

Kentucky

EMW Women's Surgical Ctr., P.S.C. v. Cameron, Nos. 2022-SC-0326-I, 2022-SC-0329-TG, 2022 Ky. LEXIS 287, at *3 (Aug. 18, 2022) (noting Court of Appeals dissolved preliminary injunction of KRS § 311.772, granting transfer Ky S. Ct., setting briefing and oral argument).

Ky. Rev. Stat. § 311.772. Prohibition against intentional termination of life of an unborn human being — Definitions — When section takes effect — Penalties not to apply to pregnant woman — Contraception — Appropriation of Medicaid funds.

(1) As used in this section:

- (a) “Fertilization” means that point in time when a male human sperm penetrates the zona pellucida of a female human ovum;
- (b) “Pregnant” means the human female reproductive condition of having a living unborn human being within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth; and
- (c) “Unborn human being” means an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages of the 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, or sell to any pregnant woman any medicine, drug, 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.

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

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

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

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

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

Ky. Rev. Stat. § 311.990. Penalties.

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

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

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

(4) Each violation of [KRS 311.560](#) shall constitute a Class D felony.

(5) Each violation of [KRS 311.590](#) shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.

(6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health and Family Services, in the administration of any of the provisions of [KRS 311.550](#) to [311.620](#) shall be a Class A misdemeanor.

(7) Each violation of [KRS 311.375\(1\)](#) shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.

(8) Each violation of [KRS 311.375\(2\)](#) shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.

(9) Each day of violation of either subsection of [KRS 311.375](#) shall constitute a separate offense.

(10)

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

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

(11)

(a)

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

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

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

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

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

(12)

(a) Except as provided in subsection (12) of Section 1 of this Act, any person who intentionally, knowingly, or recklessly performs an abortion upon a minor without obtaining the required consent pursuant to Section 1 of this Act shall be guilty of a Class D felony.

(b) Except as provided in paragraph (a) of this subsection, any person who intentionally or knowingly fails to conform to any requirement of [KRS 311.732](#) is guilty of a Class A misdemeanor.

(c) Any person who negligently releases information or documents which are confidential under [KRS 311.732](#) is guilty of a Class B misdemeanor.

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

(14) Any person convicted of violating [KRS 311.750](#) shall be guilty of a Class B felony.

(15) Any person who violates [KRS 311.760\(2\)](#) shall be guilty of a Class D felony.

(16) Any person who violates [KRS 311.770](#) shall be guilty of a Class D felony.

(17) Except as provided in [KRS 311.787\(3\)](#), any person who intentionally violates [KRS 311.787](#) shall be guilty of a Class D felony.

(18) A person convicted of violating [KRS 311.780](#) shall be guilty of a Class C felony.

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

(20) Any person who violates [KRS 311.783\(1\)](#) shall be guilty of a Class B misdemeanor.

(21) Any person who violates [KRS 311.7705\(1\)](#) is guilty of a Class D felony.

(22) Any person who violates [KRS 311.7706\(1\)](#) is guilty of a Class D felony.

(23) Except as provided in [KRS 311.731\(7\)](#), any person who violates [KRS 311.731\(2\)](#) shall be guilty of a Class D felony.

(24) Any physician, physician assistant, advanced practice registered nurse, nurse, or other healthcare provider who intentionally violates [KRS 311.823\(2\)](#) shall be guilty of a Class D felony. As used in this subsection, "healthcare provider" has the same meaning as in [KRS 311.821](#).

(25) Any person who violates [KRS 311.810](#) shall be guilty of a Class A misdemeanor.

(26) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of [KRS 311.606](#) shall be guilty of a Class B misdemeanor.

(27) Any administrator, officer, or employee of a publicly owned hospital or publicly owned health care facility who performs or permits the performance of abortions in violation of [KRS 311.800\(1\)](#) shall be guilty of a Class A misdemeanor.

(28) Any person who violates [KRS 311.905\(3\)](#) shall be guilty of a violation.

(29) Any person who violates the provisions of [KRS 311.820](#) shall be guilty of a Class A misdemeanor.

(30)

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

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

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

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

(33) Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.

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

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

(36)

(a) Any physician or qualified technician who violates [KRS 311.727](#) shall be fined not more than one hundred thousand dollars (\$100,000) for a first offense and not more than two hundred fifty thousand dollars (\$250,000) for each subsequent offense.

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

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

(38) Any person convicted of violating [KRS 311.728](#) shall be guilty of a Class D felony.

