

HOUSE Substitute for Senate BILL No. 218

By Committee on Federal and State Affairs

4-1

9 AN ACT concerning abortion; regarding restrictions on late term and
10 partial birth abortion; amending K.S.A. 65-445, 65-6701, 65-6703, 65-
11 6709, as amended by section 1 of 2009 HOUSE Substitute for Senate
12 Bill No. 238 and 65-6721 and K.S.A. 2008 Supp. 65-2836 and repealing
13 the existing sections; also repealing K.S.A. 65-6713.
14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 65-445 is hereby amended to read as follows: 65-
17 445. (a) Every medical care facility shall keep written records of all preg-
18 nancies which are lawfully terminated within such medical care facility
19 and shall annually submit a written report thereon to the secretary of
20 health and environment in the manner and form prescribed by the sec-
21 retary. Every person licensed to practice medicine and surgery shall keep
22 a record of all pregnancies which are lawfully terminated by such person
23 in a location other than a medical care facility and shall annually submit
24 a written report thereon to the secretary of health and environment in
25 the manner and form prescribed by the secretary.

26 (b) Each report required by this section shall include the number of
27 pregnancies terminated during the period of time covered by the report,
28 the type of medical facility in which the pregnancy was terminated, in-
29 formation required to be reported under K.S.A. 65-6703, and amend-
30 ments thereto, if applicable to the pregnancy terminated, and such other
31 information as may be required by the secretary of health and environ-
32 ment, but the report shall not include the names of the persons whose
33 pregnancies were so terminated. *Each report required by subsection*
34 *(c)(4) of K.S.A. 65-6703, and amendments thereto, shall specify the med-*
35 *ical diagnosis and condition constituting a substantial and irreversible*
36 *impairment of a major bodily function or the medical diagnosis and con-*
37 *dition which necessitated performance of an abortion to preserve the life*
38 *of the pregnant woman. Each report required by K.S.A. 65-6703, and*
39 *amendments thereto, shall include a sworn statement by the physician*
40 *performing the abortion and the referring physician that such physicians*
41 *are not legally or financially affiliated.*

42 (c) Information obtained by the secretary of health and environment
43 under this section shall be confidential and shall not be disclosed in a

1 manner that would reveal the identity of any person licensed to practice
2 medicine and surgery who submits a report to the secretary under this
3 section or the identity of any medical care facility which submits a report
4 to the secretary under this section, except that such information, including
5 information identifying such persons and facilities may be disclosed to
6 the state board of healing arts upon request of the board for disciplinary
7 action conducted by the board and may be disclosed to the attorney gen-
8 eral upon a showing that a reasonable cause exists to believe that a vio-
9 lation of this act has occurred. Any information disclosed to the state
10 board of healing arts or the attorney general pursuant to this subsection
11 shall be used solely for the purposes of a disciplinary action or criminal
12 proceeding. Except as otherwise provided in this subsection, information
13 obtained by the secretary under this section may be used only for statis-
14 tical purposes and such information shall not be released in a manner
15 which would identify any county or other area of this state in which the
16 termination of the pregnancy occurred. A violation of this subsection (c)
17 is a class A nonperson misdemeanor.

18 (d) In addition to such criminal penalty under subsection (c), any
19 person licensed to practice medicine and surgery or medical care facility
20 whose identity is revealed in violation of this section may bring a civil
21 action against the responsible person or persons for any damages to the
22 person licensed to practice medicine and surgery or medical care facility
23 caused by such violation.

24 (e) For the purpose of maintaining confidentiality as provided by sub-
25 sections (c) and (d), reports of terminations of pregnancies required by
26 this section shall identify the person or facility submitting such reports
27 only by confidential code number assigned by the secretary of health and
28 environment to such person or facility and the department of health and
29 environment shall maintain such reports only by such number.

30 (f) *The annual public report on abortions performed in Kansas issued*
31 *by the secretary of health and environment shall contain the information*
32 *required to be reported by this section to the extent such information is*
33 *not deemed confidential pursuant to this section. The secretary of health*
34 *and environment shall adopt rules and regulations to implement this sec-*
35 *tion. Such rules and regulations shall prescribe, in detail, the information*
36 *required to be kept by the physicians and hospitals and the information*
37 *required in the reports which must be submitted to the secretary.*

38 Sec. 2. K.S.A. 2008 Supp. 65-2836 is hereby amended to read as
39 follows: 65-2836. A licensee's license may be revoked, suspended or lim-
40 ited, or the licensee may be publicly or privately censured or placed under
41 probationary conditions, or an application for a license or for reinstate-
42 ment of a license may be denied upon a finding of the existence of any
43 of the following grounds:

