

CHAPTER 156

(HB 402)

AN ACT relating to assisted reproduction.

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:

(1) *For purposes of this section:*

(a) *"Assisted reproduction" means a method of causing pregnancy other than through sexual intercourse, including but not limited to:*

1. *Intrauterine insemination;*
2. *In vitro fertilization and transfer of embryos; and*
3. *Intracytoplasmic sperm injection.*

(b) *"Health care provider" means an individual licensed by the Kentucky Board of Medical Licensure or the Kentucky Board of Nursing, pursuant to KRS Chapters 311 and 314; and*

(c) *"Human reproductive material" means a human sperm or ovum, or a human organism at any stage of development from fertilized ovum to embryo.*

(2) *A person is guilty of fraudulent assisted reproduction when he or she is a health care provider performing an assisted reproduction procedure on a patient; and*

(a) *Knowingly causes the use of human reproductive material from a donor whom the patient did not give written consent to receive it from; or*

(b) *Intentionally causes the use of his or her own human reproductive material without the patient's knowledge and written consent.*

(3) (a) *The patient who undergoes an assisted reproduction procedure in violation of subsection (2) of this section;*

(b) *The patient's surviving spouse or partner listed on the child's birth certificate;*

(c) *The child conceived through assisted reproduction as a result of a violation of subsection (2) of this section; or*

(d) *A donor whose human reproductive material is used without the donor's consent or in a manner inconsistent with the donor's consent;*

shall have a civil cause of action against any health care provider, the health care provider's employer, or both, for a violation of the provisions of subsection (2) of this section.

(4) *A civil action may be maintained under this section whether or not the person alleged to have violated subsection (2) of this section has been charged or convicted of the alleged crime.*

(5) *Liability under this section shall include:*

(a) *Liquidated damages of ten thousand dollars (\$10,000) plus the costs of the fertility treatment and reasonable attorney's fees; or*

(b) *Compensatory and punitive damages including the costs of the fertility treatment plus the costs of the action and reasonable attorney's fees.*

(6) *An action under this section shall be commenced no later than five (5) years after:*

(a) *The eighteenth birthday of the child conceived through the fraudulent assisted reproduction; or*

(b) *The earliest of the dates when:*

1. *The person first discovers evidence against the defendant through deoxyribonucleic acid (DNA) analysis;*

2. *The person first becomes aware of the existence of a record that provides evidence against the defendant; or*
3. *The defendant confesses to the offense.*

(7) *A violation of subsection (2) of this section is a Class D felony.*

➔Section 2. KRS 311.597 is amended to read as follows:

As used in KRS 311.595(9), "dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof" shall include but not be limited to the following acts by a licensee:

- (1) Prescribes or dispenses any medication:
 - (a) With the intent or knowledge that a medication will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;
 - (b) With the intent to evade any law with respect to sale, use, or disposition of the medication;
 - (c) For the licensee's personal use or for the use of his immediate family when the licensee knows or has reason to know that an abuse of a controlled substance is occurring, or may result from such a practice;
 - (d) In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that said amounts so prescribed or dispensed are excessive under accepted and prevailing medical practice standards; or
 - (e) In response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship:
 1. Verification that the person requesting medication is in fact who the patient claims to be;
 2. Establishment of a documented diagnosis through the use of accepted medical practices; and
 3. Maintenance of a current medical record.

For the purposes of this paragraph, an electronic, on-line, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient or for any follow-up evaluation.

- (2) Issues, publishes, or makes oral or written representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including but not limited to:
 - (a) Any representation in which the licensee claims that he can cure or treat diseases, ailments, or infirmities by any method, procedure, treatment, or medicine which the licensee knows or has reason to know has little or no therapeutic value;
 - (b) Represents or professes or holds himself out as being able and willing to treat diseases, ailments, or infirmities under a system or school of practice:
 1. Other than that for which he holds a certificate or license granted by the board, or
 2. Other than that for which he holds a degree or diploma from a school otherwise recognized as accredited by the board, or
 3. Under a school or system which he professes to be self-taught.

For purposes of this subsection, actual injury to a patient need not be established.

- (3) A serious act, or a pattern of acts committed during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence, or malpractice.
- (4) Conduct which is calculated or has the effect of bringing the medical profession into disrepute, including but not limited to any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association or the code of ethics of the American Osteopathic Association. For the purposes of this subsection, actual injury to a patient need not be established.

- (5) Failure by a licensee to report a known or observed violation of KRS Chapter 311 by another licensee as described in KRS 311.606.
- (6) Violation by a licensee of KRS 304.39-215 *or Section 1 of this Act*.
- (7) Conduct by a licensee that is subject to the penalties under KRS 304.99-060(4) or (5).

Signed by Governor April 8, 2022.