(39)

(a) A person who intentionally, knowingly, or recklessly violates Sections 5 to 11 of this Act is guilty of a Class D felony.

(b) No criminal penalty may be assessed against a pregnant patient upon whom a drug-induced abortion is attempted, induced, or performed.

Ky. Rev. Stat. § 311.782. Prohibition against performing or inducing abortion when probable gestational age of unborn child is 15 weeks or more — Affirmative defenses — Penalties for violation.

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

(2) It shall be an affirmative defense to a charge under subsection (1) of this section that the abortion was intentionally performed or induced or intentionally attempted to be performed or induced by a physician and that the physician determined, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, that either of the following applied:

(a) The probable gestational age of the unborn child was less than fifteen (15) weeks; or

(b) The abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. No abortion shall be necessary if it is based on a claim or diagnosis that the pregnant woman will engage in conduct that would result in her death or in substantial and irreversible impairment of a major bodily function or if it is based on any reason related to her mental health.

(3)

(a) Except when a medical emergency exists that prevents compliance with [KRS 311.783](#), the affirmative defense set forth in subsection (2)(a) of this section does not

apply unless the physician who intentionally performs or induces or intentionally attempts to perform or induce the abortion makes a determination of the probable gestational age of the unborn child as required by [KRS 311.783\(1\)](#) or relied upon such a determination made by another physician and certifies in writing, based on the results of the tests performed, that in the physician's reasonable medical judgment the unborn child's probable gestational age is less than fifteen (15) weeks.

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

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

least one (1) other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

(4) The state Board of Medical Licensure shall revoke a physician's license to practice medicine in this state if the physician violates or fails to comply with this section.

(5) Any physician who intentionally performs or induces or intentionally attempts to perform or induce an abortion on a pregnant woman with actual knowledge that neither of the affirmative defenses set forth in subsection (2) of this section applies, or with a heedless indifference as to whether either affirmative defense applies, is liable in a civil action for compensatory and punitive damages and reasonable attorney's fees to any person, or the representative of the estate of any person including but not limited to an unborn child, who sustains injury, death, or loss to person or property as the result of the performance or inducement or the attempted performance or inducement of the abortion. In any action under this subsection, the court also may award any injunctive or other equitable relief that the court considers appropriate.

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

Ky. Rev. Stat. § 213.101. Abortion required to be reported to Vital Statistics Branch — Contents of report — Public report by Vital Statistics Branch — Administrative regulations — Audit by Inspector General.

(1) Each abortion as defined in [KRS 213.011](#) which occurs in the Commonwealth, regardless of the length of gestation, shall be reported to the Vital Statistics Branch by the person in charge of the institution within three (3) days after the end of the month in which the abortion occurred. If the abortion was performed outside an institution, the attending physician shall prepare and file the report within three (3) days after the end of the month in which the abortion occurred.

(2) The report shall include all the information the physician is required to certify in writing or determine under [KRS 311.731](#), 311.732, [311.7704](#), [311.7705](#), [311.7706](#), [311.7707](#), 311.7735, 311.7736, [311.774](#), [311.782](#), and 311.783, and at a minimum:

(a) The full name and address of the physician who performed the abortion or provided the abortion-inducing drug as defined in [KRS 311.7731](#);

(b) The address at which the abortion was performed or the address at which the abortion-inducing drug was provided by a qualified physician, or the method of obtaining the abortion-inducing drug if not provided by a qualified physician, including mail order, Internet order, or by a telehealth provider in which case identifying information for the pharmacy, Web site address, or the telemedicine provider shall be included;