- 1 (a) The licensee has committed fraud or misrepresentation in apply-
2 ing for or securing an original, renewal or reinstated license.
- 3 (b) The licensee has committed an act of unprofessional or dishon-
4 orable conduct or professional incompetency, except that the board may
5 take appropriate disciplinary action or enter into a non-disciplinary res-
6 olution when a licensee has engaged in any conduct or professional prac-
7 tice on a single occasion that, if continued, would reasonably be expected
8 to constitute an inability to practice the healing arts with reasonable skill
9 and safety to patients or unprofessional conduct as defined in K.S.A. 65-
10 2837, and amendments thereto.
- 11 (c) The licensee has been convicted of a felony or class A misde-
12 meanor, whether or not related to the practice of the healing arts. The
13 board shall revoke a licensee's license following conviction of a felony
14 occurring after July 1, 2000, *or a misdemeanor under K.S.A. 65-6703, and*
15 *amendments thereto, after July 1, 2009*, unless a $\frac{2}{3}$ majority of the board
16 members present and voting determine by clear and convincing evidence
17 that such licensee will not pose a threat to the public in such person's
18 capacity as a licensee and that such person has been sufficiently rehabil-
19 itated to warrant the public trust. In the case of a person who has been
20 convicted of a felony and who applies for an original license or to reinstate
21 a canceled license, the application for a license shall be denied unless a
22 $\frac{2}{3}$ majority of the board members present and voting on such application
23 determine by clear and convincing evidence that such person will not
24 pose a threat to the public in such person's capacity as a licensee and that
25 such person has been sufficiently rehabilitated to warrant the public trust.
- 26 (d) The licensee has used fraudulent or false advertisements.
- 27 (e) The licensee is addicted to or has distributed intoxicating liquors
28 or drugs for any other than lawful purposes.
- 29 (f) The licensee has willfully or repeatedly violated this act, the phar-
30 macy act of the state of Kansas or the uniform controlled substances act,
31 or any rules and regulations adopted pursuant thereto, or any rules and
32 regulations of the secretary of health and environment which are relevant
33 to the practice of the healing arts.
- 34 (g) The licensee has unlawfully invaded the field of practice of any
35 branch of the healing arts in which the licensee is not licensed to practice.
- 36 (h) The licensee has engaged in the practice of the healing arts under
37 a false or assumed name, or the impersonation of another practitioner.
38 The provisions of this subsection relating to an assumed name shall not
39 apply to licensees practicing under a professional corporation or other
40 legal entity duly authorized to provide such professional services in the
41 state of Kansas.
- 42 (i) The licensee has the inability to practice the healing arts with rea-
43 sonable skill and safety to patients by reason of physical or mental illness,

1 or condition or use of alcohol, drugs or controlled substances. In deter-
2 mining whether or not such inability exists, the board, upon reasonable
3 suspicion of such inability, shall have authority to compel a licensee to
4 submit to mental or physical examination or drug screen, or any combi-
5 nation thereof, by such persons as the board may designate either in the
6 course of an investigation or a disciplinary proceeding. To determine
7 whether reasonable suspicion of such inability exists, the investigative
8 information shall be presented to the board as a whole, to a review com-
9 mittee of professional peers of the licensee established pursuant to K.S.A.
10 65-2840c, and amendments thereto, or to a committee consisting of the
11 officers of the board elected pursuant to K.S.A. 65-2818, and amend-
12 ments thereto, and the executive director appointed pursuant to K.S.A.
13 65-2878, and amendments thereto, or to a presiding officer authorized
14 pursuant to K.S.A. 77-514, and amendments thereto. The determination
15 shall be made by a majority vote of the entity which reviewed the inves-
16 tigative information. Information submitted to the board as a whole or a
17 review committee of peers or a committee of the officers and executive
18 director of the board and all reports, findings and other records shall be
19 confidential and not subject to discovery by or release to any person or
20 entity. The licensee shall submit to the board a release of information
21 authorizing the board to obtain a report of such examination or drug
22 screen, or both. A person affected by this subsection shall be offered, at
23 reasonable intervals, an opportunity to demonstrate that such person can
24 resume the competent practice of the healing arts with reasonable skill
25 and safety to patients. For the purpose of this subsection, every person
26 licensed to practice the healing arts and who shall accept the privilege to
27 practice the healing arts in this state by so practicing or by the making
28 and filing of a renewal to practice the healing arts in this state shall be
29 deemed to have consented to submit to a mental or physical examination
30 or a drug screen, or any combination thereof, when directed in writing
31 by the board and further to have waived all objections to the admissibility
32 of the testimony, drug screen or examination report of the person con-
33 ducting such examination or drug screen, or both, at any proceeding or
34 hearing before the board on the ground that such testimony or exami-
35 nation or drug screen report constitutes a privileged communication. In
36 any proceeding by the board pursuant to the provisions of this subsection,
37 the record of such board proceedings involving the mental and physical
38 examination or drug screen, or any combination thereof, shall not be used
39 in any other administrative or judicial proceeding.

40 (j) The licensee has had a license to practice the healing arts revoked,
41 suspended or limited, has been censured or has had other disciplinary
42 action taken, or an application for a license denied, by the proper licensing
43 authority of another state, territory, District of Columbia, or other coun-

1 try, a certified copy of the record of the action of the other jurisdiction
2 being conclusive evidence thereof.

