

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2022 REGULAR SESSION
Unofficial Document

Amend printed copy of **HB 3/SCS 1**

On page 58, line 27, after "probable" insert "gestational" and place brackets around and strike through "post-fertilization"; and

On page 59, line 4 onto line 5, after "probable" insert "gestational" and place brackets around and strike through "post-fertilization"; and

On page 59, line 9, after "probable" insert "gestational" and place brackets around and strike through "post-fertilization"; and

On page 59, line 9, after "of" insert "fifteen (15)" and place brackets around and strike through "twenty (20)"; and

On page 59, line 15, after the word "cabinet" insert the word "that includes at"; and

On page 59, line 17, delete "post-fertilization" and insert in lieu thereof "gestational"; and

On page 64, delete lines 7 through 14 and insert in lieu thereof the following:

"→SECTION 32. A NEW SECTION OF KRS 311.781 TO 311.786 IS CREATED TO READ AS FOLLOWS:

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

(1) Medical and other authorities now know more about human prenatal development than ever before, including:

(a) Between five (5) and six (6) weeks' gestation, an unborn child's heart begins

Amendment No. SFA

Rep. Sen. Adrienne Southworth

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

Not for Filing

Unofficial Document

beating;

(b) At approximately eight (8) weeks' gestation, an unborn child begins to move about in the womb;

(c) At nine (9) weeks' gestation, all basic physiological functions are present, including teeth, eyes, and external genitalia;

(d) At ten (10) weeks' gestation, an unborn child's vital organs begin to function, and hair, fingernails, and toenails begin to form;

(e) At eleven (11) weeks' gestation, an unborn child's diaphragm is developing, he or she may even hiccup, and he or she is beginning to move about freely in the womb; and

(f) At twelve (12) weeks' gestation, an unborn child can open and close his or her fingers, starts to make sucking motions, senses stimulation from the world outside the womb, and has taken on "the human form" in all relevant aspects under *Gonzales v. Carhart*, 550 U.S. 124, 160 (2007);

(2) The United States Supreme Court has long recognized that the state has an "important and legitimate interest in protecting the potentiality of human life," *Roe v. Wade*, 410 U.S. 113, 162 (1973), and specifically that "the state has an interest in protecting the life of the unborn." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 873 (1992);

(3) The majority of abortion procedures performed after fifteen (15) weeks' gestation are dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child apart before removing the pieces of the dead child from the womb, procedures prohibited under Section 36 of this Act, and the General Assembly finds that the intentional commitment of such acts for nontherapeutic or elective reasons

Unofficial Document

is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession;

(4) Abortion carries significant physical and psychological risks to the maternal patient, and these physical and psychological risks increase with gestational age;

(5) As the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term;

(6) Seventy-five percent (75%) of all the nations in the world do not permit abortion after twelve (12) weeks' gestation except, in most instances, to save the life and preserve the physical health of the mother; and

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

➔Section 33. KRS 311.781 is amended to read as follows:

As used in KRS 311.781 to 311.786:

- (1) "Fertilization" means the fusion of a human spermatozoon with a human ovum;
- (2) *"Gestational age" has the same meaning as in KRS 311.7701;*
- (3) "Medical emergency" means a condition that in the physician's reasonable medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order 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 that delay in the performance or inducement of the abortion would create;
- ~~(4)(3)~~ "Pain-capable unborn child" means an unborn child of a probable *gestational*~~post-~~

~~fertilization~~] age of ***fifteen (15)***~~[twenty (20)]~~ weeks or more;

~~(5)~~~~(4)~~ "Physician" has the same meaning as in KRS 311.720;

(6) "Probable gestational age" has the same meaning as in KRS 311.720;

~~[(5) "Post-fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum;~~

~~(6) "Probable post-fertilization age" means, in reasonable medical judgment and with reasonable probability, the age of the unborn child, as calculated from fertilization, at the time the abortion is performed or induced or attempted to be performed or induced;]~~

(7) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(8) "Serious risk of the 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; and

(9) "Unborn child" means an individual organism of the species homo sapiens from fertilization until live birth.

➔Section 34. KRS 311.782 is amended to read as follows:

(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***~~[post-fertilization]~~ age of the unborn child is ***fifteen (15)***~~[twenty (20)]~~ weeks or greater.

