165(d) of the Internal Revenue Code;

(c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;

(d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;

(e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous deduction;

(f) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that the deduction has not been claimed under KRS 140.090(1)(h);

(g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and any other deductions in lieu thereof;

(h) Any deduction allowed for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained; and

(i) A taxpayer may elect to claim the standard deduction allowed by KRS 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63 and as modified by this section.

➔Section 9. KRS 141.039 is amended to read as follows:

In the case of corporations:

(1) Gross income shall be calculated by adjusting federal gross income as defined in Section 61 of the Internal Revenue Code as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include the amount calculated under KRS 141.205;

(f) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(g) Include the amount of deprecation deduction calculated under 26 U.S.C. sec. 167 or 168;~~[and]~~

(h) Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans, deductions attributable to those loans, and tax attributes associated with those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022; and

(i) For taxable years beginning on or after January 1, 2022, include any amount paid for the provision of gender transition procedures or as premiums for health care coverage that includes coverage for gender transition procedures. In this paragraph, "gender transition procedures" has the same meaning as in Section 1 of this Act; and

(2) Net income shall be calculated by subtracting from gross income:

(a) The deduction for depreciation allowed by KRS 141.0101;

(b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;

(c) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code, as modified by KRS 141.0101, except:

1. Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
2. The deductions contained in Sections 243, 245, and 247 of the Internal Revenue Code;
3. The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
4. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, except for deductions allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans and deductions attributable to those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
5. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts

membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

6. Any deduction prohibited by KRS 141.205; and

7. Any dividends-paid deduction of any captive real estate investment trust; and

(d) 1. A deferred tax deduction in an amount computed in accordance with this paragraph.

2. For purposes of this paragraph:

a. "Net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with accounting principles generally accepted in the United States of America; and

b. "Net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of a combined group as defined in KRS 141.202, as computed in accordance with accounting principles generally accepted in the United States of America.

3. Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with accounting principles generally accepted in the United States of America, as of January 1, 2019, shall be eligible for this deduction.

4. If the provisions of KRS 141.202 result in an aggregate increase to the member's net deferred tax liability, an aggregate decrease to the member's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.

5. For ten (10) years beginning with the combined group's first taxable year beginning on or after January 1, 2024, a combined group shall be entitled to a deduction from the combined group's entire net income equal to one-tenth (1/10) of the amount necessary to offset the increase in the net deferred tax liability, decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. The increase in the net deferred tax liability, decrease in the net deferred tax asset, or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the combined reporting requirement under KRS 141.202, but for the deduction provided under this paragraph as of June 27, 2019.

6. The deferred tax impact determined in subparagraph 5. of this paragraph shall be converted to the annual deferred tax deduction amount, as follows:

   a. The deferred tax impact determined in subparagraph 5. of this paragraph shall be divided by the tax rate determined under KRS 141.040;

   b. The resulting amount shall be further divided by the apportionment factor determined by KRS 141.120 or 141.121 that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph 5. of this paragraph; and

   c. The resulting amount represents the total net deferred tax deduction available over the ten (10) year period as described in subparagraph 5. of this paragraph.

7. The deduction calculated under this paragraph shall not be adjusted as a

result of any events happening subsequent to the calculation, including but not limited to any disposition or abandonment of assets. The deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than the combined group's entire Kentucky net income, any excess deduction shall be carried forward and applied as a deduction to the combined group's entire net income in future taxable years until fully utilized.

8. Any combined group intending to claim a deduction under this paragraph shall file a statement with the department on or before July 1, 2019. The statement shall specify the total amount of the deduction which the combined group claims on the form, including calculations and other information supporting the total amounts of the deduction as required by the department. No deduction shall be allowed under this paragraph for any taxable year, except to the extent claimed on the timely filed statement in accordance with this paragraph.

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

➔Section 11. This Act may be cited as the Kentucky's Children Deserve Help Not Harm Act.

➔Section 12. This Act shall take effect January 1, 2023, so that children in this state currently using puberty-blocking drugs or cross-sex hormones have time for appropriate medication tapering and discontinuation under the care of their physician or other health care provider.