3 (k) The licensee has violated any lawful rule and regulation promul-
4 gated by the board or violated any lawful order or directive of the board
5 previously entered by the board.

6 (l) The licensee has failed to report or reveal the knowledge required
7 to be reported or revealed under K.S.A. 65-28,122, and amendments
8 thereto.

9 (m) The licensee, if licensed to practice medicine and surgery, has
10 failed to inform in writing a patient suffering from any form of abnor-
11 mality of the breast tissue for which surgery is a recommended form of
12 treatment, of alternative methods of treatment recognized by licensees
13 of the same profession in the same or similar communities as being ac-
14 ceptable under like conditions and circumstances.

15 (n) The licensee has cheated on or attempted to subvert the validity
16 of the examination for a license.

17 (o) The licensee has been found to be mentally ill, disabled, not guilty
18 by reason of insanity, not guilty because the licensee suffers from a mental
19 disease or defect or incompetent to stand trial by a court of competent
20 jurisdiction.

21 (p) The licensee has prescribed, sold, administered, distributed or
22 given a controlled substance to any person for other than medically ac-
23 cepted or lawful purposes.

24 (q) The licensee has violated a federal law or regulation relating to
25 controlled substances.

26 (r) The licensee has failed to furnish the board, or its investigators or
27 representatives, any information legally requested by the board.

28 (s) Sanctions or disciplinary actions have been taken against the li-
29 censee by a peer review committee, health care facility, a governmental
30 agency or department or a professional association or society for acts or
31 conduct similar to acts or conduct which would constitute grounds for
32 disciplinary action under this section.

33 (t) The licensee has failed to report to the board any adverse action
34 taken against the licensee by another state or licensing jurisdiction, a peer
35 review body, a health care facility, a professional association or society, a
36 governmental agency, by a law enforcement agency or a court for acts or
37 conduct similar to acts or conduct which would constitute grounds for
38 disciplinary action under this section.

39 (u) The licensee has surrendered a license or authorization to practice
40 the healing arts in another state or jurisdiction, has surrendered the au-
41 thority to utilize controlled substances issued by any state or federal
42 agency, has agreed to a limitation to or restriction of privileges at any
43 medical care facility or has surrendered the licensee's membership on any

- 1 professional staff or in any professional association or society while under
2 investigation for acts or conduct similar to acts or conduct which would
3 constitute grounds for disciplinary action under this section.
- 4 (v) The licensee has failed to report to the board surrender of the
5 licensee's license or authorization to practice the healing arts in another
6 state or jurisdiction or surrender of the licensee's membership on any
7 professional staff or in any professional association or society while under
8 investigation for acts or conduct similar to acts or conduct which would
9 constitute grounds for disciplinary action under this section.
- 10 (w) The licensee has an adverse judgment, award or settlement
11 against the licensee resulting from a medical liability claim related to acts
12 or conduct similar to acts or conduct which would constitute grounds for
13 disciplinary action under this section.
- 14 (x) The licensee has failed to report to the board any adverse judg-
15 ment, settlement or award against the licensee resulting from a medical
16 malpractice liability claim related to acts or conduct similar to acts or
17 conduct which would constitute grounds for disciplinary action under this
18 section.
- 19 (y) The licensee has failed to maintain a policy of professional liability
20 insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments
21 thereto.
- 22 (z) The licensee has failed to pay the premium surcharges as required
23 by K.S.A. 40-3404, and amendments thereto.
- 24 (aa) The licensee has knowingly submitted any misleading, deceptive,
25 untrue or fraudulent representation on a claim form, bill or statement.
- 26 (bb) The licensee as the responsible physician for a physician assistant
27 has failed to adequately direct and supervise the physician assistant in
28 accordance with the physician assistant licensure act or rules and regu-
29 lations adopted under such act.
- 30 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406,
31 and amendments thereto, as established by any of the following:
- 32 ~~(A)~~ (1) A copy of the record of criminal conviction or plea of guilty
33 for a felony in violation of K.S.A. 21-3406, and amendments thereto.
- 34 ~~(B)~~ (2) A copy of the record of a judgment of contempt of court for
35 violating an injunction issued under K.S.A. 60-4404, and amendments
36 thereto.
- 37 ~~(C)~~ (3) A copy of the record of a judgment assessing damages under
38 K.S.A. 60-4405, and amendments thereto.
- 39 Sec. 3. K.S.A. 65-6701 is hereby amended to read as follows: 65-
40 6701. As used in ~~this act~~ *K.S.A. 65-6701 through 65-6721, and amend-*
41 *ments thereto:*
- 42 (a) "Abortion" means the use of any means to intentionally terminate
43 a pregnancy except for the purpose of causing a live birth. Abortion does