Unofficial Document

- (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~~[post-fertilization]~~ age of the unborn child was less than fifteen (15)~~[twenty (20)]~~ 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~~[post-fertilization]~~ 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~~[post-fertilization]~~ age is less than fifteen (15)~~[twenty (20)]~~ 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.

Unofficial Document

- (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.

➔SECTION 35. A NEW SECTION OF KRS 311.781 TO 311.786 IS CREATED TO READ AS FOLLOWS:

The Attorney General shall have authority to bring an action in law or equity to enforce any provisions of KRS 311.781 to 311.786 on behalf of the Commonwealth of Kentucky. The state Board of Medical Licensure shall also have authority to bring an action on its own behalf.

➔Section 36. KRS 311.787 is amended to read as follows:

(1) As used in this section:

- (a) "Bodily dismemberment, crushing, or human vivisection" means a procedure in which a person, with the purpose of causing the death of an unborn child, dismembers the living unborn child and extracts portions, pieces, or limbs of the unborn child from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two (2) rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, any portion, piece, or limb of the unborn child's body to cut or separate the portion, piece, or limb from the body. The term includes a procedure that is used to cause the death of an unborn child and in which suction is subsequently used to extract portions, pieces, or limbs of the unborn child after the unborn child's death;
- (b) "Medical emergency" has the same meaning as in KRS 311.720;
- (c) "Probable **gestational**~~[post-fertilization]~~ age" has the same meaning as in KRS

Unofficial Document

311.720~~[311.781]~~; and

- (d) "Unborn child" has the same meaning as in KRS 311.781.
- (2) No person shall intentionally perform or induce or attempt to perform or induce an abortion on a pregnant woman:
 - (a) That will result in the bodily dismemberment, crushing, or human vivisection of the unborn child; and
 - (b) When the probable **gestational**~~[post-fertilization]~~ age of the unborn child is eleven (11) weeks or greater; except in the case of a medical emergency.
- (3) A pregnant woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of subsection (2) of this section is not guilty of violating subsection (2) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (2) of this section.

➔Section 37. KRS 199.896 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, maintain, or advertise any child-care center without obtaining a license as provided in KRS 199.892 to 199.896.
- (2) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may, in the administrative regulations, establish standards of care and service for a child-care center, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care, and procedures for enforcement of penalties which are not in contravention of this section.
- (3) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee that shall not exceed administrative costs of the program to the cabinet and shall be renewable annually upon expiration and reapplication when accompanied by a renewal fee

that shall not exceed administrative costs of the program to the cabinet. Regular licenses and renewals thereof shall expire one (1) year from their effective date.

- (4) No child-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.
- (5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:
- (a) A statement of fact;
 - (b) A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and
 - (c) The timeframe, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.
- (6) The Cabinet for Health and Family Services, in consultation with the Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care

Unofficial Document

provider's license.

- (7) A child-care center shall have the right to appeal to the Cabinet for Health and Family Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.
- (8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:
 - (a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;
 - (b) The number and type of previous violations of the child-care center;
 - (c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and
 - (d) The amount of assessment necessary to assure immediate and continued compliance.
- (9) Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:
 - (a) Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;

- (b) Institute injunctive proceedings in Circuit Court to terminate the operation of the center;
 - (c) Institute action to discontinue payment of child-care subsidies; or
 - (d) Suspend or revoke the license or impose other penalties provided by law.
- (10) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of child-care center license of the operator. Identifying information regarding children and their families shall remain confidential.
- (11) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the child-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the child-care center upon the parent's, custodian's, guardian's, or other interested person's request.
- (12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and certification applications shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.
- (13) Any advertisement for child-care services shall include the address of where the service is being provided.
- (14) All inspections of licensed and unlicensed child-care centers by the Cabinet for Health and Family Services shall be unannounced.
- (15) All employees and owners of a child-care center who provide care to children shall

demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:

- (a) Basic health, safety, and sanitation;
- (b) Recognizing and reporting child abuse; and
- (c) Developmentally appropriate child-care practice.

(16) All employees and owners of a child-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development. These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric head trauma approved by the secretary of the Cabinet for Health and Family Services. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

(17) The Cabinet for Health and Family Services shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (15) of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (15) of this section.

(18) Child-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical

Unofficial Document

discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact that is intended to protect a child from immediate danger.