- (c)** The names, serial numbers, National Drug Codes, lot numbers, and expiration dates of the specific abortion-inducing drugs that were provided to the pregnant patient and the dates each were provided;
- (d)** The full name and address of the referring physician, agency, or service, if any;
- (e)** The pregnant patient's city or town, county, state, country of residence, and zip code;
- (f)** The pregnant patient's age, race, and ethnicity;
- (g)** The age or approximate age of the father, if known;
- (h)** The total number and dates of each previous pregnancy, live birth, and abortion of the pregnant patient;
- (i)** The probable gestational and post-fertilization ages of the unborn child, the methods used to confirm the gestational and post-fertilization ages, and the date determined;
- (j)** A list of any pre-existing medical conditions of the pregnant patient that may complicate her pregnancy, if any, including hemorrhage, infection, uterine perforation, cervical laceration, retained products, or any other condition;
- (k)** Whether the fetus was delivered alive and the length of time the fetus survived;
- (l)** Whether the fetus was viable and, if viable, the medical reason for termination;
- (m)** Whether a pathological examination of the fetus was performed;
- (n)** Whether the pregnant patient returned for a follow-up examination, the date and results of any such follow-up examination, and what reasonable efforts were made by the qualified physician to encourage the patient to reschedule a follow-up examination if the appointment was missed;
- (o)** Whether the woman suffered any complications or adverse events as defined in [KRS 311.7731](#) and what specific complications or adverse events occurred, and any follow-up treatment provided as required by [KRS 311.774](#);
- (p)** Whether the pregnant patient was Rh negative and, if so, was provided with an Rh negative information fact sheet and treated with the prevailing medical standard of care to prevent harmful fetal or child outcomes or Rh incompatibility in future pregnancies;
- (q)** The amount billed to cover the treatment for specific complications or adverse events, including whether the treatment was billed to Medicaid, private insurance, private pay, or other method. This should include ICD-10 codes reported and charges for any physician, hospital, emergency room, prescription or other drugs, laboratory tests, and any other costs for treatment rendered;
- (r)** The reason for the abortion, if known, including abuse, coercion, harassment, or trafficking; and

(s) Whether the pregnant patient was tested for sexually transmitted diseases when providing the informed consent required in [KRS 311.725](#) and 311.7735 twenty-four (24) hours before the abortion procedure or tested at the time of the abortion procedure, and if the pregnant patient tested positive, was treated or referred for treatment and follow-up care.

(3) The report shall not contain:

(a) The name of the pregnant patient;

(b) Common identifiers such as a Social Security number and motor vehicle operator's license number; and

(c) Any other information or identifiers that would make it possible to ascertain the patient's identity.

(4) If a person other than the physician described in this subsection makes or maintains a record required by [KRS 311.732](#), [311.7704](#), [311.7705](#), [311.7706](#), or [311.7707](#) on the physician's behalf or at the physician's direction, that person shall comply with the reporting requirement described in this subsection as if the person were the physician.

(5) Each prescription issued for an abortion-inducing drug as defined in [KRS 311.7731](#) for which the primary indication is the induction of abortion as defined in [KRS 213.011](#) shall be reported to the Vital Statistics Branch within three (3) days after the end of the month in which the prescription was issued as required by [KRS 311.774](#), but the report shall not include information which will identify the woman involved or anyone who may be picking up the prescription on behalf of the woman.

(6) The name of the person completing the report and the reporting institution shall not be subject to disclosure under [KRS 61.870](#) to [61.884](#).

(7) By September 30 of each year, the Vital Statistics Branch shall issue a public report that provides statistics on all data collected, including the type of abortion procedure used, for the previous calendar year compiled from all of the reports covering that calendar year submitted to the cabinet in accordance with this section for each of the items listed in this section. Each annual report shall also provide statistics for all previous calendar years in which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The Vital Statistics Branch shall ensure that none of the information included in the report could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed or attempted. Each annual report shall be made available on the cabinet's Web site.

(8)

(a) Any person or institution who fails to submit a report by the end of thirty (30) days following the due date set in this section shall be subject to a late fee of five hundred dollars (\$500) for each additional thirty (30) day period or portion of a thirty (30) day period the report is overdue.

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

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

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

(10) The Vital Statistics Branch shall promulgate administrative regulations in accordance with KRS Chapter 13A to assist in compliance with this section.

(11)

(a) The Office of the Inspector General, Cabinet for Health and Family Services, shall annually audit the required reporting of abortion-related information to the Vital Statistics Branch in this section and [KRS 213.172](#), and in so doing, shall function as a health oversight agency of the Commonwealth for this specific purpose.

(b) The Office of the Inspector General shall ensure that none of the information included in the audit report could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed or attempted.

(c) If any personally identifiable information is viewed or recorded by the Office of the Inspector General in conducting an audit authorized by this subsection, the information held by the Inspector General shall not be subject to the Kentucky Open Records Act, shall be confidential, and shall only be released upon court order.

(d) The Inspector General shall submit a written report to the General Assembly and the Attorney General by October 1 of each year. The reports shall include findings from:

1. The audit required in this subsection, including any identified reporting deficiencies; and
2. All abortion facility inspections, including any violations of [KRS 216B.0431](#) and [216B.0435](#).