- 1 not include: (1) The use of any drug or device that inhibits or prevents
2 ovulation, fertilization or the implantation of an embryo; or (2) disposition
3 of the product of *in vitro* fertilization prior to implantation.
- 4 (b) “Counselor” means a person who is: (1) Licensed to practice med-
5 icine and surgery; (2) licensed to practice psychology; (3) licensed to prac-
6 tice professional or practical nursing; (4) registered to practice profes-
7 sional counseling; (5) licensed as a social worker; (6) the holder of a
8 master’s or doctor’s degree from an accredited graduate school of social
9 work; (7) registered to practice marriage and family therapy; (8) a licensed
10 physician assistant; or (9) a currently ordained member of the clergy or
11 religious authority of any religious denomination or society. Counselor
12 does not include the physician who performs or induces the abortion or
13 a physician or other person who assists in performing or inducing the
14 abortion.
- 15 (c) “Department” means the department of health and environment.
- 16 (d) “Gestational age” means the time that has elapsed since the first
17 day of the woman’s last menstrual period.
- 18 (e) “Medical emergency” means that condition which, on the basis
19 of the physician’s good faith clinical judgment, so complicates the medical
20 condition of a pregnant woman as to necessitate the immediate abortion
21 of her pregnancy to avert her death or for which a delay will create serious
22 risk of substantial and irreversible impairment of a major bodily function.
- 23 (f) “Minor” means a person less than 18 years of age.
- 24 (g) “Physician” means a person licensed to practice medicine and
25 surgery in this state.
- 26 (h) “Pregnant” or “pregnancy” means that female reproductive con-
27 dition of having a fetus in the mother’s body.
- 28 (i) “Qualified person” means an agent of the physician who is a psy-
29 chologist, licensed social worker, registered professional counselor, reg-
30 istered nurse or physician.
- 31 (j) “Unemancipated minor” means any minor who has never been:
32 (1) Married; or (2) freed, by court order or otherwise, from the care,
33 custody and control of the minor’s parents.
- 34 (k) “Viable” means that stage of gestation when, in the best medical
35 judgment of the attending physician, the fetus is capable of sustained
36 survival outside the uterus without the application of extraordinary med-
37 ical means of fetal development when it is the physician’s judgment, ac-
38 cording to accepted obstetrical or neonatal standards of care and practice
39 applied by physicians in the same or similar circumstances, that there is
40 a reasonable probability that the life of the child can be continued indef-
41 initely outside the mother’s womb with natural or artificial life-supportive
42 measures.
- 43 Sec. 4. K.S.A. 65-6703 is hereby amended to read as follows: 65-

1 6703. (a) No person shall perform or induce an abortion when the fetus
2 is viable unless such person is a physician and has a documented referral
3 from another physician *who is licensed to practice medicine in this state*
4 *and who is not legally or financially affiliated with the physician perform-*
5 *ing or inducing the abortion and both physicians determine provide a*
6 *written determination, based upon a medical judgment that would be*
7 *made by a reasonably prudent physician, knowledgeable in the field, and*
8 *knowledgeable about the case and the treatment possibilities with respect*
9 *to the conditions involved, that: (1) The abortion is necessary to preserve*
10 *the life of the pregnant woman; or (2) a continuation of the pregnancy*
11 *will cause a substantial and irreversible impairment of a major bodily*
12 *function of the pregnant woman.*

13 (b) *Except in the case of a medical emergency, a copy of the written*
14 *documented referral and of the abortion-performing physician's written*
15 *determination shall be provided to the pregnant woman no less than 30*
16 *minutes prior to the initiation of the abortion. The written determination*
17 *shall be time-stamped at the time it is delivered to the pregnant woman.*
18 *Such determination shall specify:*

19 (1) *If the fetus was determined to be nonviable and the medical basis*
20 *of such determination;*

21 (2) *if the abortion is necessary to preserve the life of the pregnant*
22 *woman and the medical basis of such determination, including the specific*
23 *medical condition the physician believes would cause the death of the*
24 *pregnant woman; or*

25 (3) *if a continuation of the pregnancy will cause a substantial and*
26 *irreversible impairment of a major bodily function of the pregnant woman*
27 *and the medical basis of such determination, including the specific medical*
28 *condition the physician believes would cause a substantial and irreversible*
29 *impairment of a major bodily function of the pregnant woman.*

30 ~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to per-
31 forming an abortion upon a woman, the physician shall determine the
32 gestational age of the fetus according to accepted obstetrical and neonatal
33 practice and standards applied by physicians in the same or similar cir-
34 cumstances. If the physician determines the gestational age is less than
35 22 weeks, the physician shall document as part of the medical records of
36 the woman the basis for the determination. *The medical reasons for the*
37 *determination of the gestational age of the fetus shall also be reported by*
38 *the physician as part of the written report made by the physician to the*
39 *secretary of health and environment under K.S.A. 65-445, and amend-*
40 *ments thereto.*

41 (2) If the physician determines the gestational age of the fetus is 22
42 or more weeks, prior to performing an abortion upon the woman the
43 physician shall determine if the fetus is viable by using and exercising