(19) **Notwithstanding any other law, administrative regulation, executive order, or executive directive to the contrary, no child-care center shall be refused a license or certification, have its license or certification revoked, be subject to any fine, or be otherwise penalized for refusing to require the wearing of any type of facial covering in response to the COVID-19 virus or any mutated strain of the COVID-19 virus.**

(20) Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than fifteen (15) hours per week shall:

- (a) Notify the cabinet in writing that the center is operating;
- (b) Meet all child-care center licensure requirements and administrative regulations related to employee background checks;
- (c) Meet all child-care center licensure requirements and administrative regulations related to tuberculosis screenings; and
- (d) Be exempt from all other child-care center licensure requirements and administrative regulations.

(21)~~(20)~~ Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than ten (10) hours per week shall be exempt from all child-care licensure requirements and administrative regulations.

(22)~~(21)~~ Instructional programs for school-age children shall be exempt from all child-care licensure administrative regulations if the following criteria are met:

- (a) The program provides direct instruction in a single skill, talent, ability, expertise, or

Unofficial Document

proficiency;

- (b) The program does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;
- (c) The program operates outside the time period when school is in session, including before or after school hours, holidays, school breaks, teaching planning days, or summer vacation;
- (d) The program does not advertise or otherwise represent that the program is a licensed child-care center or that the program offers child-care services;
- (e) The program informs the parent or guardian:
 - 1. That the program is not licensed by the cabinet; and
 - 2. About the physical risks a child may face while participating in the program;and
- (f) The program conducts the following background checks for all program employees and volunteers who work with children:
 - 1. Check of the child abuse and neglect records maintained by the cabinet; and
 - 2. In-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts.

~~(23)~~~~(22)~~ Directors and employees of child-care centers in a position that involves supervisory or disciplinary power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with KRS 199.8965.

~~(24)~~~~(23)~~ A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

Unofficial Document

~~(25)~~~~(24)~~ The cabinet shall promulgate administrative regulations to identify emergency care providers who provide essential child-care services during an identified state of emergency.

~~(26)~~~~(25)~~ Notwithstanding any state law, administrative regulation, executive order, or executive directive to the contrary, during the 2020 or 2021 state of emergency declared by the Governor in response to COVID-19, including but not limited to any mutated strain of the COVID-19 virus, the cabinet shall not establish any restrictions on capacity for class or group size or the ability to combine classes and groups for capacity limits in the morning or afternoon that is below the number that was in effect on February 1, 2020.

➔SECTION 38. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any state law, administrative regulation, executive order, executive directive, school board policy, or school policy to the contrary, any requirement that is imposed in response to the COVID-19 virus or any mutated strain of the COVID-19 virus to:

(a) Wear any type of medical device, including but not limited to any type of facial covering on any public school premises, on school-sponsored transportation, or at a school-sponsored event; or

(b) Submit to any type of medical procedure or treatment, including but not limited to any type of vaccination or testing;

shall provide a parent or guardian the opportunity to opt a student out of the requirement for any reason.

(2) A parent or guardian that opts out in accordance with subsection (1) of this section shall not be required to submit any type of certification or documentation to secure an exemption from any requirement described in subsection (1) of this section.

Unofficial Document

(3) Nothing in this section shall be interpreted to contradict the requirements of KRS 158.035 regarding certificates of immunization.

➔SECTION 39. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) A public postsecondary education institution shall not impose any of the following requirements in response to the COVID-19 virus or any mutated strain of the COVID-19 virus on property located in the Commonwealth that is owned, leased, or operated by the institution that is not used for the delivery of medical or dental services:

(a) The wearing of any of type medical device, including but not limited to any type of facial covering; and

(b) Submission to any type of medical procedure or treatment, including but not limited to any type of vaccination or testing.

(2) Nothing in this section shall be interpreted to prohibit an institution from implementing or enforcing a requirement described in subsection (1) of this section that is not responsive to the COVID-19 virus or mutated strand of the COVID-19 virus, including but not limited to:

(a) A requirement in a postsecondary health care program that existed prior to January 1, 2020; and

(b) A requirement necessary to maintain the integrity of the clinical research conducted by the institution.

➔Section 40. (1) 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 this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

(2) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(3) Nothing in Section 27 or Sections 32 to 36 of this Act shall be construed as altering generally accepted medical standards.

➔Section 41. Sections 1 to 31 of this Act may be cited as the Humanity in Healthcare Act of 2022.

➔Section 42. Whereas the Commonwealth of Kentucky has a paramount interest in protecting all human life and in safeguarding individual rights, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law."