1 that degree of care, skill and proficiency commonly exercised by the or-
2 dinary skillful, careful and prudent physician in the same or similar cir-
3 cumstances. In making this determination of viability, the physician shall
4 perform or cause to be performed such medical examinations and tests
5 as are necessary to make a finding of the gestational age of the fetus and
6 shall enter such findings and determinations of viability in the medical
7 record of the woman. *The medical reasons for the determination of the*
8 *gestational age of the fetus shall also be reported by the physician as part*
9 *of the written report made by the physician to the secretary of health and*
10 *environment under K.S.A. 65-445, and amendments thereto.*

11 (3) If the physician determines the gestational age of a fetus is 22 or
12 more weeks, and determines that the fetus is not viable and performs an
13 abortion on the woman, the physician shall report such determinations,
14 *the medical basis* and the reasons for such determinations in writing to
15 the medical care facility in which the abortion is performed for inclusion
16 in the report of the medical care facility to the secretary of health and
17 environment under K.S.A. 65-445, and amendments thereto, or if the
18 abortion is not performed in a medical care facility, the physician shall
19 report such determinations, *the medical basis* and the reasons for such
20 determinations in writing to the secretary of health and environment as
21 part of the written report made by the physician to the secretary of health
22 and environment under K.S.A. 65-445, and amendments thereto.

23 (4) If the physician who is to perform the abortion determines the
24 gestational age of a fetus is 22 or more weeks, and determines that the
25 fetus is viable, both physicians under subsection (a) determine in accord-
26 ance with the provisions of subsection (a) that an abortion is necessary to
27 preserve the life of the pregnant woman or that a continuation of the
28 pregnancy will cause a substantial and irreversible impairment of a major
29 bodily function of the pregnant woman and the physician performs an
30 abortion on the woman, the physician who performs the abortion shall
31 report such determinations, *the medical basis* and the reasons for such
32 determinations ~~and the basis~~, *including the specific medical diagnosis* for
33 the determination that an abortion is necessary to preserve the life of the
34 pregnant woman or that a continuation of the pregnancy will cause a
35 substantial and irreversible impairment of a major bodily function of the
36 pregnant woman *and the name of the referring physician required by*
37 *subsection (a)* in writing to the medical care facility in which the abortion
38 is performed for inclusion in the report of the medical care facility to the
39 secretary of health and environment under K.S.A. 65-445, and amend-
40 ments thereto, or if the abortion is not performed in a medical care fa-
41 cility, the physician who performs the abortion shall report such deter-
42 minations, *the medical basis* and the reasons for such determinations ~~and~~
43 ~~the basis~~, *including the specific medical diagnosis* for the determination

1 that an abortion is necessary to preserve the life of the pregnant woman
2 or that a continuation of the pregnancy will cause a substantial and irre-
3 versible impairment of a major bodily function of the pregnant woman
4 *and the name of the referring physician required by subsection (a)* in
5 writing to the secretary of health and environment as part of the written
6 report made by the physician to the secretary of health and environment
7 under K.S.A. 65-445, and amendments thereto.

8 (5) The physician shall retain the medical records required to be kept
9 under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than
10 ~~five~~ 10 years and shall retain a copy of the written reports required under
11 paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10
12 years.

13 (d) *The secretary of health and environment shall adopt rules and*
14 *regulations to administer this section. These rules and regulations shall*
15 *include:*

16 (1) *A detailed list of the information that must be kept by a physician*
17 *under paragraphs (1) and (2) of subsection (c);*

18 (2) *the contents of the written reports required under paragraphs (3)*
19 *and (4) of subsection (c); and*

20 (3) *detailed information that must be provided by a physician to in-*
21 *sure that the specific medical basis and clinical diagnosis regarding the*
22 *woman and the viability or lack of viability of the fetus is reported.*

23 ~~(e)~~ (e) A woman upon whom an abortion is performed shall not be
24 prosecuted under this section for a conspiracy to violate this section pur-
25 suant to K.S.A. 21-3302, and amendments thereto.

26 ~~(f)~~ (f) Nothing in this section shall be construed to create a right to
27 an abortion. Notwithstanding any provision of this section, a person shall
28 not perform an abortion that is prohibited by law.

29 ~~(c) As used in this section, "viable" means that stage of fetal devel-~~
30 ~~opment when it is the physician's judgment according to accepted ob-~~
31 ~~stetrical or neonatal standards of care and practice applied by physicians~~
32 ~~in the same or similar circumstances that there is a reasonable probability~~
33 ~~that the life of the child can be continued indefinitely outside the mother's~~
34 ~~womb with natural or artificial life-supportive measures.~~

35 (g) (1) *A woman upon whom an abortion is performed in violation*
36 *of this section, the father, if married to the woman at the time she receives*
37 *the abortion procedure, and the parents or custodial guardian of the*
38 *woman, if the woman has not attained the age of 18 years at the time of*
39 *the abortion, may in a civil action obtain appropriate relief, unless, in a*
40 *case where the plaintiff is not the woman upon whom the abortion was*
41 *performed, the pregnancy resulted from the plaintiff's criminal conduct.*

42 (2) *Such relief shall include:*

43 (A) *Money damages for all injuries, psychological and physical, oc-*

- 1 *caused by the violation of this section;*
2 *(B) statutory damages equal to three times the cost of the abortion;*
3 *and*
4 *(C) reasonable attorney fees.*
5 *(h) The prosecution of violations of this section may be brought by*
6 *the attorney general, by the district attorney or county attorney for the*
7 *county where the violation occurred or by the district attorney or county*
8 *attorney for any county where acts or effects constituting or requisite to*
9 *the consummation of the offense occurred.*
10 ~~(i)~~ *(i) If any provision of this section is held to be invalid or uncon-*
11 *stitutional, it shall be conclusively presumed that the legislature would*
12 *have enacted the remainder of this section without such invalid or un-*
13 *constitutional provision.*
14 ~~(j)~~ *(j) Upon a first conviction of a violation of this section, a person*
15 *shall be guilty of a class A nonperson misdemeanor. Upon a second or*
16 *subsequent conviction of a violation of this section, a person shall be guilty*
17 *of a severity level 10, nonperson felony.*
18 Sec. 5. K.S.A. 65-6709, as amended by section 1 of 2009 House Sub-
19 stitute for Senate Bill No. 238, is hereby amended to read as follows: 65-
20 6709. No abortion shall be performed or induced without the voluntary
21 and informed consent of the woman upon whom the abortion is to be
22 performed or induced. Except in the case of a medical emergency, con-
23 sent to an abortion is voluntary and informed only if:
24 (a) At least 24 hours before the abortion the physician who is to per-
25 form the abortion or the referring physician has informed the woman in
26 writing of:
27 (1) The name of the physician who will perform the abortion;
28 (2) a description of the proposed abortion method;
29 (3) a description of risks related to the proposed abortion method,
30 including risks to the woman's reproductive health and alternatives to the
31 abortion that a reasonable patient would consider material to the decision
32 of whether or not to undergo the abortion;
33 (4) the probable gestational age of the fetus at the time the abortion
34 is to be performed and that Kansas law requires the following: "No person
35 shall perform or induce an abortion when the fetus is viable unless such
36 person is a physician and has a documented referral from another phy-
37 sician not financially associated with the physician performing or inducing
38 the abortion and both physicians determine that: (1) The abortion is nec-
39 essary to preserve the life of the pregnant woman; or (2) ~~that~~ a continu-
40 ation of the pregnancy will cause a substantial and irreversible impairment
41 of a major bodily function of the pregnant woman." If the child is born
42 alive, the attending physician has the legal obligation to take all reasonable
43 steps necessary to maintain the life and health of the child;

- 1 (5) the probable anatomical and physiological characteristics of the
2 fetus at the time the abortion is to be performed;
- 3 (6) the contact information for free counseling assistance for medi-
4 cally challenging pregnancies and the contact information for free peri-
5 natal hospice services;
- 6 (7) the medical risks associated with carrying a fetus to term; and
- 7 (8) any need for anti-Rh immune globulin therapy, if she is Rh neg-
8 ative, the likely consequences of refusing such therapy and the cost of
9 the therapy.
- 10 (b) At least 24 hours before the abortion, the physician who is to
11 perform the abortion, the referring physician or a qualified person has
12 informed the woman in writing that:
- 13 (1) Medical assistance benefits may be available for prenatal care,
14 childbirth and neonatal care, and that more detailed information on the
15 availability of such assistance is contained in the printed materials given
16 to her and described in K.S.A. 65-6710, and amendments thereto;
- 17 (2) the informational materials in K.S.A. 65-6710, and amendments
18 thereto, are available in printed form and online, and describe the fetus,
19 list agencies which offer alternatives to abortion with a special section
20 listing adoption services and list providers of free ultrasound services;
- 21 (3) the father of the fetus is liable to assist in the support of her child,
22 even in instances where he has offered to pay for the abortion except that
23 in the case of rape this information may be omitted; ~~and~~
- 24 (4) the woman is free to withhold or withdraw her consent to the
25 abortion at any time prior to invasion of the uterus without affecting her
26 right to future care or treatment and without the loss of any state or
27 federally-funded benefits to which she might otherwise be entitled; *and*
- 28 (5) *the abortion will terminate the life of a whole, separate, unique,*
29 *living human being.*
- 30 (c) At least 30 minutes prior to the abortion procedure, prior to phys-
31 ical preparation for the abortion and prior to the administration of med-
32 ication for the abortion, the woman shall meet privately with the physician
33 who is to perform the abortion and such person's staff to ensure that she
34 has an adequate opportunity to ask questions of and obtain information
35 from the physician concerning the abortion.
- 36 (d) At least 24 hours before the abortion, the woman is given a copy
37 of the informational materials described in K.S.A. 65-6710, and amend-
38 ments thereto. If the woman asks questions concerning any of the infor-
39 mation or materials, answers shall be provided to her in her own language.
- 40 (e) The woman certifies in writing on a form provided by the de-
41 partment, prior to the abortion, that the information required to be pro-
42 vided under subsections (a), (b) and (d) has been provided and that she
43 has met with the physician who is to perform the abortion on an individual

1 basis as provided under subsection (c). All physicians who perform abor-
2 tions shall report the total number of certifications received monthly to
3 the department. The department shall make the number of certifications
4 received available on an annual basis.

5 (f) Prior to the performance of the abortion, the physician who is to
6 perform the abortion or the physician's agent receives a copy of the writ-
7 ten certification prescribed by subsection (e) of this section.

8 (g) The woman is not required to pay any amount for the abortion
9 procedure until the 24-hour waiting period has expired.

10 (h) A physician who will use ultrasound equipment preparatory to or
11 in the performance of the abortion, at least 30 minutes prior to the per-
12 formance of the abortion:

13 (1) Informs the woman that she has the right to view the ultrasound
14 image of her unborn child, at no additional expense to her;

15 (2) informs the woman that she has the right to receive a physical
16 picture of the ultrasound image, at no additional expense to her;

17 (3) offers the woman the opportunity to view the ultrasound image
18 and receive a physical picture of the ultrasound image;

19 (4) certifies in writing that the woman was offered the opportunity
20 to view the ultrasound image and receive a physical picture of the ultra-
21 sound image at least 30 minutes prior to the performance of the abortion;
22 and

23 (5) obtains the woman's signed acceptance or rejection of the oppor-
24 tunity to view the ultrasound image and receive a physical picture of the
25 ultrasound image.

26 If the woman accepts the offer and requests to view the ultrasound
27 image, receive a physical picture of the ultrasound image or both, her
28 request shall be granted by the physician at no additional expense to the
29 woman. The physician's certification shall be time-stamped at the time
30 the opportunity to view the ultrasound image and receive a physical pic-
31 ture of the ultrasound image was offered.

32 (i) A physician who will use heart monitor equipment preparatory to
33 or in the performance of the abortion, at least 30 minutes prior to the
34 performance of the abortion:

35 (1) Informs the woman that she has the right to listen to the heartbeat
36 of her unborn child, at no additional expense to her;

37 (2) offers the woman the opportunity to listen to the heartbeat of her
38 unborn child;

39 (3) certifies in writing that the woman was offered the opportunity
40 to listen to the heartbeat of her unborn child at least 30 minutes prior to
41 the performance of the abortion; and

42 (4) obtains the woman's signed acceptance or rejection of the oppor-
43 tunity to listen to the heartbeat of her unborn child.

1 If the woman accepts the offer and requests to listen to the heartbeat
2 of her unborn child, her request shall be granted by the physician at no
3 additional expense to the woman. The physician's certification shall be
4 time-stamped at the time the opportunity to listen to the heartbeat of her
5 unborn child was offered.

6 (j) The physician's certification required by subsections (h) and (i)
7 together with the pregnant woman's signed acceptance or rejection of
8 such offer shall be placed in the woman's medical file in the physician's
9 office and kept for 10 years. However, in the case of a minor, the physician
10 shall keep a copy of the certification and the signed acceptance or rejection
11 in the minor's medical file for five years past the minor's majority,
12 but in no event less than 10 years.

13 (k) Any private office, freestanding surgical outpatient clinic or other
14 facility or clinic in which abortions are performed shall conspicuously post
15 a sign in a location so as to be clearly visible to patients. The sign required
16 pursuant to this subsection shall be printed with lettering that is legible
17 and shall be at least three quarters of an inch boldfaced type which reads:

18 Notice: It is against the law for anyone, regardless of their relationship
19 to you, to force you to have an abortion. By law, we cannot perform an
20 abortion on you unless we have your freely given and voluntary consent.
21 It is against the law to perform an abortion on you against your will. You
22 have the right to contact any local or state law enforcement agency to
23 receive protection from any actual or threatened physical abuse or violence.
24 You have the right to change your mind at any time prior to the
25 actual abortion and request that the abortion procedure cease.

26 The provisions of this subsection shall not apply to any private office,
27 freestanding surgical outpatient clinic or other facility or clinic which performs
28 abortions only when necessary to prevent the death of the pregnant
29 woman.

30 (l) For purposes of this section, the term "medically challenging pregnancy"
31 means a pregnancy where the fetus is diagnosed as having: (1) A
32 severe anomaly; or (2) an illness, disease or defect which is invariably
33 fatal.

34 Sec. 6. K.S.A. 65-6721 is hereby amended to read as follows: 65-
35 6721. (a) No person shall perform or induce a partial birth abortion on a
36 viable fetus unless ~~such person is a physician and has a documented referral from another physician not legally or financially affiliated with the~~
37 ~~physician performing or inducing the abortion and both physicians determine:~~ (1) The abortion is necessary to preserve the life of the pregnant
38 woman; or (2) a continuation of the pregnancy will cause a substantial
39 and irreversible impairment of a major physical or mental function of the
40 pregnant woman. *such person is a physician and has a documented referral from another physician who is licensed to practice in this state, and*
41
42
43

1 *who is not legally or financially affiliated with the physician performing*
2 *or inducing the abortion and both physicians provide a written deter-*
3 *mination, based upon a medical judgment that would be made by a rea-*
4 *sonably prudent physician, knowledgeable in the field and knowledgeable*
5 *about the case and the treatment possibilities with respect to the condi-*
6 *tions involved, that the partial-birth abortion is necessary to save the life*
7 *of a mother whose life is endangered by a physical disorder, physical*
8 *illness or physical injury, including a life-endangering physical condition*
9 *caused by or arising from the pregnancy itself.*

10 (b) As used in this section,

11 ~~(1) “partial birth abortion” means an abortion procedure which in-~~
12 ~~cludes the deliberate and intentional evacuation of all or a part of the~~
13 ~~intracranial contents of a viable fetus prior to removal of such otherwise~~
14 ~~intact fetus from the body of the pregnant woman.~~

15 ~~—(2) “Partial birth abortion” shall not include the: (A) Suction curet-~~
16 ~~tage abortion procedure; (B) suction aspiration abortion procedure; or~~
17 ~~(C) dilation and evacuation abortion procedure involving dismemberment~~
18 ~~of the fetus prior to removal from the body of the pregnant woman: in~~
19 ~~which the person performing the abortion deliberately and intentionally~~
20 ~~vaginally delivers a living fetus until, in the case of a head-first presen-~~
21 ~~tation, the entire fetal head is outside the body of the mother, or, in the~~
22 ~~case of a breech presentation, any part of the fetal trunk past the navel is~~
23 ~~outside the body of the mother, for the purpose of performing an overt~~
24 ~~act that the person knows will kill the partially delivered living fetus, and~~
25 ~~performs the overt act, other than completion of delivery, that kills the~~
26 ~~partially delivered living fetus.~~

27 (c) (1) If a physician determines in accordance with the provisions
28 of subsection (a) that a partial birth abortion is necessary and performs a
29 partial birth abortion on the woman, the physician shall report such de-
30 termination, *the medical basis, including the specific medical diagnosis,*
31 and the reasons for such determination in writing to the medical care
32 facility in which the abortion is performed for inclusion in the report of
33 the medical care facility to the secretary of health and environment under
34 K.S.A. 65-445, and amendments thereto, or if the abortion is not per-
35 formed in a medical care facility, the physician shall report ~~the reasons~~
36 ~~for~~ such determination, *the medical basis, including the specific medical*
37 *diagnosis, and the reasons for such determination* in writing to the sec-
38 retary of health and environment as part of the written report made by
39 the physician to the secretary of health and environment under K.S.A.
40 65-445, and amendments thereto. The physician shall retain a copy of the
41 written reports required under this subsection for not less than ~~five~~ 10
42 years.

43 (2) *The secretary of health and environment shall adopt rules and*

1 *regulations to administer this section. These rules and regulations shall*
2 *include:*

3 (A) *A detailed list of the contents of the written reports required under*
4 *paragraph (1) of this subsection; and*

5 (B) *detailed information that must be provided by a physician to in-*
6 *sure that the specific medical basis and clinical diagnosis regarding the*
7 *woman is reported.*

8 (d) (1) *The father, if married to the mother at the time she receives*
9 *a partial birth abortion procedure, and, if the mother has not attained*
10 *the age of 18 years at the time of the abortion, the parents or custodial*
11 *guardian of the mother, may in a civil action obtain appropriate relief,*
12 *unless, in a case where the plaintiff is not the woman upon whom the*
13 *abortion was performed, the pregnancy resulted from the plaintiff's crim-*
14 *inal conduct or the plaintiff consented to the abortion.*

15 (2) *Such relief shall include:*

16 (A) *Money damages for all injuries, psychological and physical, oc-*
17 *casioned by the violation of this section;*

18 (B) *statutory damages equal to three times the cost of the abortion;*
19 *and*

20 (C) *reasonable attorney fees.*

21 ~~(e)~~ (e) *A woman upon whom an abortion is performed shall not be*
22 *prosecuted under this section for a conspiracy to violate this section pur-*
23 *suant to K.S.A. 21-3302, and amendments thereto.*

24 ~~(f)~~ (f) *Nothing in this section shall be construed to create a right to*
25 *an abortion. Notwithstanding any provision of this section, a person shall*
26 *not perform an abortion that is prohibited by law.*

27 ~~(g)~~ (g) *Upon conviction of a violation of this section, a person shall be*
28 *guilty of a severity level ~~40~~ 8 person felony.*

29 Sec. 7. K.S.A. 65-445, 65-6701, 65-6703, 65-6709, as amended by
30 section 1 of 2009 House Substitute for Senate Bill No. 238, 65-6713 and
31 65-6721 and K.S.A. 2008 Supp. 65-2836 are hereby repealed.

32 Sec. 8. This act shall take effect and be in force from and after its
33 publication in the statute book.